

CAUSE NO. _____

AZAEL SEPULVEDA,

Plaintiff,

v.

CITY OF PASADENA, TEXAS; JEFF WAGNER, in his official capacity as City Mayor; MELISSA TAMEZ, in her official capacity as Director of the City Planning Department; NATALIE HERRERA, in her official capacity as City employee; DENICE MORALES, in her official capacity as City employee; RUBEN VILLARREAL, in his official capacity as City Council member; BIANCA VALERIO, in her official capacity as City Council member; EMMANUEL GUERRERO, in his official capacity as City Council member; PAT VAN HOUTE, in her official capacity as City Council member; JONATHAN ESTRADA, in his official capacity as City Council member; DOLAN DOW, in his official capacity as City Council member; ORNALDO YBARRA, in his official capacity as City Council member; and THOMAS SCHOENBEIN, in his official capacity as City Council member,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S VERIFIED ORIGINAL PETITION AND APPLICATION FOR
EQUITABLE RELIEF, INJUNCTIVE RELIEF, AND DECLARATORY RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Azael Sepulveda and files his Verified Original Petition and Application for Equitable Relief, Injunctive Relief, and Declaratory Relief against Defendants City of Pasadena, Texas; Jeff Wagner, in his official capacity as City Mayor; Melissa Tamez, in her

official capacity as Director of the City Planning Department; Natalie Herrera, in her official capacity as City employee; Denice Morales, in her official capacity as City employee; Ruben Villarreal, in his official capacity as City Council member; Bianca Valerio, in her official capacity as City Council member; Emmanuel Guerrero, in his official capacity as City Council member; Pat Van Houte, in her official capacity as City Council member; Jonathan Estrada, in his official capacity as City Council member; Dolan Dow, in his official capacity as City Council member; Orinaldo Ybarra, in his official capacity as City Council member; and Thomas Schoenbein, in his official capacity as City Council member. Plaintiff would show the Court the following:

I. INTRODUCTION

1. All Plaintiff Azael Sepulveda wants to do is operate his ten-year-old auto-repair shop at the property he purchased for it, 1615 Shaver Street. But the City of Pasadena, which entered into a settlement agreement allowing Mr. Sepulveda to open after he challenged the constitutionality of the City's parking requirements and won a temporary injunction, has gone back on its word. The City now will not allow him to open unless he does the impossible—and requiring Mr. Sepulveda to do the impossible is not what the City agreed to when it entered into a settlement agreement after becoming subject to a temporary injunction. In doing so, the City has breached a contract it signed, leaving a hard-working entrepreneur in the lurch, and violating the Constitution anew.

2. This lawsuit challenges the actions of the City of Pasadena, its officials, and its staff in preventing Mr. Sepulveda (who goes by Oz), a longtime resident and small-business owner, from running his auto-repair business, Oz Mechanics, at 1615 Shaver Street (the "Property"). The Property had operated as an auto machine shop for the three decades before Oz purchased it, and he wished to continue working on cars there.

3. In December 2021, Oz filed suit challenging the constitutionality of the City's off-street parking requirements. Oz was forced to file suit after the City stifled his plans by requiring him to add 23 additional parking spaces to the Property (the "2021 Parking Requirements") even though he did not need the additional parking spaces and they would not even physically fit on the Property. That litigation resulted in Oz obtaining a temporary injunction from the Harris County District Court, 281st Judicial District, *see* Cause No. 2021-80180, concluding that the City's parking requirements were unduly burdensome and oppressive as applied to the Property and enjoining the City from enforcing its parking requirements against the Property. (Temporary Injunction Order, Mar. 21, 2022). The court also ordered the parties to attend mediation.

4. At mediation, the parties reached an agreement (the "Agreement") that would allow Oz to open by adding a few new spots and requiring him to nonsuit the case. (Mediated Settlement Agreement, Apr. 11, 2022). Oz complied with his obligations under the Agreement. However, the City has not, instead steadfastly refusing to comply with its obligations. Though it agreed to allow him to open if he had seven parking spaces, it now will not let him open with seven parking spaces unless he complies with new City demands, including adding elements to the Property that neither physically fit nor comply with the Agreement, such as a setback and minimum drive-aisle width (the "New Parking Demands"). As a result, the Property remains shuttered unless Oz completes the physically impossible, forcing Oz to spend money operating out of a rental shop rather than moving his business onto his Property.

