

D-1-GN-22-000793

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

BIANCA KING,

*Plaintiff,*

v.

CITY OF LAKEWAY, TEXAS; LAKEWAY  
CITY COUNCIL; LAKEWAY ZONING &  
PLANNING COMMISSION; LAKEWAY  
BOARD OF ADJUSTMENT; LAKEWAY  
CODE COMPLIANCE DEPARTMENT,

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST, DISTRICT COURT

\_\_\_\_\_ JUDICIAL DISTRICT

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**PLAINTIFF'S VERIFIED PETITION FOR WRIT OF CERTIORARI AND  
DECLARATORY JUDGMENT, AND  
PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTIVE RELIEF**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Bianca King who files her Verified Petition For Writ Of Certiorari, Declaratory Judgment, and Application for a Temporary Restraining Order, Temporary Injunction, and Permanent Injunctive Relief against Defendants City Of Lakeway, Texas; Lakeway City Council; Lakeway Zoning & Planning Commission; Lakeway Board Of Adjustment; and Lakeway Code Compliance Department. Plaintiff would show the Court the following:

**I. INTRODUCTION**

1. The City of Lakeway, Texas is forcing Plaintiff to shut down her small home business, depriving Plaintiff of her primary source of income. The City's actions are illegal and unconstitutional.

2. Plaintiff Bianca King is a single mom of two young children, ages 2 and 4. She was laid off from her job during the pandemic, so she decided to support her family in the same way that countless women have supported their families throughout history—by taking care of her neighbors’ children. Bianca runs a small home daycare in which she takes care of two to four children at a time. Her home daycare is approved and inspected by the State of Texas.

3. Bianca’s business allows her to earn a living while also staying home with her children. Her clients are extremely happy with Bianca’s daycare, which provides an intimate and loving setting for their children while they are at work. Bianca’s clients also feel grateful to have found Bianca during the ongoing national childcare crisis, in which there is a severe shortage of affordable and quality childcare.

4. But not everyone likes Bianca’s business. The local country club has a golf course behind Bianca’s home and Bianca’s backyard faces the tee box at the eighth hole. Three golfers have complained to the City that hearing and seeing children playing in Bianca’s private backyard interferes with their golf game. Leading this opposition is Joe Bain, the City’s former mayor. While Mr. Bain lives over 30 houses away from Bianca, he is a regular golfer on the course.

5. After receiving a complaint, the City told Bianca she needed a “home occupation” permit for her home business. Bianca assumed that applying for the permit would be a mere formality. Instead, it led to a five-month administrative process, which included two public hearings.

6. At the hearings, Bianca showed that her business was harmless and providing a much-needed service. Photos of her home also showed it was well-kept and looked like a typical home in the neighborhood. Four of Bianca’s neighbors—including her next-door neighbor—filed

letters of support for Bianca, which sang her praises. Bianca's clients also filed enthusiastic letters of support. Even the City's current mayor, Thomas Kilgore, spoke in support of Bianca's business.

7. Yet the golfers also came to the hearings. At the first hearing, Mr. Bain was the only person to oppose Bianca's permit. Mr. Bain stated, "There are gonna be toys out there, and they're right on the golf course. . . . When you walk by, drive by, you can see the kids out playing there, which is fine but there is a noise issue." At Bianca's second hearing, Mr. Bain and two other golfers also opposed. As Mr. Bain stated, Bianca's backyard "backed up to the tee box and the noise is disturbing the players." The other golfers made similar complaints.

8. Children playing with toys in backyards, however, is a normal part of suburban life. Regardless of whether Bianca has a home daycare, there will still be children playing in her backyard. After all, Bianca has two kids of her own and they have family and friends that often come to visit. Bianca also would not change any of the toys or playthings in her backyard if she no longer had a home daycare.

9. Nevertheless, the Zoning and Planning Commission denied Plaintiff's permit. The City's Board of Adjustment (BOA) affirmed the denial on February 9, 2022.

10. In denying Bianca's permit, the Commission and BOA relied on the City's home business ordinance. The ordinance is one of the strictest home business ordinances in the country. It requires home businesses to meet a list of 19 separate provisions, which are almost impossible to achieve. One provision even states that home businesses must be completely "undetectable," regardless of whether they are hurting anyone. The ordinance thus grants the City broad power and discretion to deny a permit to any home business they wish, including home businesses that are opposed by politically powerful people.

11. The City's denial of Bianca's permit is illegal and unconstitutional. The City's denial of Bianca's permit is illegal pursuant to Tex. Loc. Gov't Code Ann. § 211.011. The City abused its discretion by denying a home-business permit just because it involved ordinary and commonplace activity like children playing with toys in a private backyard.

12. The City's home-business ordinance is also unconstitutional, both as applied to Bianca and on its face. The City's home business ordinance violates Bianca's right to substantive due process under the Texas Constitution—specifically her substantive due process right to earn an honest living. Tex. Const. art. I, § 19. The Texas Supreme Court recently reaffirmed that a law violates the right to earn an honest living when either (1) the regulation is not rationally related to a legitimate governmental interest or (2) the regulation's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. *See Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015). Here, the City's ordinance cannot survive either prong.

13. The City's home-business ordinance is also unconstitutional as applied to Bianca under the right to peaceably assemble. Tex. Const. art. I, § 27. Texans have a fundamental right to peaceably assemble, which includes the right to meet or congregate for shared welfare or benefit. This right is strongest when persons assemble on their own private property, including as part of a home business. *See Zaatari v. City of Austin*, 615 S.W.3d 172, 199–202 (Tex. App.—Austin 2019, pet. denied). An ordinance infringing on this right is subject to strict scrutiny, and the government cannot overcome that heavy burden in this case.

14. Because the City denied Bianca's permit on February 9, 2022, Bianca risks criminal prosecution if she keeps her home business open. Bianca is now faced with the decision to either

shut down and stop earning a living by caring for her neighbors' children, or risk misdemeanor charges and up to \$2,000 in fines per day. *See* City Ordinance § 30.07.133.

15. After the February 9 hearing, Bianca twice reached out to the City Attorney and Lakeway's current mayor to see if they would agree to allow her to stay open until the end of February while she considered her next steps. They have not responded. Meanwhile, Bianca has observed the golfers who opposed her application watching her and her home. One of the golfers asked Bianca when she would close down and if she would move out of town. Upon information and belief, Mr. Bain and the other golfers are urging the City to prosecute Bianca immediately. Upon information and belief, the City does in fact intend to immediately prosecute Bianca.

