

CAUSE NO. 22-001122-CV-85

**SHANA ELLIOTT AND
LAWRENCE KALKE,
Plaintiffs,**

V.

**CITY OF COLLEGE STATION,
TEXAS; KARL MOONEY, IN
HIS OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF
COLLEGE STATION; AND
BRYAN WOODS, IN HIS
OFFICIAL CAPACITY AS THE
CITY MANAGER OF THE CITY
OF COLLEGE STATION,
Defendants.**

CITY DEFENDANTS' AMENDED PLEA TO JURISDICTION

The City of College Station, Texas (the “City”); Karl Mooney, in his official capacity as Mayor of the City of College Station; and Bryan Woods, in his official capacity as the City Manager of the City of College Station, (collectively the “City Defendants”), file this Amended Plea to Jurisdiction asking the Court to dismiss the Plaintiffs’ claims for lack of subject matter jurisdiction because: a) their claims are not ripe; b) the Plaintiffs lack standing; and c) their claims present a non-justiciable political question.

The City contends both that the Plaintiffs have failed to plead sufficient facts to establish the court's jurisdiction and that, based on the evidence, it is impossible for them to cure that defect by repleading.

I. INTRODUCTION AND FACTUAL BACKGROUND

A. The Texas Legislature has authorized cities to enact and enforce certain regulations outside their corporate boundaries.

Under Chapter 42 of the Texas Local Government Code, “the legislature declare[d] it the policy of the state to designate certain areas as the extraterritorial jurisdiction [“ETJ”] of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.” Tex. Loc. Gov’t Code § 42.001. The extent of a city’s ETJ depends on the size of the city’s population. *Id.* § 42.021. For cities with populations exceeding 100,000, like the City of College Station, the ETJ extends five miles out from the city’s boundaries. *Id.* at § 42.021(a)(5).

The Texas Legislature has authorized Texas cities to exercise certain regulatory authority within their ETJ. Statutes authorizing that authority include: a) Chapter 212 of the Texas Local Government Code (authorizing the regulation of the subdivision of property and certain related matters); b) Chapter 216 of the Texas Local Government Code (authorizing the regulation of signs); and c) Chapter 217 of the Texas Local Government Code (authorizing the regulation of certain nuisance activities occurring within one mile of a city’s boundaries).

B. Residents in the City's ETJ sue the City of College Station and its officials, challenging the City's ETJ authority under state law.

In this dispute, the Plaintiffs are two individuals who own large residential lots outside the boundaries of the City but within the City's ETJ. The Defendants are the City and its mayor and city manager, in their respective official capacities. The Plaintiffs seek declaratory and injunctive relief against the City under the theory that the statutes authorizing cities to exercise certain regulatory authority in their ETJ, and any ordinances exercising that authority, are unconstitutional under Article I, Section 2 of the Texas Constitution. *See* Original Petition at ¶¶ 27-40.

C. The Plaintiffs assert hypothetical facts about future enforcement of the regulations by the City.

In the Original Petition, the Plaintiffs allege that the City is exercising its authority under state law to restrict or prohibit them from: a) firing air rifles or practicing archery on their lots in the City's ETJ; b) making changes to their driveways; and c) putting up signs on their lots expressing their disagreement with the City's policy of regulating activities in its ETJ. *See* Original Petition at ¶¶ 3-6, 9-10, 24-25; Affidavit of Shana Elliott at ¶¶ 6-14 (attached as **Exhibit A**); Affidavit of Lawrence Kalke at ¶¶ 6-14 (attached as **Exhibit B**).

The Plaintiffs do not allege that the City has taken, or threatened to take, any enforcement action against them under any of the regulations they challenge. In fact, the City does not enforce any of the challenged regulations against residential lots located in its ETJ. *See Affidavit of Bryan Woods at ¶¶ 5-9 (attached as Exhibit C).*

II.