5. This situation has left Oz under substantial financial stress. He renovated the Property so that he could operate Oz Mechanics there, while paying monthly on the loan for the Property. He did so under the assumption that the City would allow him to open under the terms

that the City agreed to. Meanwhile, he continues to pay rent for his leased location to keep his business running. He cannot afford to continue making both payments.

6. The City's actions flouting the Agreement operate as a breach of contract. A settlement agreement is enforceable as a written contract, and Oz tendered all performance due while the City has breached its obligations, damaging Oz.

7. Further, the City's New Parking Demands are physically impossible to comply with, which make them unconstitutional under Article I, § 19 of the Texas Constitution. As Plaintiff shows, the City's New Parking Demands violate the Texas Constitution's Due Course of Law protections because they restrict his liberty, property, and privileges or immunities in violation of "the due course of the law of the land." Tex. Const. art. I, § 19. The City's New Parking Demands lack a "rational[] relat[ion] to a legitimate governmental interest" in the "actual, real-world." *See Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015). Moreover, the "actual, real-world effect" of the ordinance "as applied to" Oz "is so burdensome as to be oppressive in light of[] the governmental interest." *Id.*

8. Plaintiff Azael Sepulveda urges this Court to grant declaratory relief, injunctive relief, nominal damages, and monetary damages against the City for: (1) the City's breach of contract, and (2) the City's New Parking Demands, which violate Article I, § 19 of the Texas Constitution.

II. JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction because Defendants lack immunity from this breach-of-contract suit brought to enforce a settlement agreement, because Plaintiff seeks to vindicate his rights under the Texas Constitution, because Plaintiff seeks a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code § 37.003,

and because Plaintiff seeks injunctive relief against a municipality organized under the laws of the State of Texas, *see* Tex. Civ. Prac. & Rem. Code § 65.021.

10. Defendants are not immune from this case. This is for several reasons, some of which are alternative, including: Defendants lack immunity for Article I, Section 19 claims that seek equitable relief; the Defendants lacked immunity in Oz’s 2021 lawsuit that the City settled; the City was acting within its proprietary powers when it entered into the Agreement; Texas waived Defendants’ liability by statute; and Defendants’ litigation activities waived any immunity it might have otherwise had.

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

III. PARTIES

NAMED PLAINTIFF

12. Azael Sepulveda is a resident of Pasadena, Texas, and the sole owner and employee of Oz Mechanics. Azael owns the subject property in his individual capacity and operates Oz Mechanics as a sole proprietorship.

DEFENDANTS AND SERVICE OF PROCESS

13. Defendant City of Pasadena is a home-rule city organized under the laws of Texas and incorporated in Harris County, Texas. Pursuant to Tex. Civ. Prac. & Rem. Code § 17.024(b), the City may be served with citation through its Mayor, Jeff Wagner, or its Secretary, Amanda Mueller, at the City’s offices located at 1149 Ellsworth Drive, Pasadena, TX 77506.

14. Defendant Jeff Wagner is the mayor of the City of Pasadena. As Mayor, Mr. Wagner is the chief administrator and executive officer of the City and is responsible for the proper administration of City affairs. City of Pasadena Code of Ordinances (hereinafter “City Code”), Charter, Article III, § 1. Mayor Wagner is sued in his official capacity.

15. Defendant Melissa Tamez is the director of the City of Pasadena Planning Department. She is responsible for overseeing the City's office of city planning and all of its employees. She is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

16. Defendant Natalie Herrera is a City employee. Specifically, she is a real estate and land use planner for the City of Pasadena. She is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

17. Defendant Denice Morales is a City employee. She, too, is a member of the City's planning department. She is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

18. Defendant Ruben Villarreal is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt and amend city ordinances. City Code, Charter, Article II, § 10. Mr. Villarreal is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

19. Defendant Bianca Valerio is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Ms. Valerio is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

20. Defendant Emmanuel Guerrero is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Mr. Guerrero is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

21. Defendant Pat Van Houte is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Ms. Van Houte is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

22. Defendant Jonathan Estrada is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Mr. Estrada is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

23. Defendant Dolan Dow is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Mr. Dow is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

24. Defendant Ornaldo Ybarra is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Mr. Ybarra is sued in his official

capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

25. Defendant Thomas Schoenbein is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances. City Code, Charter, Article II, § 10. Mr. Schoenbein is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

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

AZAEL SEPULVEDA AND OZ MECHANICS

27. Azael is 36 years old and immigrated from Mexico. He is a U.S. citizen.

28. Azael has lived in Pasadena for 32 years. He feels pride in his city and is happy to be part of its community. He volunteered as a firefighter for the Pasadena Fire Department for three years.

