



and regulations, but are denied the right to vote in City elections. Amended PTJ at 4; Pet. at ¶ 30. Plaintiffs therefore filed suit alleging that College Station’s regulation of their property without representation violates Article 1 Section 2. Pet. at ¶ 32.

On June 24, 2022, the City filed a two-paragraph plea to the jurisdiction raising two arguments concerning standing and justiciability. Answer and PTJ at ¶ 1. Plaintiffs promptly filed their response on July 1, 2022. Resp. to PTJ.

Rather than setting a hearing on its original plea, Defendants delayed for weeks and then filed an amended plea to the jurisdiction raising essentially the same two arguments, supported with a few more words and an affidavit from defendant Bryan Woods. Neither the new affidavit, nor the extra word-count help the City’s case.

### **STANDARD OF REVIEW**

The purpose of a plea to the jurisdiction is fundamentally about ensuring the viability of the claims presented by Plaintiffs rather than determining their merits. *Patel v. Texas Dep’t of Licensing & Reg.*, 469 S.W.3d 69, 77 (Tex. 2015). In reviewing a PTJ the court should “construe the pleadings liberally in the plaintiff’s favor.” *City of Houston v. Downstream Envtl., L.L.C.*, 444 S.W.3d 24, 38 (Tex. App.—Houston 2014, pet. denied). A plea to the jurisdiction should not be granted unless it can be determined that the claims are “facially invalid”—*i.e.*, improperly pled. *City of Houston v. Johnson*, 353 S.W.3d 499, 504 (Tex. App.—Houston 2011, pet. denied).

### **ARGUMENT**

While somewhat more substantive than its original plea to the jurisdiction, the City’s amended plea essentially raises the same two arguments. First, the City claims that Plaintiffs lack standing to challenge the unconstitutional regulation of their properties because the City has not taken any enforcement action against the Plaintiffs, *yet*. Amended PTJ at 5–9. Second, the City

argues that claims arising under Article 1 Section 2 of the Texas Constitution are non-justiciable. Amended PTJ at 9–13. Both arguments are flatly precluded by binding precedent.

# **I. PLAINTIFFS HAVE STANDING BECAUSE THE CHALLENGED ORDINANCES APPLY TO THEIR PROPERTIES**

First, any objection to Plaintiffs standing to challenge the regulation of their properties is meritless. The UDJA provides that “a person . . . whose rights, status, or other legal relations are affected by a . . . municipal ordinance . . . may have determined any question of construction or validity arising under the . . . ordinance.” Tex. Civ. Prac. & Rem. Cod § 37.004. *See also, City of El Paso v. Heinrich*, 284 S.W.3d 366, 376 (Tex. 2009) (allowing for prospective injunctive relief against pension board members in their official capacities).

Here, the challenged ordinances apply on their face to Plaintiffs’ properties. Pet. at ¶¶ 2, 8, 24; Answer and Plea to Jurisdiction at ¶ 6; Woods Dep. 23:24; 28:19–20; 34:10–11 (Ex. 1). This is sufficient to establish standing. Tex. Civ. Prac. & Rem. Cod § 37.004; *Heinrich*, 284 S.W.3d 366, 377; *Patel*, 469 S.W.3d at 77; *Zaatari v. City of Austin*, 615 S.W.3d 172, 182-83 (Tex. App. 2019) (property owners had standing under UDJA to bring pre-enforcement challenge to land-use ordinance).

The City objects that it has not taken enforcement action against Plaintiffs, yet. But a property owner challenging the constitutionality of an ordinance that applies to her property on its face is not required to await enforcement before challenging the ordinance in court. *City of Laredo v. Laredo Merchs. Ass’n*, 550 S.W.3d 586, 590 (Tex. 2018) (allowing constitutional challenge to ordinance where suit filed before effective date); *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626-27 (Tex. 1996) (rejecting State’s argument that plaintiffs “must actually be deprived of their property before they can maintain a [facial] challenge to this statute.”); *Zaatari*, 615 S.W.3d at 184 (“because the plaintiffs and intervenors allege a facial

abridgment of their most fundamental rights under the United States and Texas Constitutions, the City's alleged constitutional overreach itself is an injury from which the Property Owners and the State seek relief.”); *Austin v. Austin City Cemetery Ass'n*, 28 S.W. 528, 529-530 (1894) (holding that a cemetery owner could sue to enjoin the enforcement of a city ordinance restricting the location of cemeteries); *Pearson v. Grand Blanc*, 961 F.2d 1211, 1215 (6th Cir. 1992) (“the very existence of an allegedly unlawful zoning action, without more, makes a [facial constitutional challenge] ripe for federal adjudication.”). Plaintiffs therefore have standing.

The City attempts to avoid this outcome with testimony from defendant Bryan Woods, who claims that despite what the ordinances say, he is unaware of any time the City has enforced the challenged ordinances against residential properties in its ETJ. Amend PTJ at 9; Woods Dep. 36:11–13 (Ex.1).

But there is no dispute that the challenged ordinances apply to Plaintiffs’ properties on their face. *See, e.g.* College Station Code of Ordinances §7.5CC (“All off-premise and portable signs shall be prohibited within the Extraterritorial Jurisdiction of the City of College Station.”); Ch. 34, Art. 2 § 31 (“This article shall govern all streets, sidewalks, and driveways . . . within the extraterritorial jurisdiction of the City as established by the Texas Local Government Code.”) Woods Dep. 23:24; 28:19–20; 34:10–11 (Ex. 1). And Defendant Wood admitted at deposition that the ordinances are in effect and that there is nothing to stop the City from currently enforcing those ordinances against Plaintiffs’ properties. Woods Dep. 11:10–12 (Ex. 1). The testimony of a lone government official that the City does not intend to enforce its laws as written is not sufficient to eliminate standing. *State v. Johnson*, 475 S.W.3d 860, 880 (Tex. Crim. App. 2015) (quoting *United States v. Stevens*, 559 U.S. 460, 481 (2010) (the “Supreme Court has clearly stated that it will not uphold a statute ‘merely because the Government promised to use it responsibly.’”));



*FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 255 (2012) (“the Government’s assurance it will elect not to [enforce the law] is insufficient to remedy the constitutional violation.”).