THE PLAINTIFFS CANNOT MEET THEIR BURDEN TO ESTABLISH THE COURT'S JURISDICTION OVER THEIR CLAIMS

A. The Plaintiffs have the burden of establishing this Court's jurisdiction.

Generally, “before a court may address the merits of any case, the court must have jurisdiction over . . . the subject matter, jurisdiction to enter the particular judgment, and capacity to act as a court.” *See Austin Indep. Sch. Dist. v. Sierra Club*, 495 S.W.2d 878, 881 (Tex. 1973). If the district court lacks jurisdiction, then its decision would not bind the parties. *Id.* “And, a decision that does not bind the parties is, by definition, an advisory opinion prohibited by Texas law.” *Id.*

The Plaintiffs have the burden to establish the subject matter jurisdiction of the Court. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993); *City of Robinson v. Leuschner*, 636 S.W.3d 48, 53 (Tex. App.—Waco 2021, pet. filed). That includes the burden to plead sufficient facts to demonstrate jurisdiction and, if the defendants provide

evidence contesting those jurisdictional facts, to present sufficient evidence to at least raise a fact issue as to the existence of the essential elements of jurisdiction. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770–71 (Tex. 2018).

A jurisdictional plea may challenge the pleadings, the existence of jurisdictional facts, or both. When a jurisdictional plea challenges the pleadings, we determine if the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction. If, however, the plea challenges the existence of jurisdictional facts, we must move beyond the pleadings and consider evidence when necessary to resolve the jurisdictional issues, even if the evidence implicates both subject-matter jurisdiction and the merits of a claim.

Id.

The determination of whether a claimant has established the court's jurisdiction is a question of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend." *Id.* at 227.

B. The Plaintiffs' claims are not ripe, and the Plaintiffs lack standing to assert them.

1. The Plaintiffs are required to establish ripeness and standing for the Court to have jurisdiction.

"Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable." *The State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245

(Tex. 1994). Thus, ripeness and standing are essential elements of subject matter jurisdiction. *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). Indeed, “ripeness and standing are related doctrines of justiciability, as ‘each is a threshold question that implicates subject matter jurisdiction and each emphasizes the necessity of a concrete injury for a justiciable claim to be presented.’” *Mitz v. Tex. State Bd. of Veterinary Med. Examiners*, 278 S.W.3d 17, 25 (Tex. App.—Austin 2008, pet. dism’d).

2. The Declaratory Judgments Act does not eliminate the requirement for ripeness and standing.

The Texas Declaratory Judgments Act (“DJA”) does not create jurisdiction or dispense with the requirements of ripeness and standing. *Sw. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 685 (Tex. 2020); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex. 2009). The DJA “is merely a procedural device for deciding cases *already* within a court’s jurisdiction.” *Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011) (emphasis added).

“We have acknowledged that UDJA suits are often brought with an eye to future harm.” *Lynch*, 595 S.W.3d at 685. A party asserting a claim under the DJA must still establish the existence of a ripe judiciable controversy and standing. *Id.* at 683-85. “To be sure, the often future-looking nature of [DJA] suits does not remove the requirement that the court must have subject

matter jurisdiction over the suit—that is, that the parties must have standing, and a ripe, justiciable controversy must exist.” *Id.* at 685.

3. The Plaintiffs have not pled sufficient facts to establish that an injury has occurred.

To establish both ripeness and standing a claimant must have a concrete injury. *Patterson*, 971 S.W.2d at 442. “Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction ..., and like standing, emphasizes the need for a concrete injury for a justiciable claim to be presented.” *Id.* (citations omitted).

A claim is not ripe where it “involves uncertain or contingent future events that may not occur as anticipated or may not occur at all.” *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 78 (Tex. 2015).

In determining whether a case is ripe, the focus is on whether “the facts are sufficiently developed ‘so that an injury has occurred or is likely to occur, rather than being contingent or remote.’” ... If the plaintiff’s claimed injury is based on “hypothetical facts, or upon events that have not yet come to pass,” then the case is not ripe, and the court lacks subject matter jurisdiction.

Lynch, 595 S.W.3d at 683.

The Plaintiffs have not pled any facts to show that a concrete injury has occurred or is likely to occur. They allege only that the challenged regulations exist and that they believe that the regulations apply to

hypothetical activities that they wish to engage in, in the future, on their residential lots in the City's ETJ.

They do not allege that the City agrees with them or that the City is presently enforcing, has enforced, or has threatened to enforce those regulations against them or their properties. In fact, as explained below, the City does not enforce any City ordinances or regulations in its ETJ that would prohibit the types of activities the Plaintiffs allege that they desire to undertake. *See Exhibit C*, Affidavit of Bryan Woods at ¶¶ 4-9. Because the Plaintiffs have failed to allege facts sufficient to establish ripeness and standing, the Court lacks subject matter jurisdiction over the Plaintiffs' claims.