29. Azael loves everything to do with cars. At 25 years old, he opened Oz Mechanics in Pasadena, which specializes in fixing electrical issues with vehicles. Since then, he has built an excellent reputation. For example, he has 75 5-star reviews on Google Reviews.

30. Oz Mechanics is a one-man specialty shop. Other than Oz, there are no employees; Oz is the only mechanic working at Oz Mechanics. He takes clients by appointment only, and he is a diagnostician, meaning that he diagnoses and repairs electrical malfunctions in automobiles. He does not change transmissions or do any type of heavy auxiliary work.

31. Oz Mechanics first opened at a rented location on Spencer Highway, where it operated for about two-and-one-half years.

32. Oz Mechanics then moved to a rented location at 2713 Almdares Avenue, where it has operated ever since. Oz pays \$1,200 per month for this property.

33. Oz wished to invest in his business, so he sought to purchase a storefront in Pasadena.

1615 SHAVER STREET

34. Oz found 1615 Shaver Street (the Property)¹ for sale after searching with his father. He purchased it on July 12, 2021, for \$86,313.54.

35. Oz purchased the Property using all of his savings along with a personal loan, for which his house is collateral.

36. The Property was previously used as an auto machine shop by Houston Engine and Balancing Service, and so Oz believed it would only need a few minor modifications. The Property has a parking lot with five parking spaces, along with room for four cars inside the garage, which never generated any problems or complaints. These spaces are more than enough for Oz Mechanics.

37. The City Code imposes parking requirements based on the type of business along with the size of the business's building.² Complying with the City's parking requirements is necessary for a business to secure a certificate of occupancy from the City. City Code § 9-7(b).

¹ The Property is also known as 1615 Main Street because of the way the roads merge.

² These requirements are available from the City at <https://www.pasadenatx.gov/DocumentCenter/View/472/Off-Street-Parking-Ordinance-PDF>.

38. In January 2021, the City increased some of its parking requirements, including those for auto repair establishments. Under this ordinance, an auto repair establishment needs “ten (10) spaces per one thousand (1,000) square feet of G.F.A.” City Code § 9-7, Ex. A.

39. Under the 2021 Parking Requirements, Oz Mechanics would need 28 total outdoor parking spaces. When Oz purchased the Property, he believed that he would be able to open an auto shop at a location that had been home to another auto shop for decades without problem, especially since Oz’s appointment-only auto shop requires fewer parking spaces than the previous auto shop that had been located at the Property.

40. Oz first learned of the 2021 Parking Requirements when he applied for his certificate of occupancy from the City of Pasadena around August 2021, which the City denied, telling him that he needed to add 23 more parking spaces.

OZ FILES SUIT AGAINST THE CITY AND ITS OFFICIALS

41. Oz looked into adding the 23 parking spaces that the City demanded in its 2021 Parking Requirements. He learned that it would cost at least \$40,000 to add *some* parking spaces and that the full amount of parking spaces the City demanded would not even fit on the Property.

42. Oz filed a constitutional suit on December 9, 2021, challenging the City’s 2021 Parking Requirements. Specifically, he raised three claims: (1) the City’s 2021 Parking Requirements violated the Due Course of Law Clause in Article I, Section 19, of the Texas Constitution; (2) the City’s 2021 Parking Requirements violated equal protection in Article I, Section 3, of the Texas Constitution; and (3) the City violated procedural due process, protected by Article I, Section 19, of the Texas Constitution, in its handling of Oz’s application for a variance and grandfathering for the Property. Among the relief Oz sought was an injunction and declaratory relief. No. 2021-80180, Plaintiff’s Verified Original Petition and Application for Temporary

Injunction, Injunctive Relief, and Declaratory Relief and in the Alternative, Request for Writ of Mandamus (Dec. 9, 2021).

43. On February 28, 2022, the Harris County District Court, 281st Judicial District, held an evidentiary hearing on Oz's motion for a preliminary injunction. At that hearing, the Court entered findings of fact and conclusions of law, which included:

- The City would not allow Mr. Sepulveda to open Oz Mechanics at the Property because it does not have 28 outdoor parking spaces.
- The Property could not fit 28 parking spaces.
- There was no public interest in requiring 28 parking spaces at the Property.
- The Property already contained more than enough parking for Oz Mechanics.
- The previous use of the Property as an auto machine shop was materially the same as Oz's auto repair shop.
- The apparent and obvious use of the Property is as an auto shop.
- Adding some parking spaces on the Property would serve no reasonable purpose.
- Oz's claims were ripe.
- The City's witness testimony was "not credible."
- The City's demand that Oz provide 28 parking spaces at the Property was unduly burdensome and oppressive.

