

Plaintiffs intend that discovery be conducted under Discovery Level 2. Plaintiffs affirmatively plead that they seek emergency injunctive relief

II. PARTIES AND SERVICE

- A. Plaintiffs, Lori Hunt, Lynn-Marie Bonds, Darrell E. Rupert, MRBP, Ltd., Sylvia Vidaurri, Grania Patterson, Charlie Baird, ALT Properties, LLC, and Alycen Lucy bring this action as owners of property in the City of Austin, Texas. Plaintiffs own property on Manchaca Road, within the current boundaries of the City of Austin, Travis County, Texas.
- B. Plaintiff Manchaca Business Association dba Leave Manchaca Alone is a Texas non – profit association of affected businesses located on Manchaca Road.
- C. Defendant City of Austin may be served with process at the following address:
301 W. 2nd Street., Austin Texas 78701.

III. JURISDICTION AND VENUE

- A. The subject matter in controversy is within the jurisdictional limits of this court.
- B. Plaintiff seeks non-monetary relief only.
- C. This court has jurisdiction over the parties because Defendant is a Texas municipality.
- D. Venue in Travis County is proper in this cause under Section 15.0151 of the Texas Civil Practice and Remedies Code because this county is the county in which the City of Austin is located.

IV. FACTS

1. Plaintiffs Lori Hunt, Lynn-Marie Bonds, Darrell E. Rupert, MRBP, Ltd., Sylvia Vidaurri, Grania Patterson, Charlie Baird, ALT Properties, LLC, and Alycen Lucy own

property on Manchaca Road within the current limits of the City of Austin, Texas.

2. Plaintiffs never received any notice of the proposed name change to Menchaca Road, which was adopted by the Austin City Council on October 4, 2018, Ordinance No. 20181004-058, and will be effective November 15, 2018, (copy attached).
3. Plaintiffs have information regarding the alleged spelling error which is the stated basis for the adoption of the Ordinance *to correct a misspelling” which rebuts the information relied upon by Defendant that the spelling is incorrect. Due to the lack of notice, Plaintiffs did not have an opportunity to present this information at a public hearing.

V. GROUNDS FOR EMERGENCY RELIEF

7. Plaintiffs’ application for emergency relief is authorized by Texas Civil Practice and Remedies Code 65.011.
8. Plaintiffs ask the Court to order the City of Austin to notify all owners of property on Manchaca Road, including Plaintiffs, prior to adopting any ordinance changing the name of Manchaca Road as required by City of Austin Code § 14-5-6 and to suspend the effective date of Ordinance 20181004-058 until such notice has been properly given, and such public hearing has been held.
9. It is probable that Plaintiffs will recover from Defendants after a trial on the merits because Plaintiffs have met all elements of their claim for relief.
10. If Plaintiffs’ request is not granted, harm is imminent because the effective date of the ordinance illegally adopted by Council is November 15, 2018, and the City as well as

property owners on Manchaca Road will begin incurring costs for the name change through the installation of new signage, updating government documents, business related documents and materials, and other business expenses related to the location identification of properties subjected to this change of name and address without proper notice.

11. The harm that will result if this relief is not granted is irreparable because Plaintiffs will be forced to pay the costs related to this name and address change without ever having been give notice that it was going to occur, and therefore no opportunity to present their opposition at a public hearing, as required by City Ordinance.
12. Plaintiffs have no adequate remedy at law because Defendant's duty to comply with the effective date is non-discretionary, and the deadline for performing that duty is imminent.
13. Defendant has been provided a copy of this pleading and counsel has attempted to notify Defendant's counsel of our request to be heard on November 14, 2018.

VI. ARGUMENT AND RELIEF REQUESTED

Summary of Argument

14. The City of Austin violated its own ordinance by failing to notify all property owners of the proposal to change the name of Manchaca Road.
15. Businesses were deprived of due process by failing to be notified prior to the change, and being forced to make significant expenditures.
16. There is substantial information that there was not an error in the spelling of Manchaca and this was the sole rationale relied upon by the City for the name change.

Argument

17. Austin Code of Ordinances, section 14-5, the relevant provision, provides as follows:

§ 14-5-6 - OWNER NOTIFICATION.

(A)

Except as provided in Subsection (B), the department **shall notify the owners of property abutting the subject street of the proposed name change.** Notice under this section may be made in personal, by mail, or by telephone.

(B)

The department shall not issue an owner notification unless the applicant has paid the fee established in [Section 14-5-2\(C\)\(2\)](#) (Application and Fees).

§ 14-5-7 - RECOMMENDATION TO COUNCIL AND COUNCIL ACTION.

(A)

The director shall present an application for a street name change that meets the requirements of this chapter with comment from any City department to the council for action.

(B)

Except as provided in Subsection (C), the council may act on an application for a name change without a public hearing.