16. Plaintiff urges this Court to grant injunctive relief, declaratory relief, and nominal damages of \$1 against the Defendants. Otherwise, Bianca will be forced to shut down, losing her livelihood and depriving her clients of childcare.

## **II. JURISDICTION AND VENUE**

17. This Court has subject-matter jurisdiction based on the Texas Constitution, the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.003, and Tex. Loc. Gov't Code Ann. § 211.011(a)–(c).

18. Defendant Lakeway Board of Adjustments filed its decision denying Plaintiff's permit on February 10, 2022, and Plaintiff properly filed this action within 10 days pursuant to Tex. Loc. Gov't Code Ann. § 211.011(b).

19. Venue is proper in Travis County under Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1)–(3).

### III. PARTIES

#### *Named Plaintiff*

20. Bianca King is a resident of Lakeway, Texas, and the sole owner and employee of her home daycare business, “Rainbow’s Edge Family Childcare,” at 702 Vanguard Street, Lakeway, Texas. Bianca owns the home at 702 Vanguard Street, which is also her primary residence. She operates her home daycare business as a sole proprietorship.

#### *Defendants and Service of Process*

21. Defendant City of Lakeway is a home-rule city organized under the laws of Texas and incorporated in Travis County, Texas. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 17.024(b), the City may be served with citation through its mayor, clerk, secretary, or treasurer at the City’s offices located at 1102 Lohmans Crossing Road Lakeway, TX 78734-4470.

22. Defendant Lakeway City Council is responsible for passing, modifying, and repealing the City’s ordinances, including the City’s home occupation ordinance. The City Council is also empowered to take action to prevent activity violating the City’s ordinances. City Ordinance § 30.07.132. Its members may be served at the City’s offices located at 1102 Lohmans Crossing Road Lakeway, TX 78734-4470.

23. Defendant Lakeway Zoning and Planning Commission is empowered to approve home occupation permits after a public hearing. City Ordinance § 30.05.002(b). It is the entity that denied Plaintiff’s home occupation permit on November 8, 2021. Its members may be served at the City’s offices located at 1102 Lohmans Crossing Road Lakeway, TX 78734-4470.

24. Defendant Lakeway Board of Adjustment (BOA) is responsible for hearing appeals of the denial of home occupation permits. It is the entity that affirmed the denial of

Plaintiff's home occupation permit on February 9, 2022. Its members may be served at the City's offices located at 1102 Lohmans Crossing Road Lakeway, TX 78734-4470.

25. Defendant Lakeway Code Compliance Department is responsible for enforcing the City's ordinances, including its permit requirement and other restrictions on home occupations. The Department may be served at 1102 Lohmans Crossing Road Lakeway, TX 78734-4470.

#### **IV. DISCOVERY CONTROL PLAN**

26. Plaintiff intends to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

#### **V. FACTUAL ALLEGATIONS**

27. Bianca King is single mom of two young children, ages 2 and 4. She grew up in El Paso, Texas.

28. For the last decade, Bianca worked as senior program manager in the aerospace industry in California. But then the pandemic hit and turned her life upside down. Bianca's employer laid her off during a series of layoffs. At the time, Bianca was on maternity leave with her youngest child.

29. Bianca decided to turn her lost job into an opportunity. She has a gift with children. Prior to her aerospace career, she worked as a substitute teacher in the Austin Independent School District, and also as a pre-school teacher.

30. Bianca decided to move to the Austin area (where her parents and extended family currently live) and open a home daycare. This would allow her to support her children doing something she loved, while also being able to stay home with her children and be near her family.

31. With this plan in mind, Bianca bought a home in Lakeway in August 2020. She chose the home in part because it had a room that would make the perfect playroom for her business: a large dining room that was full of light and fresh air.

32. Bianca also applied to the state to become an approved daycare. First, she was approved in October 2020 as a “listed family home” after passing a background check and meeting other requirements. This designation allowed her to care for up to three children unrelated to her. A few months later, after taking a series of classes on childcare and safety at Texas A&M University, and having her home inspected, she was approved by the state as a “registered childcare home.” This designation allows her to take care of one additional preschool child, for a total of four children unrelated to her.

33. Bianca opened her business on January 1, 2021. Bianca cares for two to four children at a time, in addition to her own two. She has no plans to take care of more children.

34. She operates the daycare from the hours of 9 to 5.

35. It is her primary source of income and she is the sole breadwinner for her small family.

36. The children that Bianca cares for are four years old and under. They all live in the neighborhood. Some are the children of Bianca’s neighbors.

37. Bianca often walks the children to and from their homes in a big stroller for pickups and drop-offs, or the parents walk over themselves.

38. Bianca’s clients love that Bianca gives their children an intimate and loving environment close to home while the clients are at work. Bianca also cares for fewer children than most other daycares, so the children in her daycare receive lots of personalized attention. Bianca also reads to the children every day, allows no screen time, and serves the children organic food.



39. Bianca's daycare is a rare find; affordable and quality childcare is in short supply during the national child-care crisis.

40. The business's success has also given Bianca an enormous sense of pride and self-sufficiency.

### **The City Contacts Bianca About her Business**

41. The City Code regulates home businesses under its "home occupation" ordinance.

42. Bianca first learned of the City's home occupation ordinance when she was contacted by a code compliance inspector in the City's Code Compliance Department on August 31, 2021.

43. The inspector sent her an email stating, "Lakeway Code Compliance has received information regarding a day care being operated at 702 Vanguard. The City refers to this situation as a 'Home Occupation' which requires a 'Special Use Permit.' Your business is not currently in compliance with our ordinances. I have included the pertinent ordinances below. Please contact Building and Development Services at 512-314-7540 for guidance on applying for a permit."

44. Bianca contacted the office and had several conversations with the inspector. He told her he had received a complaint about her business.

45. The inspector seemed eager to help her apply for a permit and Bianca was left with the impression the inspector would give her a permit in a matter of days.

46. As the inspector told her, the City Ordinance empowered him to administratively approve a home occupation permit on his own. § 30.05.002(c). Such an administrative approval would allow Bianca to receive a permit without having a hearing or undergoing any other steps. *See id.*

47. With the inspector's help in drafting the application, Bianca applied for a permit on September 14, 2021. She asked for a permit for a home daycare serving up to three children at a time, in addition to her own.