No. 2021-80180, Order Granting Plaintiff's Motion for Temporary Injunction and Denying in Part Defendants' Plea to the Jurisdiction (Mar. 21, 2022).

44. Accordingly, the Court entered a temporary injunction, which enjoined Defendants from:

- (i) Enforcing the ten spaces per 1,000 square feet of G.F.A. requirement against Mr. Sepulveda or otherwise requiring Mr. Sepulveda to add any additional parking spots at his automobile repair shop at 1615 Main Street, Pasadena, Texas 77502, as a condition for him to operate or as a condition for him to obtain a certificate of occupancy; and
- (ii) Imposing any fines or penalties against Mr. Sepulveda for operating an automobile repair shop at 1615 Main Street, Pasadena, Texas 77502, without adding any additional parking spaces.

Id.

45. The Court also ordered the parties to attend mediation. *Id.*

THE PARTIES AGREED TO RESOLVE THE DISPUTE

46. The parties attended mediation on April 11, 2022, where they reached the Agreement and signed it.

47. The Agreement was signed April 11, 2022, by Jay Dale for the City of Pasadena and Victoria Clark and Azael Sepulveda for Oz.

48. The Agreement stated that the City would approve Oz's certificate-of-occupancy application if he added a handful of spots and nonsuited his case.

49. Specifically, the Agreement called for Oz to submit an engineered site plan and other drawings and to complete four conditions relating to improving the Property. These conditions are:

- Provide three parking spots in the front of the building and four on the side of the building, with spots not backing out into the right-of-way;

- Pave the area on the side of the building to the property line and remove fencing in that area;
 - Pave the floor area of the existing shed; and
 - Install bollards to block vehicle access to the area behind the shop building.
50. The City faced three obligations under the Agreement:
- Present the Agreement for approval by City Council on final approval by May 31, 2022;
 - Pay Oz \$10,000; and
 - Approve Oz's application for a certificate of occupancy once he completed the four conditions listed above in Paragraph 49.

51. In addition, Oz would nonsuit his case against the City.

52. Oz entered into this Agreement because he took the City for its word that it would meet its contractual obligation to approve his application for a certificate of occupancy for the Property once he added seven parking spaces, paved the side of the Property, installed bollards, and completed the remaining conditions.

53. Oz would not have entered into an Agreement that paid him \$10,000 to nonsuit his lawsuit without ensuring that the City issue a certificate of occupancy for the Property. Indeed, such a deal would not even make sense: The Property cost him more than \$86,000; why would he have it sit empty in exchange for \$10,000?

OZ PERFORMED HIS OBLIGATIONS UNDER THE AGREEMENT

54. The Agreement required that Oz complete four specific conditions relating to the improvement of his property, obtain and submit engineering documents to the City for its approval of his certificate-of-occupancy application, and nonsuit the case.

55. Oz obtained and submitted engineering drawings to the City with his certificate-of-occupancy application on January 24, 2023.

56. Oz nonsuited his case against the City on July 3, 2023.

57. Oz submitted a plan to the City showing compliance with his obligations under the Agreement, which he will complete once the City approves the plan.

THE CITY BREACHED THE AGREEMENT

58. The City complied with its first two obligations. First, the Pasadena City Council approved the Agreement at its May 17, 2022 meeting. Second, Oz received a check from the City in June 2022.

59. But the City failed to perform its remaining obligations under the Agreement. It made clear quickly that it would not comply with its last obligation—the one that mattered the most to Oz. The same day that the City Council approved the agreement, Oz spoke with Natalie Herrera of the City’s Planning Department. Ms. Herrera congratulated Oz on the City Council’s approval of the Agreement but told him that he still needed to submit a site plan showing that the seven parking spaces would fit in accordance with the rest of the City’s requirements, which, in her view, made it impossible for a certificate of occupancy to be granted.

60. Ms. Herrera was present at the mediation where the Agreement was reached. Her statement after the City Council meeting contradicted the Agreement the City had entered into with Oz.

61. Nevertheless, Oz wanted to open, so he went out of his way to work with the City to attempt to make sure that City staff would approve of his site plan before he continued with his formal certificate-of-occupancy application, as that would incur significant expense.

