

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 with declaratory and injunctive relief (Attachment A). The final judgment was affirmed on appeal, *City of Austin v. Acuña*, 651 S.W.3rd 474 (Tex. App.—Houston [14th Dist.] 2022, no pet.). 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, appeared through their counsel of record, Assistant City Attorneys Hannah Vahl and Elissa Hogan, and announced ready for hearing.

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. Janis Simon, Court Reporter for the 200th Judicial District Court, made a record of the proceedings.

DECLARATORY RELIEF

The Court finds:

Vertical Mixed Use II Ordinance—Passed June 9, 2022.

1. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code by failing to provide the required notice to property owners of changes in zoning regulations or zoning district boundaries. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code by providing that unelected staff can approve applications for the “affordable housing” bonus resulting in zoning regulation or zoning district boundary changes without the required notice. The lack of proper written notice effectively hindered the right to protest. Defendants violated the Final Judgment’s directive to “affirmatively inform property owners and surrounding property owners of their protest rights.” (Final Judgment at 3).
2. Ordinance number 20220609-80 violated the permanent injunction and is void *ab initio* for failure to follow the statutory requirements.
3. Defendants’ actions described above constitute *ultra vires* acts that contravene state law and the Final Judgment, entitling Plaintiffs to relief against Defendants.

Residential in Commercial Development Program—Passed December 1, 2022

4. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code by failing to provide the required notice to property owners of changes in zoning regulations or zoning district boundaries. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code by providing that unelected staff can approve applications resulting in zoning regulation or zoning district boundary changes without the required notice. The lack of proper written notice effectively hindered the right to protest. Thus, Defendants violated the Final Judgment’s directive to “affirmatively inform property owners and surrounding property owners of their protest rights.” (Final Judgment at 3).
5. Ordinance number 20221201-55 violated the permanent injunction and is void *ab initio* for failure to follow the statutory requirements.

6. Defendants' actions described above constitute *ultra vires* acts that contravene state law and the Final Judgment, entitling Plaintiffs to relief against Defendants.

Compatibility Ordinance—Passed December 1, 2022

7. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code, by failing to provide the required notice to property owners of changes in zoning regulations or zoning district boundaries. Defendants violated the Permanent Injunction and Chapter 211, Tex. Loc. Gov't Code by providing that unelected staff can approve applications resulting in zoning regulation or zoning district boundary changes without the required notice. Defendants violated the Final Judgment's directive to "affirmatively inform property owners and surrounding property owners of their protest rights." (Final Judgment at 3).

8. The notice failed to reasonably apprise property owners that their property (or property within 200 feet) was being considered for rezoning. The notice was inadequate to notify property owners of the nature of proposed zoning changes such as greater heights and lesser setbacks in understandable layperson terms. The inadequate notice effectively hindered affected property owners's right to protest.

9. Ordinance number 20221201-056 violated the Final Judgment and is void *ab initio* for failure to follow the statutory requirements.

10. Defendants' actions described above constitute *ultra vires* acts that contravene state law and the Final Judgment, entitling Plaintiffs to relief against Defendants.

Affordability Unlocked—Passed May 9, 2019

11. Ordinance No. 20190509-027 is valid pursuant to the Texas Validation statute, Tex. Loc. Gov't Code, section 51.003(a).

The Court DECLARES

1. Ordinance Nos. 20220609-080 (Vertical Mixed Use II Ordinance); Ordinance No. 202221201-055 (Residential and Commercial Development Program); and Ordinance No. 20221201-056 (Compatibility Ordinance) are void *ab initio* for failure to give proper written notice to all property owners whose property is having any of its zoning regulations or boundaries changed, and the property owners within 200 feet of such property, at least ten days before the Planning Commission's public hearing to change any zoning regulations or boundaries of their property or nearby properties, and for improper delegation of authority to Defendants' staff to make final zoning changes, without further notice or City Council approval, and for failure to affirmatively inform property owners and surrounding property owners of their protest rights under Tex. Loc. Gov't Code section 211.006(d).

Sanctions

Defendants are sanctioned \$250.00 per Ordinance per day for their willful failure to comply with the Final Judgment and permanent injunction, beginning on the day the City Council enacted each Ordinance and continuing until today. As of November 20, 2023, those sanctions total \$132,250.00 for Vertical Mixed Use II, Ordinance No. 20220609-80; \$88,500.00 for Residential in Commercial Development Program, Ordinance No. 20221201-055; and \$88,500.00 for Compatibility Ordinance, No. 20221201-056; for a total of \$309,250.00. These zoning ordinances and any other zoning amendments changing any zoning regulations or boundaries shall not be enacted without proper notice to Plaintiffs and protest rights in compliance with the provisions of Chapter 211, Texas Local Government Code.

Attorneys' Fees

Plaintiffs and Defendants have stipulated that if the Court finds that is appropriate to enter an award of reasonable and necessary attorney's fees and costs to Plaintiffs' counsel, a subsequent

hearing will be scheduled. The Court finds that an award of attorney's fees, costs, and expenses is appropriate and the parties shall set that matter for a hearing at a subsequent date.

This Order is interlocutory and not final or appealable until a final order is entered incorporating those attorney's fees, costs, and expenses.

SIGNED on November _____, 2023.

HON. JESSICA MANGRUM, JUDGE PRESIDING

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