48. Suddenly, however, Bianca got an email from a City official scheduling her for a hearing in front of the Zoning and Planning Commission. Bianca was very surprised and called the inspector. The inspector said the City would not allow him to administratively approve her permit because of the complaint he received against her. The City official who sent the email told Bianca the same thing. As a result, Bianca would have to have a hearing in front of the Commission and prove that her business complied with the City's Home Occupation Ordinance.

### **The City's Home Occupation Ordinance**

49. The City has an extremely strict ordinance governing home businesses. It is called the Home Occupation Ordinance. City Ordinance § 30.05.004. It is one of the most oppressive home-occupation ordinances in the state and even the country.

50. The Ordinance defines a home occupation as “[a]n occupation customarily carried on in a dwelling unit, or in an accessory structure to a dwelling unit, by a resident of the premises, which occupation is clearly incidental and secondary to the use of the premises for residential purposes. Examples of home occupations that are permitted by this title include but are not limited to: a computer programmer, an investor, an architect, a consultant, a writer, an artist, or a dress maker.” City Ordinance § 22.02.001.

51. The ordinance requires home occupations to comply with 19 provisions. These provisions are that:

- (1) The occupation shall produce no alteration or change in the character or exterior appearance of the building from that of a dwelling unit for human habitation;
- (2) Such use shall be incidental and secondary to the use of the premises for residential purposes and shall not utilize an area exceeding twenty percent (20%) of the gross floor area of the dwelling unit;
- (3) The occupation use shall be carried on by no other person(s) than a member(s) of the family residing on the premises. No employees may report to the residence for work, gather at the residence for any reason, or park vehicles at the residence;
- (4) The occupation shall not involve the provision of services or the sale of merchandise to a customer on the premises;
- (5) There shall be no storage of merchandise on the property (within or outside of buildings) connected with the business;
- (6) The occupation shall be conducted entirely within a dwelling unit, which must be the bona fide residence of the permittee;
- (7) No equipment or materials associated with the occupation shall be displayed or stored where visible from anywhere outside the home;
- (8) The occupation shall not produce nuisances as defined herein or wastewater runoff outside the dwelling unit or on property surrounding the dwelling unit;
- (9) The occupation shall not cause a noticeable increase in the consumption of any utilities;

- (10) The occupation shall not disturb or interfere with permitted uses in the neighborhood, nor make the adjoining premises unsuitable for their permitted uses;
- (11) The occupation shall not have a measurable effect on property values in the area;
- (12) The occupation shall not consist of the following uses: industrial, utility, manufacturing, repairing, maintaining, fabrication, laboratory, or other similar uses;
- (13) No signs advertising the business shall be permitted on the premises;
- (14) No occupation use shall be allowed which creates any hazardous risk or condition on the premises or to surrounding neighbors or their property, or any other health or safety hazard, whether regulated by statute or rule promulgated by any administrative body of the state, by the federal government, by the city, or which would constitute a common law nuisance;
- (15) The occupation shall not be detrimental or injurious to adjoining property or resident by the creation of dust, electrical interference, fumes, gas, glare, heat, light, noise, vibration, waste runoff, or other objectionable or obnoxious conditions;
- (16) Nothing herein shall be construed to allow animal breeding, animal hospitals, pet grooming, commercial kennels, commercial stables, veterinary offices, clinics, hospitals, barbershops, beauty parlors, contractor's yards, dancing schools/studios, junkyards, lodging houses, "bed and breakfast" lodges,

massage parlors/therapy clinics, restaurants, cocktail lounges, rental outlets, adult oriented businesses or vehicle repair shops as home occupations.

- (17) A home occupation[] shall effectively be undetectable by the permittee's neighbors and the public.
- (18) No occupation shall have customers driving or commuting to the home.
- (19) No occupation use shall have regularly scheduled delivery of goods or services to the home. The occurrence of any incidental delivery of goods or services to the home shall not exceed what may be expected of a typical residence.

City Ordinance § 30.05.004.

52. These provisions ban virtually all home businesses, including many traditional home businesses that are common in most other towns, and which the City has no legitimate interest in prohibiting.

53. For example, the provisions would ban math tutoring or music instruction, as those businesses would result in “services . . . to customers on the premises,” “customers driving . . . to the home,” and would not be “undetectable.” *Id.* at (4), (17), (18).

54. As the City's current mayor Thomas Kilgore stated, the provisions would even ban a “home baker.” That is because a home baking business would result in “merchandise . . . within” the home, *id.* at (5), and would not be “undetectable” if neighbors could smell or see any baked goods. *Id.* at (17).

55. Oddly, the provisions seem to ban the very businesses the ordinances lists as allowed. *See* City Ordinance § 22.02.001. For example, a dress maker keeps merchandise on the premises, is performing an on-premises service, and is detectable by the public. City Ordinance §

30.05.004(5), (4), (17). Many home architects also have clients come to their home. *Id.* at (17). And many artists would be “detectable” to their neighbors, for instance by working in an open garage or working outside in their yard. *Id.*

56. The City thus has discretion as to how strictly or leniently to apply its ordinance.

57. Indeed, upon information and belief, the City has provided permits to home businesses that do not meet all the 19 criteria.

58. Bianca was thus hopeful that the City would permit her business. After all, her business was just as innocuous as the businesses the City says it allows. In addition, many other homes near Bianca have several children. There is also little difference between Bianca watching her own children and also watching a few neighbors’ children.

59. Yet fearful of the City’s sudden change in attitude by scheduling her permit for a hearing, Bianca started keeping her clients’ children inside. She also encouraged her clients to use non-vehicle pick-ups and drop-offs.

### **The Zoning and Planning Commission Hearing**

60. Bianca’s first hearing took place on November 8, 2021, in front of the Zoning and Planning Commission. The video of the hearing is available online.<sup>1</sup>

61. At the hearing, only one person opposed Bianca’s permit—Joe Bain. Mr. Bain was mayor of the town from 2015 until 2018. When he approached the podium, he addressed the members of the Commission: “I think I know most of you.”

62. Mr. Bain lives over 30 homes away from Bianca. However, he is a golfer and he plays golf at the Live Oak golf course at the Hills of Lakeway Country Club, a private par-4 course in the neighborhood. Bianca’s backyard faces the eighth hole of that course.

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<sup>1</sup> Available for viewing at <https://lakewaytx.new.swagit.com/videos/147774>.