Indeed, courts have often found standing for constitutional challenges even “where the government has never prosecuted—and *promises* it will *never* prosecute...” *Seals v. McBee*, 898 F.3d 587, 598 (5th Cir. 2018) (emphasis added). This makes sense. “[A] string of promises does not an actuality make.” *Roman Catholic Diocese of Dallas v. Sebelius*, 927 F. Supp. 2d 406, 420 (N.D. Tex. Feb. 26, 2013). “[T]he government’s policies, plans, and representatives could change or cease to exist at any time.” *Id.*

Here, Plaintiffs have not even received promises. Woods admitted that the ordinances apply to Plaintiffs’ properties on their face, and nothing prevents the city from enforcing those ordinances tomorrow. Dep. Woods 11:18 (Ex. 1). Further, Woods admitted that the City charter currently<sup>1</sup> requires that he enforce the laws as written. Dep. Woods 19:5–7 (Ex. 1). Plaintiffs are thus left with nothing more than the non-binding assertion of a lone government official that, to his knowledge, the City has chosen not to enforce its laws *yet*. Plaintiffs’ constitutional rights may not be left at the mercy of the City’s “*noblesse oblige*.” *Ex parte Mitcham*, 542 S.W.3d 561, 566 (Tex. Crim. App. 2018) (citing *FCC*, 567 U.S. at 256 (2012)). The City’s arguments regarding standing fail.

## **II. IT IS WELL ESTABLISHED THAT CLAIMS UNDER ARTICLE 1 SECTION 2 ARE JUSTICIABLE**

The City’s only other argument is that the protection afforded by Article 1, Section 2 of the Texas Constitution is a political question that this Court is unable to address. Def. Amended PTJ at 11–13. But both the Texas Supreme Court and the Court of Criminal Appeals have found

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<sup>1</sup> Woods speculated that the City Counsel could hypothetically direct him not to enforce, but it has not done so. Dep. Woods 19:18 (Ex. 1).

challenges under Article 1, Section 2 justiciable. *Brown v. City of Galveston*, 97 Tex. 1 (Tex. 1903); *Ex parte Lewis*, 45 Tex. Crim. 1 (Tex. Crim. App. 1903).

Indeed, Plaintiffs raised these binding cases in response to the City’s initial plea to the jurisdiction, and the City has failed to provide any response in its amended plea—effectively admitting that it has no answer for them. Instead, the City once again raises caselaw addressing the federal Constitution’s guarantee clause, U.S. Const. art. IV, § 4 which federal courts have, *sometimes*, found nonjusticiable. *Colegrove v. Green*, 328 U.S. 549 (1946). *But see, New York v. United States*, 505 U.S. 144, 183–186 (1992).

But this case involves the Texas Constitution, which is entitled to independent interpretation in Texas Courts. *Patel*, 469 S.W.3d at 86. And the Texas Supreme Court has *never* found a provision of the Texas Constitution to be a nonjusticiable political question. *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 779–80 (Tex. 2005) (noting in 2005 that “[t]his Court has never held an issue to be a nonjusticiable political question.”). To the contrary, even when the Texas Constitution uses “imprecise language” the Texas Supreme Court has still determined challenges raised under that language are “subject to judicial review.” *Morath v. Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 846–47 (Tex. 2016)

Article 1, Section 2 is certainly no more ambiguous than a host of other provisions the Texas Supreme Court has found justiciable. *See, e.g., Texas Dep’t of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648 (Tex. 2022) (Due course of law provision); *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, (Tex. 2005) (Interpreting “efficient system of public free schools” in Art. 7 Sec. 1); *Johnson v. State*, 912 S.W.2d 227, 230–31 (Tex. Crim. App. 1995) (defining “unreasonable seizure” in Art. 1 Sec. 9). To the contrary, the mandates of Article 1, Section 2 are straightforward—Texans shall have the power to vote for those who regulate the

area in which they reside. *Ex parte Lewis*, 45 Tex. Crim. at 27. More importantly, even if Article 1, Section 2 was uniquely ambiguous—and it is not—a plea to the jurisdiction in this Court is not the proper venue for such distinctions. Both the Texas Supreme Court and the Court of Criminal Appeals have held challenges under Article 1, Section 2 to be justiciable. That binding precedent—which the City has not and cannot rebut—flatly precludes the City’s argument.

### **CONCLUSION**

For the forgoing reasons, the City’s plea to the jurisdiction should be denied.

Respectfully submitted,

/s/Chance Weldon

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served in compliance with Tex. R. Civ. P. 21 and 21a, on this 14<sup>th</sup> day of September, 2022, on all parties or their attorneys of record as follows:

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# **EXHIBIT 1**

**SHANA ELLIOTT, ET AL. vs CITY OF COLLEGE STATION, TEXAS, ET AL.**  
**Bryan Woods on 09/07/2022**

1 CAUSE NO. 22-00122-CV-85

2 SHANA ELLIOTT and, ) IN THE DISTRICT COURT OF  
3 LAWRENCE KALKE )  
4 Plaintiff, )  
5 vs. )  
6 CITY OF COLLEGE STATION, )  
7 TEXAS, KARL MOONEY, ) BRAZOS COUNTY, TEXAS  
8 MAYOR OF THE CITY OF )  
9 COLLEGE STATION and BRYAN )  
WOODS, CITY MANAGER OF )  
OF COLLEGE STATION )  
Defendant(s). ) 85TH JUDICIAL DISTRICT