4. The Plaintiffs cannot establish ripeness and standing if allowed to replead.

The Plaintiffs should only be afforded an opportunity to amend their pleadings if the pleadings demonstrate curable defects. *Miranda*, 133 S.W.3d at 227. “As is the case with special exceptions, a pleader must be given an opportunity to amend in response to a plea to the jurisdiction only if it is possible to cure the pleading defect.” *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007).

In this case, the evidence demonstrates that the Plaintiffs cannot meet their burden to establish ripeness and standing even if the Court allowed

them to replead. Bryan Woods, the City Manager, confirms that the City does not enforce the challenged regulations against residential properties in its ETJ. *See Exhibit C*, Affidavit of Bryan Woods at ¶¶ 4-9.

C. The Plaintiffs' claims are barred by the political question doctrine.

The Plaintiffs challenge certain City regulations based on the Plaintiffs' contention that the City's hypothetical enforcement of regulations in its ETJ is a violation of the republican form of government provision contained in Article I, Section 2 of the Texas Constitution which provides as follows:

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Tex. Const. art. I, § 2 (emphasis added).

The federal constitution contains a similar provision that reads as follows. “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.” U.S. Const. art. IV, § 4 (emphasis added).

According to the Plaintiffs' pleadings, a city violates Article I, Section 2 of the Texas Constitution if an individual who resides in a city's ETJ is "subject to the municipality's regulatory authority but is denied the ability to vote to remove the holder of legislative power from office." *See* Original Petition at ¶ 29.

However, the Texas Legislature decided to create municipal ETJ and to authorize Texas cities to regulate certain activities outside their corporate boundaries. *See* Tex. Loc. Gov't Code chs. 42, 212, 216, 217. Whether Texas municipalities should be afforded the authority to regulate activities outside their corporate boundaries is a question for the Texas Legislature, not the courts. And, whether that authority afforded to municipalities is inconsistent with a republican form of government, is a non-justiciable political question.

1. The political question doctrine requires that courts abstain from matters committed to the other branches of government.

In Texas, subject matter jurisdiction requires that the case be justiciable, and political questions are nonjusticiable issues. *Am. K-9 Detection Services, LLC v. Freeman*, 556 S.W.3d 246, 253-54 (Tex. 2018). Under the political question doctrine, the courts abstain from answering questions that are committed to the other two branches of government. *Baker v. Carr*, 369 U.S. 186, 209 (1962); *Am. K-9 Detection Services, LLC*, 556 S.W.3d at 249. "To protect the separation of powers essential to the structure

and function of American governments, the political question doctrine teaches that the Judicial Branch will abstain from matters committed by constitution and law to the Executive and Legislative Branches.” *Am. K-9 Detection Services, LLC*, 556 S.W.3d at 249.

2. Claims under the republic form of government provisions in the federal and state constitutions present non-justiciable political questions.

“The application of the [political question] doctrine depends ... on whether an issue is committed to another branch of government and therefore outside the judiciary's authority to address.” *Id.* at 253. In making that determination, a court considers whether there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Id.* “[T]he lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch.” *Id.*

In most cases, the U.S. Supreme Court has held that claims under the federal guarantee clause are non-justiciable political questions. *New York v. United States*, 505 U.S. 144, 184 (1992); *State of Tex. v. United States*, 106 F.3d 661, 666–67 (5th Cir. 1997). Although the Texas Supreme Court has not expressly held that a claim under the Texas Constitution’s republican form of government provision presents a non-justiciable political question, it has

acknowledged that a claim under the federal constitution's guarantee of a republican form of government "was not for the courts to decide." *Bonner v. Belsterling*, 138 S.W. 571, 574–75 (Tex. 1911).