63. Mr. Bain's chief complaint was that there are toys in Bianca's backyard. As he stated, the toys in Bianca's backyard "were fully visible to the golf course." Mr. Bain continued, "There are gonna be toys out there, and they're right on the golf course, which is another issue for me." Mr. Bain also referenced a "huge" inflatable that used to be in Bianca's backyard, which seemed to refer to a five-foot tall inflatable sprinkler in the shape of a rainbow arch that Bianca uses in summer for her own children.

64. Mr. Bain also complained he could see and hear children playing in Bianca's backyard. He said that "when you walk or drive by" (in a golf cart), "you can see the kids out playing, which is fine, but there is a noise issue."

65. In addition, Mr. Bain complained Bianca had a sign on her car advertising her business. This sign was a small decal on Bianca's car a little bigger than a toaster. As Mr. Bain noted, Bianca no longer had the sign. She removed it after she learned signs were not allowed for home businesses.

66. After Mr. Bain's comments, some of the Commission members referenced the ordinance provision that a home business "shall effectively be undetectable by the permittee's neighbors and the public." City Ordinance § 30.05.004(17).

67. But as one Commission member stated, children playing outside with toys is a normal part of residential life and whether Bianca has two kids at her home or four to six shouldn't matter. Kids playing in a suburban backyard is a typical occurrence—not something unique to a home daycare.

68. Indeed, Bianca has two kids of her own. Bianca also has family and her children's friends visit frequently, including by playing in her backyard with toys. So regardless of whether Bianca has a home daycare, there would be children and toys in her backyard.

69. Some of the Commission members also stated that the ordinance would not allow Bianca's clients to drive to pick up or drop off their children at Bianca's home. *Id.* at (18). But there is little traffic associated with Bianca's business. Bianca cares for only two to four children at a time. In addition, the children she watches are often siblings, meaning they are picked up and dropped off by one parent.

70. And as Bianca told the Commission, the parents often just walk their children to Bianca's home or she walks to get them with a big stroller, since they all live in Lakeway. Some parents even use golf carts to drop off and pick up their children.

71. In any event, neighborhood families sometimes driving to Bianca's home once or twice a day in no way harm the community and is not materially different than family or friends visiting. Indeed, Bianca's parents and other extended family often drive to and from her house. And when Bianca's family babysits for her children, they can be seen picking up and dropping her children off.

72. Some of the Commission members also stated they were concerned that the State's permitting process for daycares was not rigorous enough. But as other members noted, the ordinance does not give the City authority to deny a home business on that basis.<sup>2</sup>

73. Nevertheless, the Commission denied Bianca's permit in a 4 to 1 decision, with one recusal. In denying the permit, the Commission members did not state which provision of the ordinance they were relying on.

74. Bianca was very surprised and upset by the decision.

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<sup>2</sup> Some Commission members also wondered whether Bianca should register her business with Texas Child Protective Services. But as other members stated at the hearing, this is not required by any law. In fact, Child Protective Services does not allow daycares to register with them.



75. To try to save her livelihood, she had to pay a local attorney to represent her in an appeal to the City Board of Adjustment (BOA).

### **Bianca Appeals to the BOA**

76. As part of Bianca's appeal, she collected evidence that showed her business is harmless and good for the community.

77. She collected letters of support from her clients.

78. She also collected letters of support from four of her neighbors, including her next-door neighbor. As one neighbor stated, Bianca's business "is small, not loud, and no disruption to the neighborhood." Another neighbor stated that "the business is quiet and unobtrusive."

79. Several of the letters, from both clients and neighbors, also stated that Bianca's daycare was a much-needed service and welcome in the community by young parents.

80. Bianca also included photos of her property. The included photos showing her home business is not visible from her front yard. Photos of her backyard show it is surrounded by a wrought iron fence and has only ordinary kids' toys and a wooden playscape with a swing set.

81. All this evidence was included in the record.

### **The BOA Affirms the Denial of Bianca's Permit**

82. The BOA held the hearing on February 9, 2022. The audio of the hearing is available online.<sup>3</sup>

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<sup>3</sup> The hearing audio is available at <https://tinyurl.com/4bbujhzn>.

83. Bianca’s lawyer made a presentation showing that Bianca’s business was harmless and providing a valuable service. He also made clear she only wanted to care for up to four children at a time, in addition to her own two children.<sup>4</sup>

84. The City’s current mayor, Thomas Kilgore, spoke in favor of Bianca in his private capacity as a resident of Lakeway. As Mayor Kilgore stated, “We have these 20, almost unachievable criteria [in the Home Occupation Ordinance].” He urged the BOA to “follow the letter of the ordinance and look at it, but I would ask you not to parse it so tightly that it cannot be achieved.”

85. Bianca’s father—a police chief in a nearby town—also testified in her support. He explained how Bianca’s business was harmless and a much-needed service for parents. He also reminded the BOA that Bianca was a single mother and that her business was her primary source of income.

86. Four opponents testified against Bianca, including the former mayor, Joe Bain. None live next to Bianca and instead live several homes away. Their chief complaint was that Bianca’s backyard faced the golf course, and that they did not want to hear or see children while they were golfing.

87. The first opponent said she is on the golf course behind Bianca’s house “five days a week.” She stated, “The toys and the swing set, that is one thing. . . . But there is more than two children out there. So how are we supposed to know which ones are her children?” This opponent lives down the street from Bianca, with two homes and an intersection between them.

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<sup>4</sup> Bianca’s permit application on September 14, 2021, asked to care for up to three children at a time, which is what the State allowed under Bianca’s designation as a “listed family home.” But the State later approved Bianca as a registered child-care home, so Bianca asked the City to grant her a permit for up to four unrelated children.

88. The second opponent—who lives 23 houses away from Bianca— complained that she can hear children yelling while she is on the golf course and that there are number of toys in Bianca’s backyard. She emphasized that one day, she and her fellow players heard a child crying in the yard, which disturbed their playing.

89. In response to these statements, a BOA member asked, “What hole was this on?” The opponent responded that it was at the eighth hole. The opponent also stated that she has video recorded the children in Bianca’s yard.

90. Former mayor Joe Bain, who lives over 30 homes away, was the third opponent. He again complained that toys in Bianca’s backyard were “visible to the golf course.” He also said that Bianca’s yard “backed up to the tee box and the noise is disturbing the players.”

91. The final opponent stated that there were “children were outside the dwelling,” that children “are out in the yard,” and that there were toys outside. There are two homes and an intersection between his house and Bianca’s.

92. Some of the opponents also mentioned they had seen cars outside Bianca’s home to pick up and drop off children. But as Bianca’s attorney told the BOA, Bianca’s family members and friends often drop off and pick up children at Bianca’s home.

