

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

FRANCISCA ACUÑA; SUSANA	§	IN THE DISTRICT COURT OF
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.,	§	
<i>PLAINTIFFS,</i>	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
THE CITY OF AUSTIN; THE CITY	§	
COUNCIL OF AUSTIN; THE	§	
HONORABLE AUSTIN MAYOR	§	
KIRK WATSON, IN HIS OFFICIAL	§	
CAPACITY; THE HONORABLE AUSTIN	§	
CITY COUNCIL MEMBERS NATASHA	§	
HARPER-MADISON, VANESSA	§	
FUENTES, JOSÉ VELÁSQUEZ, JOSÉ	§	
“CHITO” VELA, RYAN ALTER,	§	
MACKENZIE KELLY, LESLIE POOL,	§	
PAIGE ELLIS, ZOHAIB “ZO” QADRI,	§	
ALISON ALTER, IN THEIR OFFICIAL	§	
CAPACITIES; AND CITY OF AUSTIN	§	
INTERIM CITY MANAGER, JESUS	§	
GARZA, IN HIS OFFICIAL CAPACITY,	§	
<i>DEFENDANTS</i>	§	201 ST JUDICIAL DISTRICT

ORDER

On March 18, 2020, Hon. Jan Soifer, Judge Presiding, 201st Judicial District Court, entered a final judgment in this cause (“Final Judgment”). The Final Judgment was appealed and affirmed on appeal. Plaintiffs filed their Motion to Enforce Permanent Injunction on March 6, 2023; their First Amended Motion to Enforce Permanent Injunction on May 5, 2023; and their Second Amended Motion to Enforce Permanent Injunction and Request for Declaratory Judgment on August 18, 2023.

On August 24, 2023, Defendants filed their Response to Motion to Enforce; and on September 2, 2023, their First Amended Response to Motion to Enforce.

On September 26, 2023, Plaintiffs' Second Amended Motion to Enforce Permanent Injunction and Request for Declaratory Judgment was called for hearing. 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 hearing. Defendants, THE CITY OF AUSTIN; THE CITY COUNCIL OF AUSTIN; THE HONORABLE AUSTIN MAYOR KIRK WATSON, IN HIS OFFICIAL CAPACITY; THE HONORABLE AUSTIN CITY COUNCIL MEMBERS NATASHA HARPER-MADISON, VANESSA FUENTES, JOSÉ VELÁSQUEZ, JOSÉ "CHITO" VELA, RYAN ALTER, MACKENZIE KELLY, LESLIE POOL, PAIGE ELLIS, ZOHAIB "ZO" QADRI, ALISON ALTER, IN THEIR OFFICIAL CAPACITIES; AND CITY OF AUSTIN INTERIM CITY MANAGER, JESUS GARZA, IN HIS OFFICIAL CAPACITY ("Defendants"), appeared through their counsel of record, Assistant City Attorneys Hannah Vahl and Elissa Hogan, and announced ready for hearing.

After considering the evidence, the pleadings, and the arguments of counsel, the Court FINDS as follows:

Vertical Mixed Use II (Ordinance No. 20220609-080) —Passed June 9, 2022.

1. Defendants violated Texas Local Government Code Chapter 211 by failing to provide written notice to all property owners, and surrounding property owners within 200 feet, whose zoning classification was changed by Vertical Mixed Use II, at least 10 days before

the Planning Commission's public hearing on those zoning changes, pursuant to Tex. Loc. Gov't Code § 211.007(c); or in the alternative, providing the alternative notice by following Tex. Loc. Gov't Code § 211.007(d).

2. Vertical Mixed Use II constituted a change in zoning classification because it made changes to a voluntary affordable housing bonus program that allowed changes to multiple zoning regulations in exchange for creation of affordable housing units.