62. Oz informally submitted two site plans for Ms. Herrera’s review in the summer of 2022, each of which were drawn by an engineering firm and complied with the Agreement.

63. Ms. Herrera orally told Oz that neither plan was acceptable to the City.

64. Ms. Herrera told Oz via email on September 2, 2022, that one of his site plans was unacceptable because it supposedly didn't comply with the City Code. Her email also included a marked-up site plan that conflicted with the Agreement.

65. The City demanded that Oz submit a formal certificate-of-occupancy application. He complied, which cost him significant fees from the engineering firm that created the plans.

66. Oz received a letter from the City on February 13, 2023, stating that it was disapproving his site plan for two reasons: (1) bollards must be a maximum of four feet apart, necessitating that he add more bollards, and (2) the drive-aisle widths did not meet City requirements.

67. In addition to the City's denial letter, the City also included marked-up site plans.

68. City employee Denice Morales orally told Oz that the City would not move forward with his certificate-of-occupancy application unless he corrected the alleged deficiencies with the site plan. She did not give any other reason for the City's disapproval and did not request any additional documents from Oz.

69. As for the bollards, that is an easy fix that complies with the Agreement. Accordingly, Oz is happy to make it.

70. But the City's concern about the drive-aisle widths presents a problem. The marked-up site plans the City included with its denial letter state that Oz cannot have four parking spaces on the side of the building because doing so would render Oz "[n]oncompliant" with the City's drive-aisle width requirements.

71. But the Property cannot physically hold the four parking spaces on the side of the building with a larger drive aisle.

72. The parties agreed that the Property would have four parking spaces on the side of the building.

73. Now, the City will not allow the Property to have four parking spaces on the side of the building. This is a breach of the Agreement.

74. In addition to the two reasons the City invoked in its denial letter, its marked-up site plans supposedly add four further requirements. These issues were not invoked as justifications for the City's denial of Oz's certificate-of-occupancy application.

75. The four further issues were: (A) the site plans needed to include drainage and restrictor calculations, and the Property needed to use a particular internal drainage system; (B) the Property needed a six-inch curb around the paving and driveways; (C) the Property needed a five-foot setback made of grass; and (D) vehicles could not back into the right-of-way.

76. Of these four further issues, two conflict with the Agreement, one does not, and another likely does not, depending on how the City interprets it.

77. First, the issue regarding drainage does not conflict with the Agreement. Despite the fact that it was not included on the City's denial letter, Oz will agree to add drainage calculations and follow the City's preferred drainage system if the City will grant him a certificate of occupancy.

78. Second, the issue regarding adding a curb throughout the Property likely does not conflict with the Agreement, though it was not part of the Agreement and would render various parts of the lot unusable. Moreover, it was not included in the City's denial letter. Despite that, Oz will agree to add a curb throughout the Property if the City will grant him a certificate of occupancy.

79. Third, the issue regarding a five-foot grass setback conflicts with the Agreement, which provides that the area on the side of the building “will be paved from the Property line to the shed.” Complying with this demand would also further narrow the drive aisle—one of the two reasons the City invoked for its denial. Oz is not willing to comply with City demands that conflict with the Agreement.

80. Fourth, the issue regarding the right-of-way conflicts with the Agreement, as it contorts the definition of “right-of-way” and renders the Agreement unenforceable. Oz is not willing to comply with City demands that conflict with the Agreement.

81. Ultimately, Oz is willing to comply with reasonable City ordinances and requirements to obtain a certificate of occupancy for the Property. But the City refuses to issue Oz a certificate of occupancy for the Property for reasons conflicting with the Agreement.

82. The City has no justification for its breach of the Agreement.

83. The City signed the Agreement with the provision that the Property would have seven parking spaces: four on the side and three in front.

84. But now the City has taken the position that the Property cannot have seven parking spaces due to the City’s drive-aisle-width requirements.

85. One possibility to explain the City’s actions is that the City signed the Agreement and later regretted it, with City staff deciding not to grant a certificate of occupancy subject to the Agreement.

86. If this possibility is true, then the City breached the Agreement.

87. In the alternative, the City signed the Agreement without ever intending to grant Oz a certificate of occupancy for the Property with seven parking spaces, instead wishing to dismiss his lawsuit for \$10,000.

88. If this alternative explanation is true, then the City signed the Agreement in bad faith and also breached the Agreement.