10 \*\*\*\*\*

11 ORAL AND ZOOM DEPOSITION OF

12 BRYAN WOODS

13 SEPTEMBER 7, 2022

14 \*\*\*\*\*

15 The Oral Deposition of BRYAN WOODS, taken at the  
16 request of the PLAINTIFF, on SEPTEMBER 7, 2022, from  
17 12:51 p.m. to 1:36 p.m., at VIA ZOOM

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21 Reported by: Belen A. Soto, CSR, RMR  
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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. Chance Weldon, Esq.</p> <p>4 and Mr. Christian Townsend, Esq.</p> <p>5 TEXAS PUBLIC POLICY FOUNDATION</p> <p>6 901 Congress Avenue</p> <p>7 Austin, Texas 78701</p> <p>8 (512)472-2700</p> <p>9 Email: cweldon@texaspolicy.com</p> <p>10 ctownsend@texaspolicy.com</p> <p>11</p> <p>12 FOR DEFENDANT(S):</p> <p>13 Mr. John J. Hightower, Esq.</p> <p>14 OLSON &amp; OLSON, LLP</p> <p>15 2727 Allen Parkway, Suite 600</p> <p>16 Houston, Texas 77019</p> <p>17 Email: jhightower@olsonllp.com</p> <p>18 and</p> <p>19 Mr. Adam C. Falco, Esq.</p> <p>20 COLLEGE STATION CITY ATTORNEY'S OFFICE</p> <p>21 1101 Texas Avenue</p> <p>22 College Station, Texas 77842</p> <p>23 Email: Afalco@cstx.gov</p> <p>24</p> <p>25</p>	<p>1 THE COURT REPORTER: The time is</p> <p>2 12:51 p.m. Will the attorneys please state your</p> <p>3 appearances, your location and who you represent, for</p> <p>4 the record, after which I will swear in the witness.</p> <p>5 MR. HIGHTOWER: I'm John Hightower with</p> <p>6 Olsen &amp; Olsen representing City of College Station.</p> <p>7 MR. FALCO: Adam Falco, College Station</p> <p>8 City Attorney.</p> <p>9 MR. WELDON: Chance Weldon for the</p> <p>10 plaintiffs.</p> <p>11 MR. TOWNSEND: Christian Townsend for the</p> <p>12 plaintiffs with the Texas Public Policy Foundation.</p> <p>13 BRYAN WOODS</p> <p>14 (Being first duly sworn, testified as follows:)</p> <p>15 MR. HIGHTOWER: This is John Hightower</p> <p>16 speaking. Again, the city's agreed to this deposition</p> <p>17 with the understanding that it's limited to the</p> <p>18 jurisdictional issues raised in our plead of the</p> <p>19 jurisdiction. Are we agreement on that?</p> <p>20 MR. WELDON: Yes.</p> <p>21 MR. HIGHTOWER: So, let the record reflect</p> <p>22 that opposing counsel was in agreement and nodding,</p> <p>23 since you can't see him.</p> <p>24 MR. WELDON: Yes. We're in agreement that</p> <p>25 the deposition is for the jurisdictional issues raised</p>
Page 3	Page 5
<p>1 I N D E X</p> <p>2 BRYAN WOODS PAGE</p> <p>3 Examination by Mr. Weldon 5</p> <p>4 Examination by Mr. Hightower 36</p> <p>5 Reporter's Certification 39</p> <p>6 Correction's and Signature 41</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 NO. DESCRIPTION PAGE</p> <p>10 Exhibit 1 Amended PTJ 6</p> <p>11 Exhibit 2 Affidavit of Bryan Woods 8</p> <p>12 Exhibit 3 Excerpts from City Charger 18</p> <p>13 Exhibit 4 College Station's Ordinance Concerning 20</p> <p>14 Excerpts from Sign Ordinance</p> <p>15 Exhibit 5 College Station's Ordinance Concerning 24</p> <p>16 Street, Sidewalk, Right-of-Way and</p> <p>17 Driveway Construction and Repair</p> <p>18 Exhibit 6 College Station's Ordinance Concerning 31</p> <p>19 the Discharge of Firearms</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 in the plead of jurisdiction.</p> <p>2 MR. HIGHTOWER: That's all I wanted to</p> <p>3 say, so you can proceed as far as I'm concerned. This</p> <p>4 is John Hightower.</p> <p>5 (Discussion off the record.)</p> <p>6 EXAMINATION</p> <p>7 BY MR. WELDON:</p> <p>8 Q. Good afternoon. My name is Chance Weldon, and</p> <p>9 I represent the plaintiffs in this case.</p> <p>10 Could you please state your name for the</p> <p>11 record?</p> <p>12 A. My name is Bryan C. Woods.</p> <p>13 Q. Okay. And you are currently the city manager</p> <p>14 for the City of College Station; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you're testifying here today in your</p> <p>17 official capacity as city manager; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. I'm going to be talking a lot today</p> <p>20 about something called the extraterritorial</p> <p>21 jurisdiction.</p> <p>22 Are you familiar with that term?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And do you mind if I use the term -- the</p> <p>25 acronym ETJ to refer to that today?</p>