93. The BOA members discussed whether Bianca’s business complied with the ordinance. They discussed three provisions of the ordinance. Like the Commission, the BOA discussed whether Bianca’s business complied with provisions 17 and 18 under the ordinance by being undetectable and not having clients drive to home.

94. The BOA also discussed provision 4 for the first time. Provision 4 prohibits home businesses from providing “services or the sale of merchandise to a customer on the premises to customers on the premises.” City Ordinance § 30.05.004(4).

95. The BOA ultimately voted to affirm the denial of Bianca's permit in a 4 to 2 decision. (There was one recusal). The BOA did not specify what provision they were denying her permit under. The next day, the BOA filed its written decision on February 10, 2022. The decision stated that the Commission had denied the permit under provisions 17 and 18, and the BOA was affirming that decision.

96. Since then, some of the golfers who opposed Bianca's business at the hearings have watched Bianca and her home to see if she is still operating. One of the golfers even approached Bianca's home while Bianca was exercising in her garage and asked to know more details about Bianca's plans for shutting down her business.

97. Bianca twice reached out to the City Attorney and mayor, on February 11 and again on February 14, to see if he would give her more time to keep her business open while she considers her options. As of the filing of this petition, she has yet to hear back from them.

98. Upon information and belief, Mr. Bain and the other golfers are urging the City to prosecute Bianca immediately. Upon information and belief, the City does in fact intend to immediately prosecute Bianca.

99. Bianca was able to secure pro bono counsel from the undersigned law firm, the Institute for Justice. Together, they filed this petition.

## **VI. INJURY TO PLAINTIFF**

100. If Bianca continues to operate her business without a permit from the City, she will be subject to a misdemeanor charge and up to a \$2,000 fine per day. City Ordinance § 30.07.133. These fines would quickly accumulate into tens of thousands of dollars.

101. Upon information and belief, the City intends to immediately prosecute Bianca if she does not close down her business.

102. To avoid the risk of prosecution, Bianca will have to immediately shut down her business at her home unless this Court allows her to stay open.

103. Bianca's business has been a tremendous source of pride for Bianca, and she has dedicated countless hours building it and cementing an excellent reputation among her clients.

104. Bianca's business is also her primary source of income. Shutting down Bianca's business would also leave her clients scrambling to find new childcare.

105. But for the City's unconstitutional home-based ordinance and the illegal denial of her home occupation permit, Bianca would be able to continue operating her home daycare and providing for her family.

## **VII. CLAIMS**

### **FIRST CAUSE OF ACTION**

#### **(REQUEST FOR WRIT OF CERTIORARI; ILLEGAL ACTION BY BOARD OF ADJUSTMENT)**

106. Plaintiff hereby incorporates the allegations set forth above in paragraphs 1 to 105, all of which are fully re-alleged here.

107. The order of the BOA affirming the denial of Bianca's home occupation permit was illegal.

108. To establish that an order of a zoning board is illegal, the party attacking the order must show that the board abused its discretion. A board abuses its discretion if it acts without reference to any guiding rules and principles, or clearly fails to analyze or apply the law correctly.

109. Whether a zoning board of adjustment abused its discretion is a question of law for the trial court.

110. Here the Board of Adjusted acted illegally by affirming the Commission's decision to deny Plaintiff's permit under City Ordinance § 30.05.004(17) and (18). Provision 17 states that

“[a] home occupation[] shall effectively be undetectable by the permittee’s neighbors and the public.” Provision 18 states, “No occupation shall have customers driving or commuting to the home.”

111. The BOA abused its discretion by affirming the Commission’s finding that Plaintiff’s home business does not comply with provision 17. The BOA based its decision on statements from golfers, including the former City mayor, that they could detect toys and children in Plaintiff’s private backyard.

112. Toys and children in a private backyard are normal and common in a suburban area, whether a person has a home daycare or not. Plaintiff herself has two children that play in her backyard. Plaintiff’s children also have friends and relatives that frequently come to visit them and play in her backyard. Thus, toys and children would be in Plaintiff’s backyard whether she had a daycare or not.

113. Moreover, the ability of golfers to see toys and children in Plaintiff’s private backyard is not a sufficient reason to find that Plaintiff’s business is “detectable” under provision 17. This is especially true as it would be difficult for the golfers to determine whether the children playing in Plaintiff’s yard are her own children, family or friends, or daycare children.

114. Plaintiff also would not change or remove any of the toys or playthings in her backyard if she no longer had a home daycare.

115. The BOA thus abused its discretion by finding that Plaintiff’s business did not comply with provision 17.

116. The BOA also abused its discretion by finding that Plaintiff’s home business does not comply with provision 18 (“No occupation shall have customers driving or commuting to the home.”). Although neither the Commission nor Board stated its reasons for this finding, they

seemed to base this decision on statements from residents, none of whom lived next to Plaintiff and two of whom lived over 20 houses away from Plaintiff. These statements were that the residents saw people in cars dropping children off at Plaintiff's home.

117. Dropping children off is normal and common activity in a suburban area, whether a person has a home daycare or not. Plaintiff has friends and a big family that often drive to her home in cars. Plaintiff's children also frequently have playdates with their friends at Plaintiff's home.

118. In addition, statements at the hearing showed that Plaintiff's parents often drop off their grandchildren (Plaintiff's children) at Plaintiff's home after spending time with them.

119. Moreover, Plaintiff stated that she often walks the daycare children to and from her home in a big stroller or their parents walk to pick and drop them off.

120. As a result, it would be difficult to determine whether cars at Plaintiff's home are dropping off Plaintiff's children, Plaintiff's children's friends, or daycare children.

121. The BOA thus abused its discretion by finding that Plaintiff's business did not comply with provision 18.

122. Moreover, in affirming the denial of Plaintiff's permit, the BOA interpreted provisions 17 and 18 so strictly that their interpretation contradicted other aspects of the ordinance. The ordinance states that, "Examples of home occupations that are permitted by this title include but are not limited to: a computer programmer, an investor, an architect, a consultant, a writer, an artist, or a dress maker." City Ordinance § 22.02.001. Several of these occupations would certainly be detectable to neighbors and the public under provision 17, or at least as detectable as Plaintiff's home business. Similarly, several of these occupations would have clients coming to the home under provision 18. Yet these occupations are expressly allowed under the ordinance.

123. Upon information and belief, the City has also granted permits to home occupations that violated one or both of these provisions.