In *Bonner*, the court was faced with a challenge to a provision in the charter of the City of Dallas that provided for recall elections. *Id.* The claimant, who had been recalled from his position on the City's board of education, argued that the recall provision violated the guarantee of a republican form of government in the U.S. Constitution. *Id.* at 574. In rejecting his claims, the court concluded that "[t]he policy of reserving to the people such power as the recall, the initiative, and the referendum is a question for the people themselves in framing the government, or for the Legislature in the creation of municipal governments." *Id.*

The Texas Legislature has made the legislative judgment that creating municipal ETJ and authorizing Texas municipalities to regulate certain activities outside their corporate boundaries is necessary to "promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities." Tex. Loc. Gov't Code § 42.001; *see also* Tex. Loc. Gov't Code chs. 212, 216, 217. The authority to enact such legislation is committed to the Legislature under the Texas Constitution, and any claim that the legislation conferring the authority on local municipalities to regulate in their ETJ is inconsistent with a republican form of government is

a non-justiciable political question. Furthermore, the specific declaration requested by the Plaintiffs that the City's alleged application of its code of ordinances to the Plaintiffs' properties violates Article 1, Section 2 of the Texas Constitution would be inconsistent with the Legislature's clear determination that the City has the authority to regulate in its ETJ. For these reasons, in addition to the lack of ripeness and standing, the claims in this case should be dismissed for lack of subject matter jurisdiction.

III. CONCLUSION AND REQUEST FOR RELIEF

The Plaintiffs have failed to plead facts sufficient to establish subject matter jurisdiction, and the undisputed jurisdictional facts demonstrate that they cannot meet their burden if they are given an opportunity to replead. More specifically, the Plaintiffs cannot establish ripeness and standing and their claims present a non-justiciable political question. For all these reasons, the Court lacks jurisdiction and must dismiss the Plaintiffs' claims with prejudice. Therefore, the City Defendants respectfully request that the Court enter an order dismissing the Plaintiffs' claims and this lawsuit, with prejudice, for lack of subject matter jurisdiction.

Respectfully submitted,

By: /s/ John J. Hightower
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COUNSEL FOR CITY DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2022, a true and correct copy of the foregoing was sent as indicated to all counsel of record in accordance with Tex. R. Civ. P. 21 and 21a, as follows:

Chance Weldon
Robert Henneke
Christian Townsend
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
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cweldon@texaspolicy.com
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Via electronic service

/s/ John J. Hightower
John J. Hightower

EXHIBIT A

CAUSE NO. 22-001122-CV-85

SHANA ELLIOTT and
LAWRENCE KALKE
Plaintiffs,

v.

CITY OF COLLEGE STATION, TEXAS.
KARL MOONEY, MAYOR OF
THE CITY OF COLLEGE STATION,
And BRYAN WOODS, CITY MANAGER
OF THE CITY OF COLLEGE STATION
Defendants.

IN THE DISTRICT COURT

BRAZOS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

AFFIDAVIT OF SHANA ELLIOTT

1. My name is Shana Elliott. I am over the age of eighteen years old, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and all such facts are true and correct.
2. I moved into College Station's Extraterritorial Jurisdiction (ETJ) in 2017 and have resided there with the intent to remain since then.
3. I currently live at 3337 Arapaho Ridge, College Station, TX 77845. I purchased this home in 2021 and live there with my family.
4. I cannot vote in College Station elections, including those for the Mayor, and for city council members.
5. College Station does not provide fire, police, water, or septic services to my property. I receive these services from other entities.
6. Nevertheless, College Station has passed regulations which affect what I can do with my property and on my property.

7. For instance, my property currently has a crushed gravel driveway which extends from our paved driveway to other parts of the property. I intend to make improvements to the driveway including but not limited to paving the graveled part of the driveway.
8. I cannot make those changes right now without facing a penalty from College Station. Currently, when I begin to make a change to my driveway I will need to apply for and receive a permit from the City of College Station in order to make these changes to my driveway.
9. Likewise, my family members and I desire to engage in archery target practice on our property. I own a bow, and my family members and I wish to fire a bow and arrow on the property located in the ETJ.
10. I am prevented from doing that by College Station's ordinances.
11. But for College Station's ordinances, my family and I would engage in the firing of my bow and arrow on my property.
12. Finally, I desire to place a sign on my property that refers to places not on my property. Specifically, I wish to place a sign that discusses how my neighbors' properties are being regulated by College Station.
13. Under College Station's code of ordinances, I am forbidden from placing any off-premise sign in my yard.
14. But for College Station's ordinances, I would be able to place an off-premise sign on my property.