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<p>1 A. That'll be fine.</p> <p>2 Q. Okay.</p> <p>3 MR. WELDON: I'd like to introduce</p> <p>4 Exhibit 1 which is the amended plea to the jurisdiction.</p> <p>5 (Exhibit 1 marked for identification.)</p> <p>6 Q (By Mr. Weldon) If you'd take a second to look</p> <p>7 at that document.</p> <p>8 So, are you familiar with this document?</p> <p>9 A. Yeah, I've seen it before.</p> <p>10 Q. Yeah. And to your knowledge, what is it?</p> <p>11 A. It's our response to your -- your statement</p> <p>12 of -- or your lawsuit.</p> <p>13 Q. Okay. And you're a defendant in this case,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And so you authorized your attorneys to</p> <p>17 file this document, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Can you take a look at page 2, the</p> <p>20 bottom of that first paragraph, that last sentence?</p> <p>21 A. Um-hum.</p> <p>22 Q. That says that: (reading)</p> <p>23 College Station's ETJ extends up to five</p> <p>24 miles outside of its boundaries.</p> <p>25 Is that correct?</p>	<p>1 regulate in that area?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 MR. WELDON: I'd like to introduce</p> <p>5 Exhibit 2, which is Mr. Woods' affidavit.</p> <p>6 (Exhibit 2 marked for identification.)</p> <p>7 Q (By Mr. Weldon) All right. This is your sworn</p> <p>8 affidavit, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. And can you take a look at paragraph 4?</p> <p>11 A. Yes.</p> <p>12 (Court reporter clarification.)</p> <p>13 MR. WELDON: I asked him to take a second</p> <p>14 to familiarize himself with paragraph 4.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q (By Mr. Weldon) That paragraph says that you</p> <p>17 had your staff look to see if the city has ever enforced</p> <p>18 or threatened to enforce its ordinances against the</p> <p>19 plaintiffs, correct?</p> <p>20 A. That's correct, that is what it says.</p> <p>21 Q. Yeah. Did you look -- well, is that true?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you look through the files yourself?</p> <p>24 A. I did not look through every file myself, no.</p> <p>25 Q. Okay. So, when you say "there are no records</p>
Page 7	Page 9
<p>1 A. That's what the sentence says, yes.</p> <p>2 Q. Okay. Is that true?</p> <p>3 A. I guess it depends, I mean, it could.</p> <p>4 Q. It could?</p> <p>5 So, the city's -- is there an area where</p> <p>6 it doesn't extend five miles?</p> <p>7 A. I don't know off the top of my head. I'd have</p> <p>8 to go --</p> <p>9 (Court reporter clarification.)</p> <p>10 THE WITNESS: Could you just reask the</p> <p>11 question?</p> <p>12 Q (By Mr. Weldon) Yes.</p> <p>13 To your knowledge, does the</p> <p>14 extraterritorial jurisdiction of College Station extend</p> <p>15 up to five miles outside of its territorial boundaries?</p> <p>16 A. Yes. It extends up to.</p> <p>17 Q. Okay.</p> <p>18 A. I will say I can't confirm that it goes the</p> <p>19 full five miles in every direction.</p> <p>20 Q. Fair enough.</p> <p>21 And to your knowledge, the city has</p> <p>22 authority to regulate property in that area, correct?</p> <p>23 A. To the degree that that authority is given by</p> <p>24 the state.</p> <p>25 Q. Is that a yes, they have some authority to</p>	<p>1 of enforcement," that's not based on your personal</p> <p>2 knowledge, is it?</p> <p>3 A. No. It's based on, I guess what the statement</p> <p>4 is, which I asked my staff to review and they reported.</p> <p>5 Q. Okay. Thank you.</p> <p>6 Staying with Exhibit 2, can you move down</p> <p>7 and a take look at paragraph 5?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. It says in that paragraph that you</p> <p>10 reviewed the plaintiff's pleadings in this case; is that</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Did you review the pleadings or was it</p> <p>14 someone on your staff?</p> <p>15 A. No, I reviewed it.</p> <p>16 Q. Okay. So, a little bit further down in the</p> <p>17 paragraph it says that: (Reading)</p> <p>18 The city does not, quote, enforce,</p> <p>19 unquote, any city ordinances in its ETJ or</p> <p>20 prohibit the activities Plaintiffs listed</p> <p>21 in their pleadings.</p> <p>22 Correct?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And did you come to that conclusion</p> <p>25 yourself or was that someone else on your staff?</p>