(C)

If an owner of property abutting the subject street opposes the proposed street name change, the council shall hold a public hearing before taking action on the application for a street name change. (emph. supp.)

18. This petition, in the attached Exhibit A, contains nine (9) sworn affidavits of property owners abutting Manchaca Road who did not receive notice of the street name change and would have requested a hearing and /or appeared at the public hearing that was held, had they been properly notified of the proposed name change. On information and belief there are additional property owners on Manchaca Road who also did not receive proper notice.

19. A public hearing was held on October 4, 2018, but without any notice to Plaintiffs. Plaintiffs as affected property owners had no opportunity to participate or express their opposition, as required by City Code, section 14-5-7 C. The City must comply with its own Code before taking action which affects the very property owners addressed by the Code's provisions.

20. The failure to provide notice prejudices the ability of Plaintiffs to properly present information regarding the advisability of the proposed name change. Complete and adequate notice is a fundamental right to allow parties to fully participate in a public proceeding. The United States Supreme Court has stated: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Armstrong v. Manzo*, 380 U.S. 545, 550, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). "The notice must be of such nature as reasonably to convey the required information." *Mullane*, 339 U.S. at 314, 70 S.Ct. 652. The Third Court of Appeals has noted in the TCEQ application context that the applicant must provide the public with notice of its application. *United Copper Indus., Inc. v. Grissom*, 17 S.W.3d 797, 802 (Tex.App.-Austin 2000, pet. dismiss'd as moot). This requirement affords individuals who may be affected by the grant or denial of the permit a meaningful opportunity to voice their concerns and participate in the permitting process by requesting a contested-case hearing on the permit application. *Id.*" *Chocolate Bayou Water v. Tx Nat. Res. Cons. Commission, et al*, 124 S.W.3d 844 at 850 (Tex. App. – Austin 2003, no

pet.)

21. In this case, Plaintiffs failed to receive any notice at all of the proposed name change application, or the public hearing regarding it. Failing to provide obviously affected parties with notice undermines any sense that due process was afforded to the affected public before this decision was made. The City does not appear to have a specific procedural remedy in its Ordinance to cure notice defects such as these. In such a case, it is appropriate, to preserve Plaintiffs' due process rights, for the Court to do so. "Before the enactment of section 41.411, the property tax scheme did not provide taxpayers with adequate remedies at law to cure defective notice. Thus, courts developed equitable remedies in order to provide taxpayers with due process protections." *Mag -T. v. Travis Central Appraisal District*, 161 S.W. 3d 617, 630-631 (Tex. App. Austin -2005, rehearing overruled). We are asking this court to provide this protection by suspending this ordinance, and requiring a new notice and public hearing to be held due to the prejudicial failure of notice to Plaintiffs.

22. The City Council based its decision upon Section 14-5-4, to correct a misspelling, as set out below

§ 14-5-4 - ALLOWED REASONS FOR STREET NAME CHANGE.

The director may consider an application for a street name change if the name change is:

- (1) to establish continuity of a street name, including establishing one name for a roadway with staggered center lines that is commonly traveled as a single thoroughfare;
- (2) to eliminate duplication of name spelling or phonetics;
- (3) **to correct a misspelling;**
- (4) to enhance ease of location;
- (5) for consistency with the street numbering system designation, including compass direction;

- (6) to provide a necessary roadway designation, including: "street," "road," "lane," "circle," "drive," or "boulevard;"
- (7) to honor a person, place, institution, group, entity, or event; or
- (8) to enhance a neighborhood through the association of a street name with its location, area characteristics, and history. emph. supp
23. Plaintiffs have information, which they had no opportunity to present to Council that undermine this basis for the adoption of the ordinance.
24. Specifically, Plaintiffs have information that “Manchaca” children attended Crockett High School. The family apparently lived in the area known as Manchac[a] Springs since the 1850s. Plaintiffs should have at least had an opportunity to present this information to the Council before the decision was made to “correct a spelling error”.
25. If ultimately found to be true, this information undermines the stated basis for the adoption of the Ordinance.
26. There exists a genuine controversy between the parties herein that would be terminated by the granting of a declaratory judgment. Plaintiffs therefore request that declaratory judgment be entered as follows:
- that the City of Austin be ordered to give proper notice to all Manchaca Road property owners, and hold a public hearing before adopting any proposed name change.

VII. ATTORNEY'S FEES

Pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code, request is made for all costs and reasonable and necessary attorney's fees incurred by Plaintiffs herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to

appear and answer herein, and that on final trial hereof declaratory judgment be granted as requested herein and Plaintiff be awarded injunctive relief, costs and reasonable and necessary attorney's fees, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

/s/ Roger B. Borgelt
Roger B. Borgelt
Borgelt Law
State Bar No. 02667960
614 S. Capital of Texas Hwy.
Austin, Texas 78746
Tel: 512/600-3467
E-mail: roger@borgeltlaw.com