Residential in Commercial (Ordinance No. 20221201-055)—Passed December 1, 2022

3. Defendants violated Texas Local Government Code Chapter 211 by failing to provide written notice to all property owners, and surrounding property owners within 200 feet, whose zoning classification was changed by Residential in Commercial, at least 10 days before the Planning Commission's public hearing on those zoning changes, pursuant to Tex. Loc. Gov't Code § 211.007(c); or in the alternative, providing the alternative notice by following Tex. Loc. Gov't Code § 211.007(d).
4. Residential in Commercial constituted a change in zoning classification because it created a voluntary affordable housing bonus program that allowed changes to multiple zoning regulations in exchange for creation of affordable housing units.

Compatibility on Corridors (Ordinance No. 2021201-056) – Passed December 1, 2022

5. Defendants violated Texas Local Government Code Chapter 211 by failing to provide sufficient written notice to all property owners, and surrounding property owners within 200 feet, whose zoning classification was changed by Compatibility on Corridors, at least 10 days before the Planning Commission's public hearing on those zoning changes, pursuant to Tex. Loc. Gov't Code § 211.007(c); or in the alternative, providing the alternative notice by following Tex. Loc. Gov't Code § 211.007(d).

6. The written notice Defendants provided of Compatibility on Corridors was insufficient because it failed to reasonably apprise property owners of the location of Compatibility on Corridors by failing to specify the street segments to which Compatibility on Corridors would apply.

Affordability Unlocked (Ordinance No. 20190509-027) —Passed May 9, 2019

7. Any notice defect under Texas Local Government Code Chapter 211 with respect to passage of Affordability Unlocked has been validated pursuant to the Texas Validation statute, Tex. Loc. Gov't Code, section 51.003(a).

Contempt and Sanctions

8. Defendants did not violate the Final Judgment through their passage of Vertical Mixed Use II, Residential in Commercial, Compatibility on Corridors, or Affordability Unlocked. The Final Judgment was limited to passage of a comprehensive Land Development Code (“LDC”) rewrite and, accordingly, did not apply to those ordinances. The Final Judgment also did not apply to Affordability Unlocked because Affordability Unlocked was passed before the Final Judgment was entered and was not mentioned in Plaintiffs’ petitions before the Final Judgment was entered.
9. To the extent that the Final Judgment was intended to apply to matters beyond passage of a LDC Rewrite, it was insufficiently clear, specific, and unambiguous to warrant finding Defendants in contempt of it based on the notice they provided of Vertical Mixed Use II, Residential in Commercial, and Compatibility on Corridors. In addition, the Final Judgment could not have applied to Defendants’ passage of Affordability Unlocked because Affordability Unlocked was passed before the Final Judgment was entered.

It is accordingly ORDERED:

10. Vertical Mixed Use II (Ordinance No. 20220609-080) is declared void because Defendants failed to provide written notice of Vertical Mixed Use II pursuant to Tex. Loc. Gov't Code § 211.007(c) or the alternative notice under Tex. Loc. Gov't Code § 211.007(d).
11. Residential in Commercial (Ordinance No. 20221201-055) is declared void because Defendants failed to provide written notice of Residential in Commercial pursuant to Tex. Loc. Gov't Code § 211.007(c) or the alternative notice under Tex. Loc. Gov't Code § 211.007(d).
12. Compatibility on Corridors (Ordinance No. 2021201-056) is declared void because Defendants failed to provide sufficient written notice of Compatibility on Corridors pursuant to Tex. Loc. Gov't Code § 211.007(c) by failing to specify the street segments to which Compatibility on Corridors would apply in the written notice provided and failed to provide alternative notice under Tex. Loc. Gov't Code § 211.007(d).
13. Although Vertical Mixed Use II, Residential in Commercial, and Compatibility on Corridors are hereby declared void, any development with an application approved in reliance on Vertical Mixed Use II, Residential in Commercial, and Compatibility on Corridors may be build in accordance with the development standards set forth in those ordinances.
14. Plaintiffs' request to hold Defendants in civil contempt and for sanctions and attorney's fees are hereby DENIED.
15. All relief not awarded herein is hereby denied. This is a final order disposing of all claims and all parties.

SIGNED on November _____, 2023.

AGREED AS TO FORM AND SUBSTANCE:

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