<p style="text-align: right;">Page 10</p> <p>1 A. Again, I asked my staff to look if we had</p> <p>2 enforced those ordinances and they said no.</p> <p>3 Q. Okay. So, then, that wouldn't be based on your</p> <p>4 personal knowledge, it would be based on your staff,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. So, staying with that paragraph, I'm curious</p> <p>8 about the language you chose there. You claim that:</p> <p>9 (Reading)</p> <p>10 The city does not, quote, enforce,</p> <p>11 unquote, any ordinances that would apply</p> <p>12 to Plaintiffs' activities.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. But you didn't say that there are no ordinances</p> <p>16 that might apply to those activities, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So, is it your position that there are</p> <p>19 some ordinances that could apply, perhaps, on their</p> <p>20 face, but College Station doesn't enforce them?</p> <p>21 A. I don't -- I wouldn't speculate on what could</p> <p>22 apply. The -- I commented on specifically what you</p> <p>23 asked about, which were the -- what was in the</p> <p>24 plaintiffs' plea. So, that -- that's the only thing I</p> <p>25 can say is . . .</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Well, I would say a code enforcement officer</p> <p>2 can't enforce it on their own. I mean, they could take</p> <p>3 some of action if that's what you're asking.</p> <p>4 Q. Yes. What sort of action could they take?</p> <p>5 A. I mean, it would -- you know, it would depend.</p> <p>6 That would be speculative based on what the ordinance</p> <p>7 was and what was allowed. But, you know, I'm -- I'm --</p> <p>8 I don't know, I guess you'd have to ask a more specific</p> <p>9 question.</p> <p>10 Q. Could a code enforcement officer say, for</p> <p>11 example, issue notice of violation?</p> <p>12 A. Again, it would depend on what the ordinance</p> <p>13 was and what was allowed. And -- and so, I mean, I</p> <p>14 guess that -- to not get down into too much of a</p> <p>15 hypothetical, a code enforcement officer could issue a</p> <p>16 notice of violation, but -- yeah, they could.</p> <p>17 Q. So, to clean that up a little bit --</p> <p>18 A. Yeah.</p> <p>19 Q. -- for the transcript.</p> <p>20 A. Yep.</p> <p>21 Q. Yeah. So, a code enforcement officer could</p> <p>22 issue a notice of violation under an ordinance as</p> <p>23 written?</p> <p>24 A. Yeah. I would say a code enforcement officer</p> <p>25 could issue a violation erroneously and for any number</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. Try this a different way.</p> <p>2 I'm asking about the choice that you used</p> <p>3 the word enforce but you didn't use the word apply.</p> <p>4 So, my question is, is your position you</p> <p>5 do not enforce any ordinances?</p> <p>6 A. Yes. My position is that we do not enforce</p> <p>7 those ordinances.</p> <p>8 Q. Are you claiming that there are no ordinances</p> <p>9 that could apply to them?</p> <p>10 A. I'm not claiming that there are no ordinances</p> <p>11 that -- no, I'm not claiming that. I'm -- exactly what</p> <p>12 I said, that we don't enforce the ordinances.</p> <p>13 Q. Okay. As city manager, is your decision not to</p> <p>14 enforce an ordinance permanently binding on the city?</p> <p>15 A. No.</p> <p>16 Q. Okay. So, a future city manager could come to</p> <p>17 a different conclusion about enforcement?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. In fact, you could change your mind</p> <p>20 about enforcement, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Say that there's a code enforcement officer</p> <p>23 that doesn't know your current position on enforcement,</p> <p>24 is there anything that would prevent her from enforcing</p> <p>25 the ordinance as written?</p>	<p style="text-align: right;">Page 13</p> <p>1 of reasons.</p> <p>2 Q. Uh-huh.</p> <p>3 A. So, yes they could.</p> <p>4 Q. They could?</p> <p>5 So, they wouldn't have to check with you</p> <p>6 first?</p> <p>7 A. For it to be enforced, it would have to be</p> <p>8 checked.</p> <p>9 Q. Right.</p> <p>10 A. Because, ultimately, that's -- that's my</p> <p>11 position.</p> <p>12 Q. So, you determine in -- let's -- let's unpack</p> <p>13 that a little bit.</p> <p>14 What do you mean by enforced?</p> <p>15 A. I guess carried out. And so if someone issued</p> <p>16 a notice of violation and it was contrary to our policy</p> <p>17 or to an ordinance, then it wouldn't be valid.</p> <p>18 Q. Okay. But that person who received the notice</p> <p>19 of violation I imagine would still have to come down to</p> <p>20 city hall and get that worked out, correct?</p> <p>21 A. Yeah. Again, I -- it would depend on the</p> <p>22 situation.</p> <p>23 Q. Is your city attorney, is that an independent</p> <p>24 office?</p> <p>25 A. Yes.</p>

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<p>1 Q. Okay.</p> <p>2 A. We're both appointed --</p> <p>3 Q. Okay.</p> <p>4 A. -- to council -- by the council.</p> <p>5 Q. Does the city attorney have authority to</p> <p>6 enforce city ordinances?</p> <p>7 A. To a degree. I couldn't comment on the</p> <p>8 specifics, but, yes, they do.</p> <p>9 Q. Okay. So, if a city attorney had a different</p> <p>10 opinion about the enforcement of an ordinance than say</p> <p>11 you had, would they have authority to bring an</p> <p>12 enforcement action?</p> <p>13 A. I will leave that to a city attorney to answer.</p> <p>14 Q. So, you don't know?</p> <p>15 A. I'll answer on my -- on the city manager's</p> <p>16 part. But it would -- it would, again, depend on a lot</p> <p>17 of other factors.</p> <p>18 Q. Okay. Do you have anything that you can say</p> <p>19 here today that would prevent a city attorney from</p> <p>20 taking a unilateral action to enforce a city ordinance?</p> <p>21 A. I would not agree that a city attorney could</p> <p>22 unilaterally enforce the city ordinance.</p> <p>23 Q. Okay.</p> <p>24 A. And part of that is because, again, it depends</p> <p>25 on the specific nature of the ordinance. But to answer</p>	<p>1 Q. Okay.</p> <p>2 A. I wouldn't say -- I wouldn't say they're all</p> <p>3 formal in the sense that I take direction from them.</p> <p>4 But whether it's a public resolution or something that</p> <p>5 they vote on would be depending on what they were</p> <p>6 directing.</p> <p>7 Q. Okay. Well, we'll circle back to that later.</p> <p>8 Can you go down to paragraph 9 of your</p> <p>9 affidavit? That's still in Exhibit 2.</p> <p>10 A. Okay.</p> <p>11 Q. At the bottom of that paragraph you say:</p> <p>12 (Reading)</p> <p>13 The city does not enforce its ordinances</p> <p>14 to residential properties in the ETJ.</p> <p>15 Correct?</p> <p>16 A. I say that it doesn't enforce the ordinances</p> <p>17 that have been challenged.</p> <p>18 Q. Okay. So, those are not enforced against</p> <p>19 residential properties in the ETJ?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And I'm curious, is there any city</p> <p>22 ordinance that you can point to that says that these</p> <p>23 ordinances do not apply to residential properties in the</p> <p>24 ETJ?</p> <p>25 A. On that I'd have to go look at all of our</p>
Page 15	Page 17
<p>1 your question, I'm -- I'm not saying it would be</p> <p>2 prohibited.</p> <p>3 Q. Okay. As city manager, do you have authority</p> <p>4 to change the scope of College Station's ordinances?</p> <p>5 A. Only to the degree granted by council. I guess</p> <p>6 my -- my simple answer would be no.</p> <p>7 Q. Okay. What -- let me unpack that a little bit.</p> <p>8 What authority has city council granted</p> <p>9 you to narrow the scope of ordinances?</p> <p>10 A. I don't think they grant me the scope to narrow</p> <p>11 it, I think they -- they give me direction and give me</p> <p>12 the authority to enforce them.</p> <p>13 Q. Okay. And what kind of direction?</p> <p>14 A. Well, it depends. It can be either very</p> <p>15 specific or just general that they're happy with the --</p> <p>16 the nature of the way things are being run. Or it could</p> <p>17 be very specific related to something where they -- they</p> <p>18 want to see additional resources or something added</p> <p>19 towards an enforcement.</p> <p>20 Q. So, would that be something that's done</p> <p>21 formally through like the adoption of a resolution, or</p> <p>22 is it like more informal?</p> <p>23 A. It could be. Again, it depends on the</p> <p>24 situation and what the ordinance is and what they want</p> <p>25 to accomplish. So, it could be any of those things.</p>	<p>1 ordinances. I don't know them off the top of my head.</p> <p>2 Q. What do you base your claim on that they're not</p> <p>3 enforced in the ETJ?</p> <p>4 A. That when we looked at all the challenged</p> <p>5 ordinances and asked all the staff members and</p> <p>6 departments who are responsible for enforcing those, we</p> <p>7 found no record of any such enforcement or any contact</p> <p>8 from the -- from the plaintiffs to the city or our</p> <p>9 office.</p> <p>10 Q. So, in that case -- and correct me if I'm</p> <p>11 wrong -- it sounds like what you found out is they had</p> <p>12 not been -- there was no record of them being enforced</p> <p>13 yet?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. But is there a written policy that they</p> <p>16 shall not be enforced?</p> <p>17 A. I don't know. Not that I'm aware of.</p> <p>18 Q. Okay. So -- and there's no ordinance that says</p> <p>19 they can't be enforced?</p> <p>20 A. Again, not -- I don't know every ordinance off</p> <p>21 the top of my head, but not that I'm aware of.</p> <p>22 Q. Okay. So -- okay.</p> <p>23 MR. WELDON: I'm going to introduce a new</p> <p>24 exhibit, Exhibit 3, and it's going to be a copy of the</p> <p>25 city charter.</p>