89. In either scenario, the City has not held up its side of the deal, thus breaching the Agreement and harming Oz.

THE CONCLUSION OF THE FIRST LAWSUIT

90. While the parties discussed Oz's certificate-of-occupancy application and whether the City would abide by the terms it had agreed to in the Settlement Agreement, the case remained pending at the District Court.

91. Oz did not immediately nonsuit his case upon receiving the \$10,000 check from the City because the Agreement did not include any indication that time was of the essence and Oz wished to be able to seek the Court's involvement in light of the City's backtracking on the Agreement.

92. On March 22, 2023, he moved to enforce the Agreement.

93. The City responded by filing a counterclaim that alleged that Oz had breached the Agreement by not nonsuiting his case immediately upon receiving the \$10,000 check from the City. No. 2021-80180, City of Pasadena, Texas' Original Counterclaim (Mar. 31, 2023). The City sought damages from Oz along with attorneys' fees. *Id.* The City's counterclaim declined to make any mention of the City's breach of the Agreement. *See id.*

94. The District Court ordered the parties to return to mediation in an effort to resolve the dispute after the City filed its counterclaim.

95. The parties scheduled a second mediation for June 23, 2023.

96. But before the mediation could occur, the City filed a motion for summary judgment on its counterclaim and scheduled a hearing for three business days after the scheduled mediation.

97. The parties attended a second mediation on June 23, 2023, where they were unable to reach an agreement.

98. The week after the City's summary-judgment hearing and before the Court decided the City's motion or entered judgment in the lawsuit, Oz nonsuited his case. No. 2021-80180, Plaintiff's Notice of Nonsuit (July 3, 2023). He did so without prejudice to any action not encompassed by his original petition, including an action for breach of contract regarding the Agreement. *See* No. 2021-80180, Order Granting Nonsuit, signed by Judge Weems (July 5, 2023); *see also* Order Granting Defendant's Motion to Modify the Order Granting Plaintiff's Notice of Nonsuit, signed by Judge Weems (July 20, 2023).

99. Shortly after Oz nonsuited his case, the City nonsuited its counterclaim without prejudice. No. 2021-80180, Defendant's Notice of Nonsuit (July 5, 2023).

THE CITY'S BREACH HAS HARMED OZ

100. The City's refusal to approve Oz's certificate-of-occupancy application has harmed Oz.

101. Oz pays for two locations for Oz Mechanics: (1) the Property, where he wishes to open, and (2) his leased space on Almdares Avenue, where he continues to operate his business.

102. Oz pays \$624.74 per month on the loan for the Property.

103. Oz pays \$1,200 per month for his leased space on Almdares Avenue.

104. In addition to the lease payment, Oz also pays utilities and insurance for his leased space. These cost around \$230 per month.

105. Oz does not want two locations for Oz Mechanics; he wants one—the Property.

106. Oz would give up his lease to the Almdares Avenue location if the City granted him a certificate of occupancy for the Property, allowing him to open Oz Mechanics there.

107. Oz has spent considerable time and resources—at least \$50,000—renovating the inside of the building at the Property. He did so in anticipation of being able to open Oz Mechanics at the Property pursuant to the Agreement.

108. Much of the work Oz has done on the Property was sweat equity done with his father, whose dream it was for Oz to open his own shop.

109. Oz's father unfortunately passed away before he could see his dreams come to fruition.

110. Oz remains focused on his and his father's dream: Opening Oz Mechanics at the Property.

VI. INJURY TO PLAINTIFF

111. Oz has invested substantial time and resources into his efforts to open Oz Mechanics.

112. He originally sued the City because it was requiring the impossible for him to open Oz Mechanics at the Property.

113. After winning a temporary injunction on his initial constitutional claims, he entered into an Agreement with the City, pleased that the City had come to its senses, and agreed to allow an auto shop to open with the parking that it needed and no more.

114. But the City apparently signed the Agreement in an effort to rid itself of a meritorious lawsuit and without intending to fulfill its contractual obligations.

115. Today, the City continues to require the impossible for Oz Mechanics to open at the Property. It demands more space than physically exists at the Property, defying physics and the Agreement.

116. Meanwhile, Oz bears the brunt of the City's unreasonable demands. He continues to pay for two locations for his business when he can only use one.

117. It is a burden to own property that he cannot use and that no one can use for its apparent and obvious use as an auto shop.

118. The City's demands make the Property unusable for anyone as an auto shop, making it difficult to rent out or sell.

119. Because of the City's actions, Oz's finances have become extremely strained.

120. Had the City abided by the terms of the Agreement, Oz Mechanics could have been open at the Property by now and would have given up the lease on the Almdares Avenue location.