Shana Elliott

SHANA ELLIOTT

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 15th day
of June, 2022.



Rose Philips
Notary Public, State of Texas

EXHIBIT B

CAUSE NO. 22-001122-CV-85

SHANA ELLIOTT and
LAWRENCE KALKE
Plaintiffs,

v.

CITY OF COLLEGE STATION, TEXAS.
KARL MOONEY, MAYOR OF
THE CITY OF COLLEGE STATION,
And BRYAN WOODS, CITY MANAGER
OF THE CITY OF COLLEGE STATION
Defendants.

IN THE DISTRICT COURT

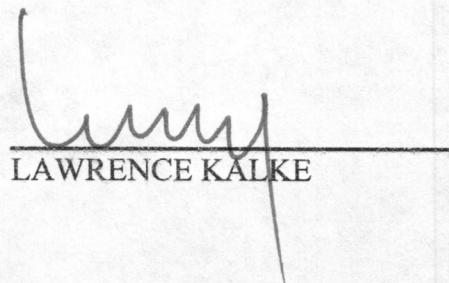
BRAZOS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

AFFIDAVIT OF LAWRENCE KALKE

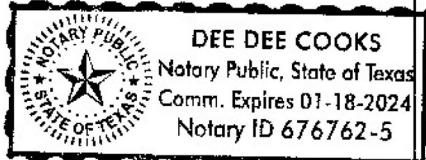
1. My name is Lawrence Kalke. I am over the age of eighteen years old, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated in this affidavit, and all such facts are true and correct.
2. I moved into College Station's Extraterritorial Jurisdiction (ETJ) in 2017 and have resided there with the intent to remain since then.
3. I currently live at 3301 Mojave Canyon Dr., College Station, TX 77845. I purchased this home in 2017 and live there with my family.
4. I cannot vote in College Station elections, including those for the Mayor, and for city council members.
5. College Station does not provide fire, police, water, or septic services to my property. I receive these services from other entities.
6. Nevertheless, College Station has passed regulations which affect what I can do with my property and on my property.

7. For instance, I am seeking to add a mother-in-law suite to my property. Doing so would require an extension of my driveway to the new structure. This extension would involve changes to my current driveway and additional pavement being added to extend the driveway.
8. I cannot make those changes right now without facing a penalty from College Station. Currently, when I begin to make a change to my driveway I will need to apply for and receive a permit from the City of College Station in order to make these changes to my driveway.
9. Likewise, my family members and I desire to engage in archery target practice on our property. I own a bow, and my family members and I wish to fire a bow and arrow on the property located in the ETJ.
10. I am prevented from doing that by College Station's ordinances.
11. But for College Station's ordinances, my family and I would engage in the firing of my bow and arrow on my property.
12. Finally, I desire to place a sign on my property that refers to places not on my property. Specifically, I wish to place a sign that discusses how my neighbors' properties are being regulated by College Station.
13. Under College Station's code of ordinances, I am forbidden from placing any off-premise sign in my yard.
14. But for College Station's ordinances, I would be able to place an off-premise sign on my property.



LAWRENCE KALKE

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 28th day
of June, 2022.




Dee Dee Cooks
Notary Public, State of Texas

EXHIBIT C

CAUSE NO. 22-001122-CV-85

SHANA ELLIOTT AND
LAWRENCE KALKE,
Plaintiffs,

V.

**CITY OF COLLEGE STATION,
TEXAS; KARL MOONEY, IN
HIS OFFICIAL CAPACITY AS
MAYOR OF THE CITY OF
COLLEGE STATION; AND
BRYAN WOODS, IN HIS
OFFICIAL CAPACITY AS THE
CITY MANAGER OF THE CITY
OF COLLEGE STATION,
Defendants.**

IN THE DISTRICT COURT OF

BRAZOS COUNTY, TEXAS

85TH JUDICIAL DISTRICT

AFFIDAVIT OF BRYAN WOODS

STATE OF TEXAS
COUNTY OF BRAZOS

On this date, Bryan Woods personally appeared before me, the undersigned Notary Public, and after being duly sworn stated the following under oath:

1. My name is Bryan Woods and I am over 18 years of age and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are true and correct.