<p style="text-align: right;">Page 18</p> <p>1 (Exhibit 3 marked for identification.)</p> <p>2 Q (By Mr. Weldon) Have you seen this before?</p> <p>3 MR. HIGHTOWER: Just a second -- John</p> <p>4 Hightower speaking -- this looks like this is part of</p> <p>5 the city charter, not the city charter.</p> <p>6 MR. WELDON: Correct.</p> <p>7 MR. HIGHTOWER: Would you like clarify</p> <p>8 that?</p> <p>9 MR. WELDON: Yes. This is an excerpt --</p> <p>10 my apologies -- from the city charter. We're only going</p> <p>11 to use one page of it.</p> <p>12 Q. (By Mr. Weldon) Have you seen this document</p> <p>13 before?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Does it appear to be an excerpt of the</p> <p>16 City of College Station's city charter?</p> <p>17 A. Yes. It does appear to be.</p> <p>18 Q. Okay. Can you take a look at Section 2, right</p> <p>19 in about the middle of that paragraph after the quote</p> <p>20 about the city council --</p> <p>21 A. Okay.</p> <p>22 Q. -- that paragraph seems to indicate that:</p> <p>23 (Reading)</p> <p>24 The city management shall execute the laws</p> <p>25 and administer the government of the city.</p>	<p style="text-align: right;">Page 20</p> <p>1 to execute the laws of the city under the direction of</p> <p>2 the council.</p> <p>3 Q (By Mr. Weldon) And as we sit here today you</p> <p>4 said that the city council has not told you not to</p> <p>5 enforce ordinances in the ETJ, correct?</p> <p>6 A. They have not told me what to enforce or not to</p> <p>7 enforce.</p> <p>8 Q. Okay. So, all we have right now is the</p> <p>9 ordinances as written, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 MR. WELDON: I'd like to introduce</p> <p>13 Exhibit 4, and this is going to be an excerpt of the</p> <p>14 City of College Station ordinances regarding --</p> <p>15 (Court reporter clarification.)</p> <p>16 MR. WELDON: -- regarding signs.</p> <p>17 (Discussion off the record.)</p> <p>18 (Exhibit 4 marked for identification.)</p> <p>19 Q (By Mr. Weldon) Have you seen this group of</p> <p>20 ordinances before?</p> <p>21 A. I have.</p> <p>22 Q. Okay. In particular, can you go down to the</p> <p>23 bottom of the page and look at the section marked CC?</p> <p>24 Have you seen that provision before? That</p> <p>25 sentence?</p>
<p style="text-align: right;">Page 19</p> <p>1 Is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Do you think that provision obligates you to</p> <p>4 enforce city ordinances as written?</p> <p>5 A. Um, I think it obligates me to enforce city</p> <p>6 ordinances as written with direction from the council,</p> <p>7 if that's clear.</p> <p>8 Q. Has the city council asked you not to enforce</p> <p>9 ordinances in the ETJ?</p> <p>10 A. They have not specifically commented on these</p> <p>11 ordinances, nor have they specifically -- they have not</p> <p>12 specifically asked me not to or specifically asked me to</p> <p>13 enforce them.</p> <p>14 Q. Okay. So, as it stands today, this language</p> <p>15 would obligate you to execute the laws and administer</p> <p>16 the --</p> <p>17 (Court reporter clarification.)</p> <p>18 MR. WELDON: I'll restate question.</p> <p>19 Q (By Mr. Weldon) So, as it stands here today,</p> <p>20 then, this language would obligate you to enforce city</p> <p>21 ordinances as written, correct?</p> <p>22 MR. HIGHTOWER: Objection. Form of the</p> <p>23 question.</p> <p>24 You can answer.</p> <p>25 THE WITNESS: I would say it obligates me</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Correct. I have, yes.</p> <p>2 Q. Okay. And this is part of the City of College</p> <p>3 Station's regulation on signs, correct?</p> <p>4 A. Yeah, it appears to be.</p> <p>5 Q. Yeah. And that sentence says that: (Reading)</p> <p>6 All off-premise and portable signs shall</p> <p>7 be prohibited within the extraterritorial</p> <p>8 jurisdiction of the City of College</p> <p>9 Station.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And you would agree that language</p> <p>13 prohibits my clients from putting up off-premise</p> <p>14 portable signs on their property in the ETJ, correct?</p> <p>15 MR. HIGHTOWER: Objection. Form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Do I answer?</p> <p>18 MR. HIGHTOWER: You can answer.</p> <p>19 THE WITNESS: Oh, okay.</p> <p>20 MR. HIGHTOWER: You can, yeah, sure.</p> <p>21 THE WITNESS: I'm sorry, could you repeat</p> <p>22 that?</p> <p>23 Q (By Mr. Weldon) Yes.</p> <p>24 You would agree that the plain language of</p> <p>25 this provision prohibits my clients from putting up</p>

