

CAUSE NO. D-1-GN-18-003286

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
FAYEZ KAZI; JAMES SHIEH; GREG	§	
ANDERSON; CLAIRE HEMPEL;	§	
and PATRICK HOWARD,	§	
	§	
<i>Defendants.</i>	§	250 TH JUDICIAL DISTRICT

FIRST AMENDED INFORMATION IN THE NATURE OF QUO WARRANTO

TO THE HONORABLE DISTRICT JUDGE:

The State of Texas, acting by and through its Attorney General, Ken Paxton, files this information to remove Fayez Kazi, James Shieh, Greg Anderson, Claire Hempel, and/or Patrick Howard from the City of Austin Planning Commission (the “Commission”) because one or more of them unlawfully hold a position on the Commission. In support of this Information, the State shows as follows:

I. Parties and Jurisdiction

1. Plaintiff is the State of Texas (the “State”) and is represented by its Attorney General, Ken Paxton. Tex. Civ. Prac. & Rem. Code § 66.002. The State brings this action under Tex. Civ. Prac. & Rem. Code §§ 66.001, *et seq.* The Court has jurisdiction to remove Defendants from the Commission upon a finding that they unlawfully hold positions on the Commission, *id.* § 66.003(1), and to award costs for the prosecution of this Information, *id.* § 66.003(2). The State intends to conduct

discovery under a Level 3 Discovery Control Plan, which the parties will discuss in the coming weeks. Tex. R. Civ. P. 190.1, 190.4.

2. Defendants are Travis County residents. Defendants Fayez Kazi, James Shieh, and Greg Anderson have already been served and have appeared in this cause. Defendants Claire Hempel and Patrick Howard may be personally served at either of the next-to-occur scheduled meetings of the Commission, on December 10 or 17, 2019, at City Hall, in Council Chambers.

3. Venue is proper in this Court. Tex. Civ. Prac. & Rem. Code, § 15.002.

II. Facts and Grounds for Relief

4. The City of Austin's Charter creates a Planning Commission with responsibility to create a comprehensive city plan, advise the City Council on all land development regulations, and control platting and subdividing land. *See Austin, Tex., Charter art. X, § 4.* Article X, section 2 of the Charter controls eligibility to serve on the Commission: "The planning commission shall have a number of members equal to the number of members on the council plus two (2) additional members, a minimum of two-thirds of the members who shall be lay members not directly or indirectly connected with real estate and land development."

5. Under these provisions, with thirteen voting positions on the Commission, a minimum of nine members must be lay members. Thus, no more than four members of the Commission may be directly or indirectly connected with real estate and land development. Once the Commission has four members who are directly or indirectly connected with real estate and land development, any additional

proposed member is not qualified to serve on the Commission if he or she, too, is directly or indirectly connected to real estate and land development. Appointments that do not comply with these requirements are unlawful insofar as they violate the City Charter, the City Code, and the Bylaws. Members appointed in violation of these requirements do not lawfully hold positions on the Commission.

6. On February 21, 2019, the City Council appointed Patrick B. Howard to the Commission. *See* Austin, Tex., Regular City Council Minutes, Discussion Item 26, p. 11 (Feb. 21, 2019), *available at* <https://www.austintexas.gov/edims/document.cfm?id=316064>. On June 19, 2019, the City Council appointed Claire Hempel to the Commission. *See* Austin, Tex., Regular City Council Minutes, Discussion Item 85, p. 30 (June 19, 2019), *available at* <https://www.austintexas.gov/edims/document.cfm?id=325225>. On the same day, the City Council also reappointed the following Commission members: Fayez Kazi, Greg Anderson, Patrick Howard, and James Shieh. *Id.* at 30–31.

7. The current term for each of those existing members began on July 1, 2019, and will end on June 30, 2021. Commission Roster, *available at* <https://austintexas.granicus.com/boards/w/e8a392f100751dbe> (last visited Aug. 23, 2019).

8. Of the thirteen existing Commission members, five are directly or indirectly connected to real estate and land development.

a. Fayez Kazi is an engineer and is President of Civiltude LLC. His application states he has “18 years’ experience in land development and

infrastructure planning.” According to his company’s website, “[h]is expertise ranges from urban planning and zoning to civil infrastructure design and land development.”¹ His company assists school districts, affordable housing builders, municipalities, and commercial developers.²

- b. James Shieh is an architect. His application states his occupation to be “Design and Development,” and further states that he started his own firm, which assists clients in “development work.” His firm, J Square Architecture LLC, recites that it is involved “in commercial and residential design, land development and interior design. The firm provides professional services for development, new construction, remodel, addition, interior design, and restoration for commercial and residential projects.”³
- c. Greg Anderson is an “affordable housing builder,” according to his application. He currently serves as the “Director of Community Affairs” for Austin Habitat for Humanity.⁴ Austin Habitat for Humanity “builds new homes” and has a land acquisition team that is “responsible for the search, review and oversight of land purchases and development activities for affordable housing.”⁵

¹ Civiltude Team, at https://civiltude.com/our_team/ (last visited Nov. 20, 2019).