124. The City exercises discretion in granting and denying home occupation permits. In exercising this discretion, it improperly considers whether politically powerful people oppose the permit.

125. The City considered that politically powerful people opposed Plaintiff's permit.

126. The City thus abused its discretion by denying Plaintiff's permit under provisions 17 and 18.

127. Pursuant to Tex. Loc. Gov't Code Ann. § 211.011, Plaintiff respectfully requests that this Court issue a Writ of Certiorari directed to the BOA regarding the BOA's affirmance of the Commission's decision to deny Plaintiff her home occupation permit. Plaintiff also requests the Court enter a judgment declaring that the BOA illegally affirmed the decision to deny Plaintiff her home occupation permit. Tex. Loc. Gov't Code Ann. § 211.011(a), (f) (empowering court to declare BOA action illegal)

#### **SECOND CAUSE OF ACTION**

#### **(TEX. CONST. ART. I, § 19 – AS APPLIED CLAIM; SUBSTANTIVE DUE PROCESS; DEPRIVATION OF ECONOMIC LIBERTY AND PROPERTY RIGHTS)**

128. Plaintiff hereby incorporates the allegations set forth above in paragraphs 1 to 105, all of which are fully re-alleged here.

129. Article I, Section 19 of the Texas Constitution provides: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."



130. This “due course of the law of the land” guarantee of the Texas Constitution is commonly known as the Constitution’s “due process” provision. Among the rights encompassed in this provision is substantive due process. Substantive due process protects, among other things, the right to economic liberty (such as the right to earn an honest living in the occupation of one’s choice) and property rights.

131. To show that an economic regulation has violated substantive due process under this provision, a plaintiff must show either that (1) the regulation is not rationally related to a legitimate governmental interest or (2) the regulation’s actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. *See Patel v. Tex. Dep’t of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015).

132. Defendants’ home occupation ordinance is an economic regulation. *See City Ordinance* § 30.05.004. Each of the ordinance’s provisions, including provisions 4, 17, and 18, are also economic regulations. City Ordinance § 30.05.004(4) (“The occupation shall not involve the provision of services or the sale of merchandise to a customer on the premises”); *id.* at (17) (“A home occupation[] shall effectively be undetectable by the permittee’s neighbors and the public.”); *id.* at (18) (“No occupation shall have customers driving or commuting to the home”).

133. The ordinance, including provisions 4, 17, and 18, violates the due process guarantee as applied to Plaintiff.

134. The ordinance, including provisions 4, 17, and 18, interferes with Plaintiff’s right to economic liberty, specifically her right to earn an honest living. It also interferes with Plaintiff’s property rights.

135. Defendants lack a legitimate reason for applying the ordinance to ban Plaintiff's home daycare business.

136. Applying the ordinance to ban Plaintiff's home daycare business is not rationally related to a legitimate government interest.

137. The ordinance's actual, real-world effect—preventing small home daycare businesses—is so burdensome as to be oppressive in light any legitimate governmental interest, as applied to Plaintiff.

138. Plaintiff's home daycare business does not interfere with anyone's rights and is not otherwise a nuisance. Plaintiff's home daycare business is harmless.

139. Plaintiff's home daycare involves caring for only two to four children at a time, in addition to her own two children. Having four to six children at a home, whether they are related to the homeowner or not, is a normal and ordinary use of property. In fact, many Texans have several children of their own.

140. The government does not have a legitimate interest in preventing small groups of children from being together in or outside a home.

141. It is irrational and oppressively burdensome to deny Plaintiff's home daycare because she provides a basic service to a small group of children in her home.

142. Even if Plaintiff's home daycare business resulted in the sound of children playing outside, that is a normal and expected noise in any suburban community. In fact, Plaintiff's own children and their friends would regularly cause such sounds outside, regardless of whether she operated a home business or not.

143. The government does not have a legitimate interest in preventing the sounds of a small group of children playing in a person's private backyard.

144. It is irrational and oppressively burdensome to deny Plaintiff's home daycare because it might result in sounds of children in a backyard.

145. Even if Plaintiff's home daycare business resulted in toys outside, children's toys are normal and expected in any suburban community. In fact, Plaintiff's own children and their friends would regularly play with toys outside, regardless of whether she operated a home business or not.

146. The government does not have a legitimate interest in preventing toys in a person's private backyard.

147. It is irrational and oppressively burdensome to deny Plaintiff's home daycare because it might result in toys in a backyard.

148. Even if Plaintiff's home daycare business prevented golfers from golfing in complete silence or with a view without toys, such things are normal and expected in any golf course that runs alongside homes. In fact, Plaintiff's own children and their friends would regularly play outside with toys, regardless of whether she operated a home business or not.

149. The government does not have a legitimate interest in making sure golfers can golf in complete silence with a peripheral view unmarred by toys.

150. It is irrational and oppressively burdensome to deny Plaintiff's home daycare business because it might annoy nearby golfers.

151. Even if Plaintiff's home daycare business causes cars to sometimes be briefly parked outside of her home twice a day while they pick up and drop off their children, such things are normal and expected in any suburban community. In fact, as stated at the hearing, Plaintiff's own family, friends, and babysitter would often cause cars to be outside picking up and dropping off children, regardless of whether Plaintiff operated a home business or not.

152. The government does not have a legitimate interest in preventing minimal vehicular traffic outside a residential home.

153. It is irrational and oppressively burdensome to deny Plaintiff's home daycare business because it might cause minimal vehicular traffic outside of her home.

154. The state's police power and/or zoning power does not extend to allow Defendants to deny Plaintiff's home occupation permit or otherwise prohibit Plaintiff's home daycare business for three children.

155. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that preventing Plaintiff from operating a home daycare business for a small group of children violates Plaintiff's substantive due process under the Texas Constitution. *See also* Tex. Loc. Gov't Code Ann. § 211.011(a), (f) (empowering court to declare BOA action illegal)

### **THIRD CAUSE OF ACTION**

#### **(TEX. CONST. ART. I, § 19 – FACIAL CLAIM; SUBSTANTIVE DUE PROCESS; DEPRIVATION OF ECONOMIC LIBERTY AND PROPERTY RIGHTS)**

156. Plaintiff hereby incorporates the allegations set forth above in paragraphs 1 to 105 all of which are fully re-alleged here.