2. I am the City Manager of the City of College Station, Texas, and have held that position since November 2018. Prior to being appointed as City Manager of the City of College Station, I served in various positions with the City of New Braunfels, Texas, including Assistant City Manager. I have a Bachelor of Science degree in construction engineering technology from the University of Southern Mississippi and a Master of Public Affairs degree from the University of Missouri-Columbia. I also serve as an officer in the United States Navy Reserve.

3. Under the College Station City Charter, I am chief executive officer and the head of the administrative branch of the city government and am responsible to the City Council for the proper administration of all affairs of the City. My responsibilities include overseeing and supervising City staff in the enforcement of the City's ordinances and regulations.

4. I have reviewed the pleadings and affidavits filed by Shana Elliott and Lawrence Kalke as plaintiffs in the above referenced lawsuit. After receiving the lawsuit papers, I directed members of my staff to review the City's records to determine whether anyone with the City has every enforced or threatened to enforce any City ordinance or regulation against Ms. Elliott or Mr. Kalke for any activities that they might have taken, or that they might desire to take, on the residential lots they own in the City's ETJ. No such records could be located.

5. According to their affidavits, Ms. Elliott and Mr. Kalke are concerned about the City's possible enforcement of three different sets of regulations. My staff and I have reviewed their pleadings and affidavits regarding the three types of activities they desire to undertake on their lots. I have confirmed that the City does not enforce any City ordinances or regulations in its ETJ that would prohibit those activities on their lots or that would require a permit from the City.

6. First, both Mr. Kalke and Ms. Elliott testify that they and their families would like to practice archery on their lots and they believe that to be prohibited by the City's ordinances. Ms. Elliott alleges in addition that she and her family would like to shoot air guns on their property and that it is prohibited by the City. In fact, the City does not enforce any City ordinances or regulations in its ETJ that would prohibit or regulate archery or shooting an air gun outside the City's boundaries.

7. Next, Mr. Kalke testifies that he desires to construct a mother-in-law suite on his lot which would require an extension of his existing driveway. He testifies further that he cannot build the driveway extension without getting a permit from the City and that the City would fine him if he did not get a permit. Similarly, Ms. Elliott testifies that she would like to make improvements to her existing crushed gravel driveway, including possibly paving it. She, like Mr. Kalke, states her belief that the City would require her to get a permit to do that and would prosecute her if she went forward without a permit. Mr. Kalke's and Ms. Elliott's fears are unfounded. I have confirmed that the City does not enforce any City ordinances or regulations in

its ETJ that would require a permit for, or otherwise regulate, the driveway alterations they describe in their affidavits.

8. Finally, both Mr. Kalke and Ms. Elliott testify that they have a desire to place signs on their lots expressing their disapproval of the City of College Station having any regulatory authority in its ETJ. They testify further that to do so would be a violation of the City's ordinances and would put them at risk of prosecution and a fine. Again, their fears are unfounded. I have confirmed that the City does not enforce any City ordinances or regulations in its ETJ that would prohibit them from putting up the signs they desire to place on their lots.

9. To my knowledge, neither Ms. Elliott nor Mr. Kalke has ever contacted my office or any other City office with questions about whether the City enforces any of the challenged regulations in its ETJ. Had they made such inquiry, they would have learned that the City does not enforce the challenged ordinances and regulations on residential lots in its ETJ.

Further affiant sayeth not.


Bryan Woods

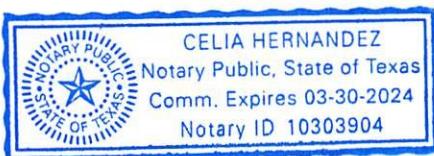
SWORN TO AND SUBSCRIBED before me by Bryan Woods on the 8th day of August 2022.


Celia Hernandez

Notary Public, State of Texas

Notary's printed name: Celia Hernandez

My commission expires: 3/30/24



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Kaela Olson on behalf of John Hightower

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Associated Case Party: Shana Elliott

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Associated Case Party: City of College Station, Texas

Name	BarNumber	Email	TimestampSubmitted	Status
John Hightower	9614200	jhightower@olsonllp.com	8/9/2022 2:35:12 PM	SENT
Adam Falco	24055464	afalco@cctx.gov	8/9/2022 2:35:12 PM	SENT
Allison Killian	24099785	akillian@olsonllp.com	8/9/2022 2:35:12 PM	SENT