VII. CLAIMS

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

121. Oz hereby incorporates the allegations set forth above in paragraphs 1 to 120, all of which are fully re-alleged here.

122. On April 11, 2022, Oz and the City executed a valid and enforceable written contract.

123. Oz fully performed his obligations under the Agreement.

124. The City materially breached the Agreement. Specifically, the City breached the Agreement by refusing to grant Oz's application for a certificate of occupancy for allegedly too-narrow drive-aisle widths, lacking a five-foot grass setback, and having vehicles back into the right-of-way.

125. The City was required to grant the certificate-of-occupancy application Oz submitted in January 2023. In not doing so, it breached the Agreement and harmed Oz.

126. The City's breach caused injury to Oz, which resulted in at least the following damages: (1) monthly payments of \$1,200 for the leased property on Almdares Avenue; (2)

monthly utility and insurance payments of around \$230 for the leased property on Almedares Avenue; and (3) loss of use of the Property.

SECOND CAUSE OF ACTION: DUE COURSE OF THE LAW OF THE LAND

(TEX. CONST. ART. I, § 19—DEPRIVATION OF LIBERTY, PROPERTY, AND PRIVILEGES OR IMMUNITIES

127. Oz hereby incorporates the allegations set forth above, in paragraphs 1 to 120, all of which are fully re-alleged here.

128. Article I, § 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.”

129. This “due course of the law of the land” guarantee of the Texas Constitution is commonly known as the Constitution’s “Due Course of Law” provision. Article I, Section 19 guarantees that Texas courts will review the substance of the government’s restrictions to determine if those restrictions are valid and comport with the provision’s “due course of the law of the land” requirement. Among the rights protected by the Due Course of Law Clause is the right to pursue one’s chosen occupation free from unreasonable restrictions by the government—Oz’s economic liberty, property rights, and privileges or immunities.

130. To show that an economic restriction violates the Due Course of Law Clause’s substantive protections, a plaintiff must show either that (1) the regulation’s purpose is not rationally related to a legitimate governmental interest, or (2) when considered as a whole, the statute’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*, 469 S.W.3d at 87.

131. The City's requirement that Oz provide certain parking spaces at the Property before he can open, and the City's New Parking Demands, are economic restrictions on Oz's liberty, property, and on his privileges or immunities.

132. This lawsuit does not challenge the constitutionality of the 2021 Parking Requirements. Instead, this cause of action challenges the City's New Parking Demands.

133. The City's New Parking Demands, as applied to Oz, violate Texas's Due Course of Law guarantee.

134. The City's New Parking Demands interfere with Oz's right to economic liberty, specifically his right to earn an honest living. They also restrict Oz's property rights and his privileges or immunities of state citizenship.

135. Defendants lack a legitimate governmental interest for demanding that Oz add a physically impossible parking layout to the Property.

136. The City's application of its New Parking Demands on Oz and his property are not rationally related to a legitimate government interest. Nor is the "actual, real-world effect" of the City's New Parking Demands rationally related to a legitimate governmental interest.

137. Even if the City's New Parking Demands were rationally related to a legitimate government interest, the New Parking Demands would still be unconstitutional as applied to Oz because their actual, real-world effect is so burdensome as to be oppressive in light of the governmental interest.

138. It is physically impossible to comply with the City's New Parking Demands.

139. Requiring Oz to attempt to comply with physically impossible demands is completely irrational and so burdensome as to be oppressive.

140. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that the City’s New Parking Demands violate Oz’s protections under Article I, Section 19 of the Texas Constitution.

THIRD CAUSE OF ACTION: EQUAL PROTECTION

(TEX. CONST. ART. I, § 3—EQUAL RIGHTS AND EQUALITY UNDER THE LAW)

141. Oz hereby incorporates the allegations set forth above, in paragraphs 1 to 120, all of which are fully re-alleged here.

142. Article I, § 3 of the Texas Constitution provides: “All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.”

143. Among other things, Section 3 protects Oz’s right to equal protection of the laws, which includes the right to use his property in a productive manner free from irrational treatment at the hands of Defendants.

144. Defendants routinely allow businesses to have parking similar to what Oz is attempting to have, specifically, a few spots in front and on the side of the business.

145. Oz is similarly situated to the businesses that have parking similar to what Oz is attempting to have.

146. Defendants rejected Oz’s application anyway.

147. Defendants’ disparate treatment of Oz is the sole reason why Oz has not been able to open his business at his new location, while Defendants currently allow other similarly situated businesses with similar parking to operate.