² Civiltude Story, at <https://civiltude.com/about/> (last visited Nov. 20, 2019).

³ J Square Architecture, Firm, at <http://jsquarearch.com/firm/index.html> (last visited Nov. 20, 2019).

⁴ Austin Habitat for Humanity, About, Meet our Team, at <https://austinhabitat.org/about/meet-our-team/> (last visited Nov. 20, 2019).

⁵ Austin Habitat for Humanity, Our Impact, Lines of Business, Affordable Homes & Land Acquisition, at <https://austinhabitat.org/our-impact/lines-of-business/> (last visited Nov. 20, 2019).

- d. Claire Hempel is a Principal at Design Workshop, a firm that provides “landscape architecture, planning, urban design and strategic services.”⁶ She personally “serves as the Operations Manager for the Austin office, as well as a project manager, overseeing a multitude of local, regional and international projects, including urban and regional parks, urban design, comprehensive community and environmental planning, and resort planning and design.”⁷ She promotes herself as an “Experienced Principal with a demonstrated history of working in the architecture & planning industry.”⁸
- e. Patrick Howard is the Executive Director and CEO of the Housing Authority of Travis County.⁹ He also “oversee[s] operations of the Strategic Housing Finance Corporation, an affiliated affordable housing development entity, and general partner in 2,286 multifamily units.”¹⁰

These individuals are directly and indirectly connected with real estate and land development. They are not “lay members” within the meaning of the City Charter.

9. At least one, if not more, of the current members of the Commission was unlawfully appointed in violation of the minimum two-thirds “lay member”

⁶ Design Workshop, Inc., Home, at <http://www.designworkshop.com/index.html> (last visited Sept. 12, 2019).

⁷ Design Workshop, Inc., Leadership, Principals, Claire Hempel, at <http://www.designworkshop.com/leadership.html#principals> (last visited Sept. 12, 2019).

⁸ Claire Hempel, LinkedIn, <https://www.linkedin.com/in/claire-hempel-3333455/> (last visited Sept. 12, 2019).

⁹ Housing Authority of Travis County, Contacts, at <https://www.hatctx.com/contacts/> (last visited Sept. 12, 2019).

¹⁰ Patrick B. Howard, LinkedIn, <https://www.linkedin.com/in/patrick-b-howard-aicp-cpm-cme-hccp-nahp-e-shcm-562b053b/> (last visited Sept. 12, 2019).

requirement of the City Charter and the Bylaws. Any member who has been unlawfully appointed does not lawfully hold his or her position on the Commission and must be removed. *See* Tex. Civ. Prac. & Rem Code §§ 66.001, *et seq.*

10. The appointment of more than four individuals who are directly or indirectly connected with real estate and land development violates the minimum two-thirds “lay member” requirement of the City Charter and the Bylaws. Thus, after four such positions were filled on the current Commission, additional proposed appointees were no longer qualified to serve if they were directly or indirectly connected with real estate and land development.

11. City of Austin Code of Ordinances § 2-1-21(F) provides that an appointee “is not eligible to begin service until the person has signed a written acknowledgment stating that the person: (1) has taken the oath of office; (2) has received a copy of and agreed to comply with the City’s ethics and personal responsibility guidelines; and (3) has agreed to complete the training required by Section 2-1-23.” Further, City of Austin Code of Ordinances § 2-1-25(A) provides that a member’s failure to file a public financial statement required by § 2-7-72 automatically vacates the member’s position.

12. The requirements set forth in paragraphs 10 and 11 above, and/or other applicable requirements, may be used to determine the sequence in which the four permitted real estate and land development positions were filled, with all others thereafter disqualified from serving.

III. Requested Relief

13. The State seeks judgment removing any Defendant from the Commission who holds his or her position in excess of the four permitted positions, as determined under any of the methods described in paragraphs 10–12 above or any other method deemed appropriate by the Court.

14. The State also seeks against all removed Defendants an award of its costs in prosecuting this Information and any other relief permitted under Tex. Civ. Prac. & Rem. Code § 66.003.

IV. Prayer

15. Wherefore, the State prays that Defendants be cited to appear and answer, and that upon final trial or other resolution hereof, judgment be entered removing Defendants from the Commission, awarding the State its costs of prosecution, and awarding the State such other relief to which it may be justly entitled.

Respectfully submitted this 26th day of November, 2019.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all counsel of record on November 26, 2019, electronically through the electronic filing manager.

/s/Benjamin S. Walton
BENJAMIN S. WALTON
Assistant Attorney General