157. Article I, Section 19 of the Texas Constitution provides that: “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

158. This “due course of the law of the land” guarantee of the Texas Constitution is commonly known as the Constitution's “due process” provision. Among the rights encompassed in this provision is substantive due process. Substantive due process protects, among other things,

the right to economic liberty (such as the right to earn an honest living in the occupation of one's choice) and property rights.

159. To show that an economic regulation has violated substantive due process under this provision, a plaintiff must show either that (1) the regulation is not rationally related to a legitimate governmental interest or (2) the regulation's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. *See Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015).

160. Defendants' home occupation ordinance is an economic regulation. *See City Ordinance § 30.05.004*. Each of the ordinance's 19 provisions are also economic regulations. This includes provisions 4, 17, and 18.

161. Provisions 4, 17, and 18 violate the due process guarantee on their face. City Ordinance § 30.05.004 (4) ("The occupation shall not involve the provision of services or the sale of merchandise to a customer on the premises"); *id.* at 17 ("A home occupation[] shall effectively be undetectable by the permittee's neighbors and the public."); *id.* at (18) ("No occupation shall have customers driving or commuting to the home").

162. Provisions 4, 17, and 18 are so strict as to make Defendants' home occupation ordinance one of the strictest in the state and even the country.

163. Provisions 4, 17, and 18 are so broad as to ban many and almost all ordinary home businesses, even traditional home businesses that have been common in this country for hundreds of years. These businesses include home baking and tutoring.

164. Provisions 4, 17, and 18 apply regardless of whether a home business might harm anyone or otherwise be a nuisance.

165. In addition, Defendants have ample other ordinance provisions to deal with home businesses that may be a nuisance.

166. Provisions 4, 17, and 18 are also so broad as to give Defendants virtually unlimited discretion to deny home businesses. This includes the discretion to deny home business based on an illegitimate purpose, such as satisfying the whims of politically powerful people in the City.

167. Provisions 4, 17, and 18 interfere with City residents' right to economic liberty, specifically their right to earn an honest living. They also interfere with residents' property rights.

168. Defendants lack a legitimate reason for using Provisions 4, 17, and 18 to ban home businesses.

169. Provisions 4, 17, and 18 are also not rationally related to a legitimate government interest.

170. Provisions 4, 17, and 18 are so burdensome as to be oppressive in light of the governmental interest.

171. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that provisions 4, 17, and 18 violate substantive due process under the Texas Constitution and are unconstitutional on their face. *See also* Tex. Loc. Gov't Code Ann. § 211.011(a), (f) (empowering court to declare BOA action illegal)

#### **FOURTH CAUSE OF ACTION**

#### **(TEX. CONST. ART. I, § 27 – AS APPLIED CLAIM; RIGHT TO PEACEABLY ASSEMBLE)**

172. Plaintiff hereby incorporates the allegations set forth above in paragraphs 1 to 105, all of which are fully re-alleged here.

173. Article 1, section 27 of the Texas Constitution guarantees the fundamental right to peaceably assemble, which includes the right to meet or congregate for shared welfare or benefit. This right is strongest when persons assemble on their own private property.

174. The fundamental right to peaceably assemble extends to persons running businesses out of their homes. *See Zaatari v. City of Austin*, 615 S.W.3d 172, 199–202 (Tex. App.—Austin 2019, pet. denied).

175. The City’s home-occupation ordinance prohibits or restricts the peaceable assembly of citizens on private property with respect to the purpose, time, or number of people.

176. The home-occupation ordinance restricts Plaintiff’s fundamental right to assembly, for instance, by prohibiting Plaintiff from providing a “service” while assembled, City Ordinance § 30.05.004(4); by prohibiting Plaintiff from assembling on her private property in a way that is not “effectively [] undetectable” by her neighbors, *id.* at (17); and by prohibiting Plaintiff’s clients from driving or commuting to her home, *id.* at (18).

177. The City’s restriction of Plaintiff’s fundamental right to physically congregate in a peaceable manner on her own private property—whether inside or outside—requires strict scrutiny. *See Zaatari*, 615 S.W.3d at 201–02.

178. The home-occupation ordinance does not survive strict scrutiny because the City cannot identify a compelling interest that justifies its restrictions on Plaintiff’s right to peaceably assemble on private property.

179. The regulation of property use is not, in and of itself, a compelling governmental interest. *Zaatari*, 615 S.W.3d at 201–02. And any concerns the City may have in maintaining quiet neighborhoods are already addressed by other ordinances.

180. The City does not have a compelling interest in restricting the assembly of persons who meet together at a home business.

181. The City cannot demonstrate that Plaintiff's caring for her clients' children or her meeting with clients for pick up or drop off is a serious burden on neighboring properties sufficient to justify the zoning ordinance's encroachment on the fundamental rights of Plaintiff and her clients to peaceably assemble in or outside of her private property.

182. The sight of toys and children in a private backyard is normal and common activity in a suburban area, whether a person has a home daycare or not. So is dropping off children at a suburban home. Plaintiff herself has two children of her own with friends and relatives that comes to visit them, and statements at the hearing showed that Plaintiff and her family and friends would assemble in a similar manner if not for her home daycare.

183. Moreover, the City does not have a compelling interest in preventing minimal vehicular traffic outside a residential home.

184. Any cars driving to Plaintiff's home to drop off children for daycare would have a minimal impact on the neighborhood, especially as her clients all live in the neighborhood. And Plaintiff stated that she often walks the daycare children to and from her home in a big stroller or their parents walk to pick and drop them off.

185. The home-occupation fails strict scrutiny because it is not narrowly tailored and can be achieved by less-intrusive and more-reasonable means.

186. The state's police power and/or zoning power does not extend to allow Defendants to deny Plaintiff's right to assemble on her private property merely because she has a pecuniary interest in the assembly.



187. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code Ann. §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that the City’s home occupation ordinance is unconstitutional as applied to Plaintiff’s small home daycare business for up to four children unrelated to her, under the Texas Constitution’s right to peaceably assemble. Tex. Const. art. I, § 27. *See also* Tex. Loc. Gov’t Code Ann. § 211.011(a), (f) (empowering court to declare BOA action illegal).

**VIII. APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION FOR PLAINTIFF’S CONSTITUTIONAL CLAIMS**

188. Plaintiff requests that the Court grant a temporary restraining order allowing Plaintiff to maintain the status quo and continue to operate her home daycare business for up to four children at a time, and enjoining the Defendants from enforcing their home occupation ordinance against her, until a temporary injunction hearing can be held. Such relief is available for Plaintiff’s first cause of action, Tex. Loc. Gov’t Code Ann. § 211.011(c), as well as Plaintiff’s constitutional claims in the second to fourth causes of action. Tex. R. Civ. P. 680.