<p style="text-align: right;">Page 22</p> <p>1 off-premise portable signs on their property in the ETJ, 2 correct?</p> <p>3 A. I would agree that on the language, but we have 4 not enforced that ordinance.</p> <p>5 MR. HIGHTOWER: And this is Hightower, 6 renew the objection. Objection as to form.</p> <p>7 Q (By Mr. Weldon) You would agree that this 8 language tells my clients that it's prohibited, correct? 9 MR. HIGHTOWER: Objection. Form of the 10 question. 11 THE WITNESS: Yeah. I can't decide what 12 it tells your clients.</p> <p>13 Q. (By Mr. Weldon) It says: (Reading) 14 All off-premise and portable signs shall 15 be prohibited. 16 Do you know what that means? 17 A. Yes, I do. 18 Q. Okay. What does that mean? 19 A. You want me to reread it? 20 Q. I -- yes, I would like you to say it on the 21 record. 22 MR. HIGHTOWER: Well, I'm going to renew 23 my objection. And just I'm going to add a little bit to 24 it. You've taken one sentence out of an ordinance that 25 I believe is --</p>	<p style="text-align: right;">Page 24</p> <p>1 or other portions of this ordinance that would allow my 2 clients to put up an off-premise portable sign?</p> <p>3 A. I can't -- I can't -- no, I'm not aware of any. 4 Q. Okay. 5 A. I'll say that. 6 Q. Okay. I'd like to introduce Exhibit 5, this is 7 going to be part of the street and sidewalk ordinance. 8 (Exhibit 5 marked for identification.) 9 MR. HIGHTOWER: I think that's 6. 10 MR. WELDON: It's 5. 11 MR. HIGHTOWER: I'm sorry, excuse me. 12 (Court reporter clarification.) 13 Q. (By Mr. Weldon) Okay. Are you familiar with 14 that document? 15 A. Yes. 16 Q. Does it appear to be the City of College 17 Station's -- 18 A. It does. 19 (Court reporter clarification.) 20 MR. WELDON: I'll reask the question. 21 Q (By Mr. Weldon) Does this appear to be the City 22 of College Station's street and sidewalk ordinances? 23 A. It does. 24 Q. Okay. Can you take look down at Article 2, 25 Section 34-31?</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. WELDON: I'm going to object to your 2 speaking objection. 3 MR. HIGHTOWER: Well, I'm going to -- I'm 4 going to go ahead. 5 It's dozens of pages long and contains 6 definitions. So, your question is absolutely 7 inappropriate to take one sentence out of a 20 or 8 30-page ordinance and expect a witness to -- without the 9 benefit of the entire ordinance, to answer questions. 10 MR. WELDON: And I'll object to that 11 speaking objection and ask that you not make them. And 12 second, I'm going to ask him to answer the question. 13 And third, I'll get to your point in just a minute, 14 we're getting there.</p> <p>15 Q (By Mr. Weldon) First, it says: (Reading) 16 All off-premise signs and portable signs 17 shall be prohibited. 18 What does that mean? 19 A. All off-premise and portable signs shall be 20 prohibited. 21 Q. Okay. So, if my clients want to put up an 22 off-premise or portable sign, is that that prohibited 23 under the text of this ordinance? 24 A. In the text of this ordinance, yes. 25 Q. Okay. Are you aware of any other definitions</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Okay. 2 Q. And will you take a look at Subsection A there? 3 A. Yeah. 4 Q. And that section says that: (Reading) 5 It shall govern all streets, sidewalks and 6 driveways within the extraterritorial 7 jurisdiction of the city. 8 Correct? 9 MR. HIGHTOWER: Objection. Form of the 10 question. 11 THE WITNESS: It says more than that, but 12 yes, it includes that. 13 Q. (By Mr. Weldon) Yeah. So, from now on when 14 we're talking about Article 2, it's safe to say that 15 those regulations in Article 2 apply to the ETJ, 16 correct? 17 MR. HIGHTOWER: Objection. Form of the 18 question. 19 THE WITNESS: Yeah. I -- I mean, I think 20 you can apply this specific -- you're saying anything 21 under Article 2 -- restate it for me, I'm sorry. 22 Q (By Mr. Weldon) Yes. It says -- so the section 23 at the top says: (Reading) 24 This article shall govern all streets, 25 et cetera, et cetera, including the</p>