148. There is no constitutionally legitimate reason for Defendants’ disparate treatment of Oz.

149. The actual, real-world effect of Defendants' disparate treatment of Oz does not serve any legitimate governmental purpose.

150. The actual, real-world effect of Defendants' disparate treatment of Oz is so unduly burdensome as to be unconstitutionally oppressive.

151. Defendants' disparate treatment of Oz cannot survive any standard of review.

152. Defendants' disparate treatment of Oz is irrational.

153. Defendants' disparate treatment of Oz is arbitrary.

154. Defendants' disparate treatment of Oz is unreasonable.

155. Defendants' disparate treatment of Oz is unduly burdensome.

156. Defendants' disparate treatment of Oz is oppressive.

157. Defendants' disparate treatment of Oz does not further any legitimate governmental interest.

158. Defendants' disparate treatment of Oz is not tailored to any legitimate governmental purpose.

159. Defendants' disparate treatment of Oz is based on a law that is arbitrarily enforced and is therefore unenforceable against Oz.

160. Defendants' disparate treatment of Oz is based solely on animus.

161. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that the City's New Parking Demands violate Oz's protections under Article I, Section 3 of the Texas Constitution.

VIII. EQUITABLE RELIEF

162. Plaintiff seeks the equitable relief of specific performance of the Agreement.

163. Damages are inadequate compensation if the Property remains closed. Oz seeks to open the Property with four parking spaces on the side of the building and three parking spaces in front of the building—just as the parties agreed to in the Agreement.

164. Oz wants to open Oz Mechanics at the Property. To do so, he needs a certificate of occupancy from the City.

IX. APPLICATION FOR PERMANENT INJUNCTION

165. After adjudication of this case on the merits, Plaintiff requests that the Court enter a permanent injunction enjoining Defendants from enforcing the City's parking demands against Plaintiff, thus allowing Plaintiff to receive a certificate of occupancy to open his business.

X. ATTORNEYS' FEES

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

XI. REQUEST FOR JURY TRIAL

167. Plaintiff requests a trial by jury.

XII. PRAYER AND RELIEF REQUESTED

WHEREFORE, Plaintiff requests that the Court render judgment in his favor and grant the following specific relief:

- A. A declaratory judgment that Defendants breached the Agreement;
- B. A declaratory judgment that the Defendants' New Parking Demands of Oz are unconstitutional under the substantive due process protections of Article 1, Section 19 of Texas Constitution as applied to Plaintiff Oz's intended location for his business, Oz Mechanics, at 1615 Shaver Street;
- C. A permanent injunction granting Plaintiff a certificate of occupancy to open Oz Mechanics at 1615 Shaver Street pursuant to the Agreement, with four parking spaces on the side

of the building and three parking spaces in the front of the building, and without imposing conditions irreconcilable with the Agreement and the layout of the Property;

D. An award of one dollar in nominal damages;

E. An award of monetary damages in the amount of \$250,000 or less, specifically, \$1,500 for each month after the City denied Oz’s certificate-of-occupancy application;

F. An award of reasonable attorneys’ fees and costs; and

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

H. In sum, Plaintiff requests “monetary relief of \$250,000 or less and non-monetary relief.” *See* Texas R. Civ. P. 47(c)(2). In addition, Plaintiff’s requested nominal damages and attorney fees are within the jurisdictional limits of the Court. *See id.*

RESPECTFULLY SUBMITTED this 14th day of September 2023.

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Local Counsel for Plaintiff

VERIFICATION

STATE OF TEXAS

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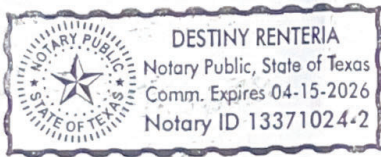
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared AZAEL SEPULVEDA, whose name is subscribed below and after having been duly sworn, on his oath stated that the facts set forth in paragraphs 12, 27-36, and 39-120 of the foregoing Plaintiff's Verified Original Petition and Application for Equitable Relief, Injunctive Relief, and Declaratory Relief are within his personal knowledge and are true and correct.

Azel Sepulveda

AZAEL SEPULVEDA

SUBSCRIBED AND SWORN TO before me on this the 13 day of September, 2023.



Destiny Renteria

Notary Public - State of Texas

My Commission Expires: April, 15, 2023