189. Plaintiff also requests that the Court grant a temporary injunction allowing Plaintiff to maintain the status quo and continue to operate her home daycare business for up to four children unrelated to her at a time, and enjoining the Defendants from enforcing their home occupation ordinance against her, for the pendency of this case. Such relief is available for Plaintiff’s first cause of action, Tex. Loc. Gov’t Code Ann. § 211.011(c), as well as Plaintiff’s constitutional claims in the second to fourth causes of action.

190. Plaintiff will experience immediate and irreparable injury unless the Defendants are so enjoined. Plaintiff has no other adequate remedy at law.

**IX. APPLICATION FOR PERMANENT INJUNCTION**

191. After adjudication of this case on the merits, Plaintiff requests that the Court enter a permanent injunction (1) enjoining Defendants named herein from enforcing the home occupation ordinance against Plaintiff, thus allowing Plaintiff to continue operating her home business for up to four children at a time, and (2) enjoining Defendants named herein from enforcing provisions 4, 17, and 18 against other home businesses in the City.

**X. ATTORNEYS' FEES**

192. Plaintiff hereby requests all costs and reasonable attorneys' fees, as permitted by Section 37.009 of the Texas Civil Practice and Remedies Code.

**XI. REQUEST FOR JURY TRIAL**

193. Plaintiff requests a trial by jury.

**XII. PRAYER AND RELIEF REQUESTED**

WHEREFORE, Plaintiff requests that the Court render judgment in her favor and grant her the following relief.

*For Plaintiff's First Clause of Action, pursuant to Tex. Loc. Gov't Code Ann. § 211.011, Plaintiff requests that this Court grant the following specific relief:*

A. A Writ of Certiorari directed to the BOA regarding the BOA's affirmance of the Commission's decision to deny Plaintiff her home occupation permit pursuant to Tex. Loc. Gov't Code Ann. § 211.011(c).

B. A restraining order allowing Plaintiff to maintain the status quo and continue to operate her home daycare business for up to four children unrelated to her at a time, pursuant to Tex. Loc. Gov't Code Ann. § 211.011(c)

C. A declaration that the denial of Plaintiff's home occupation permit was illegal pursuant to Tex. Loc. Gov't Code Ann. § 211.011.

D. An order granting Plaintiff a home occupation permit to operate her home daycare business for up to four children unrelated to her at a time at her address of 702 Vanguard Street, Lakeway, Texas.

*In addition or in the alternative, Plaintiff requests that this Court grant the following specific relief for Plaintiff's constitutional claims (the second, third, and fourth causes of action):*

E. A temporary restraining order allowing Plaintiff to maintain the status quo and continue to operate her home daycare business for up to four children unrelated to her at a time, until a temporary injunction hearing can be held.

F. A temporary injunction allowing Plaintiff to maintain the status quo and continue to operate her home daycare business for up to four children unrelated to her at a time, for the pendency of this litigation.

G. A permanent injunction allowing Plaintiff to operate her home daycare business for up to four children unrelated to at a time at her address of 702 Vanguard Street, Lakeway, Texas.

H. A declaratory judgment that the Defendants' home occupation ordinance, City Ordinance § 30.05.004, is unconstitutional as applied to Bianca's home daycare business, under the substantive due process protections of Article 1, Section 19 of Texas Constitution.

I. A declaratory judgment that provisions 4, 17, and 18 of the Defendants' home occupation ordinance, City Ordinance § 30.05.004, are unconstitutional on their face under the substantive due process protections of Article 1, Section 19 of Texas Constitution.

J. A declaratory judgment that the Defendants' home occupation ordinance, City Ordinance § 30.05.004, is unconstitutional as applied to Bianca's home daycare business, under the right to peacefully assembly under Article 1, Section 27 of Texas Constitution

K. An award of \$1 in nominal damages for Plaintiff;

L. An award of reasonable attorneys' fees and costs; and

M. All other legal and equitable relief to which Plaintiff may be entitled.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of February 2022.

/s/ Arif Panju

Arif Panju (Texas Bar No. 24070380)

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\*Motion for admission *pro hac vice* forthcoming

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

BIANCA KING,

*Plaintiff,*

v.

CITY OF LAKEWAY, TEXAS; LAKEWAY CITY COUNCIL; LAKEWAY ZONING & PLANNING COMMISSION; LAKEWAY BOARD OF ADJUSTMENT; LAKEWAY CODE COMPLIANCE DEPARTMENT,

*Defendants.*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

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**AFFIDAVIT OF BIANCA KING IN SUPPORT OF  
PLAINTIFF’S VERIFIED PETITION FOR WRIT OF CERTIORARI AND  
DECLARATORY JUDGMENT, AND PLAINTIFF’S  
APPLICATION FOR A TEMPORARY RESTRAINING ORDER, TEMPORARY  
INJUNCTION, AND INJUNCTIVE RELIEF**

My name is Bianca King, my date of birth is November 11, 1979, and my address is 702 Vanguard St., Lakeway, Texas 78734. I declare under penalty of perjury that the following paragraphs in the document “Plaintiff’s Verified Petition for Writ Of Certiorari and Declaratory Judgment, And Plaintiff’s Application for a Temporary Restraining Order, Temporary Injunction, And Injunctive Relief,” are true and correct according to my personal knowledge:

- Paragraphs 1-16
- Paragraph 20
- Paragraph 27-48
- Paragraphs 54
- Paragraph 58-105

Executed in Travis County, State of Texas, affirmed and subscribed before me on the 14<sup>th</sup> day of February, 2022.

Bianca King  
Bianca King

State of Texas  
County of Travis

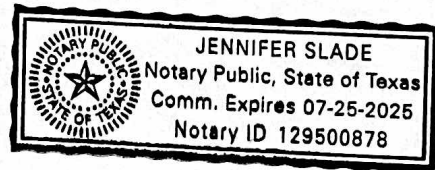
Bianca King personally appeared before me and took an oath that the above is true and correct

Personally Known  
 Produced Identification

Type and # of ID TX DL # 1247335

[Signature]  
(Signature of Notary)

Jennifer Slade  
(Name of Notary Typed, Stamped or Printed)



### **Automated Certificate of eService**

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Arif Panju on behalf of Arif Panju  
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Envelope ID: 61766087  
Status as of 2/16/2022 9:16 AM CST

#### Case Contacts

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