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<p>1 extraterritorial jurisdiction.</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. I would just add the caveat as established by a</p> <p>6 Texas Local Government Code.</p> <p>7 Q. Okay.</p> <p>8 A. But yes.</p> <p>9 Q. But yes.</p> <p>10 And this article that it's referring to,</p> <p>11 we're in Article 2; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. So, when we're talking about things in</p> <p>14 Article 2, we can agree that they apply to the</p> <p>15 extraterritorial jurisdiction?</p> <p>16 MR. HIGHTOWER: Objection. Form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Everything in Article --</p> <p>19 this covers everything in Article 2.</p> <p>20 Q (By Mr. Weldon) Okay. So, it applies to the</p> <p>21 ETJ, correct?</p> <p>22 A. It applies to: (Reading)</p> <p>23 The entire subdivided and unsubdivided</p> <p>24 portion of the city, the extraterritorial</p> <p>25 jurisdiction by the city as established by</p>	<p>1 Q (By Mr. Weldon) Um-hum.</p> <p>2 A. So, there's a caveat there.</p> <p>3 Q. So, Article A deals with interference, but</p> <p>4 Article B says that any property owner desiring a new</p> <p>5 driveway approach, not just ones that interfere,</p> <p>6 correct?</p> <p>7 (Court reporter clarification.)</p> <p>8 MR. HIGHTOWER: Objection. Form of the</p> <p>9 question.</p> <p>10 Q (By Mr. Weldon) Okay. So, A does talk about</p> <p>11 interference with municipal, but B, which is a separate</p> <p>12 subsection dealing with permits, talks about any</p> <p>13 property owner; isn't that correct?</p> <p>14 A. Yeah, B says any property owner.</p> <p>15 Q. Okay. And you would agree that B(3) also</p> <p>16 applies in the ETJ, correct?</p> <p>17 MR. HIGHTOWER: Objection. Form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I agree that Section 2</p> <p>20 covers the city and the ETJ.</p> <p>21 Q (By Mr. Weldon) And that this is in Section 2?</p> <p>22 A. This is in Section 2.</p> <p>23 Q. And, therefore, applies in the ETJ?</p> <p>24 MR. HIGHTOWER: Objection. Form of the</p> <p>25 question.</p>
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<p>1 a Texas Local Government Code.</p> <p>2 (Court reporter clarification.)</p> <p>3 Q. (By Mr. Weldon) Okay. Can we take a look down</p> <p>4 a bit further under Article 2, Section 34-36? And we're</p> <p>5 going to be in B(3).</p> <p>6 A. Okay.</p> <p>7 Q. Okay. Would you agree that this is still</p> <p>8 within Article 2, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And in looking at B(3), that section</p> <p>11 says, among other things, that: (Reading)</p> <p>12 Any property owner desiring a new driveway</p> <p>13 approach or improvement to an existing</p> <p>14 driveway at an existing residential or</p> <p>15 other property shall apply for a permit.</p> <p>16 Correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And as we discussed earlier, because</p> <p>19 this is in Article 2, that also applies to the ETJ,</p> <p>20 correct?</p> <p>21 MR. HIGHTOWER: Objection. Form of the</p> <p>22 question.</p> <p>23 THE WITNESS: So, it applies, but there is</p> <p>24 also a piece in Article A here where it speaks to</p> <p>25 interference with a municipal facility.</p>	<p>1 THE WITNESS: Again, we don't enforce it.</p> <p>2 And why I pointed you to the municipal facility is</p> <p>3 because that's how we -- that's how we look at it. Is</p> <p>4 you could have something that interacts with a municipal</p> <p>5 facility. So, I don't -- I don't totally agree with</p> <p>6 that, no.</p> <p>7 Q. (By Mr. Weldon) So, can you point to anything</p> <p>8 in this ordinance that says that it does not apply to</p> <p>9 the ETJ?</p> <p>10 A. No, I can't.</p> <p>11 Q. Okay. Because on its face this applies in the</p> <p>12 ETJ, correct?</p> <p>13 A. As I stated previously, Section 2 covers the</p> <p>14 city and the ETJ, yes.</p> <p>15 Q. Okay. Because I want to make sure that we're</p> <p>16 distinguishing between your enforcement practices and</p> <p>17 what your ordinances say. So, I understand that you</p> <p>18 don't -- you're claiming you don't enforce, correct?</p> <p>19 A. Correct.</p> <p>20 Q. But you're not claiming separately that these</p> <p>21 ordinances on their face don't apply, correct?</p> <p>22 A. That -- no, I'm not claiming that.</p> <p>23 Q. Okay. Can you take look now at Section B(4)</p> <p>24 just beneath B(3)?</p> <p>25 A. Um-hum.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. And this says -- we can take a second to read 2 it because I know it's a paragraph. 3 A. You said B(4), correct? 4 Q. Yes. 5 A. Go ahead. 6 Q. Okay. And this says that: (Reading) 7 A permit for building site plan approval 8 shall be required for the location of all 9 driveways which provide access to 10 property. 11 Correct? 12 A. Correct. 13 Q. Okay. And all means all; is that -- 14 MR. HIGHTOWER: Form of the question. 15 THE WITNESS: I would agree that all means 16 all. 17 Q (By Mr. Weldon) Thank you, I appreciate that. 18 Looking down a little bit further, it also 19 says that: (Reading) 20 Driveway permits will also be required for 21 any significant structure change, land use 22 change or property boundary change. 23 Correct? 24 A. Correct. 25 Q. Okay. That's also mandatory language, correct?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Okay. And that definition includes a bunch of 2 things including bows and arrows, correct? 3 A. Correct. 4 Q. Okay. Can you jump down to 26-2(B), that 5 contains the ordinance's prohibition on the discharge of 6 a firearm, correct? 7 MR. HIGHTOWER: Objection. Form of the 8 question. 9 THE WITNESS: Within the city, correct. 10 Q (By Mr. Weldon) Okay. Can you jump down to 11 26-2(C). We can take a second to look at that, it's a 12 longer one. 13 A. Okay. 14 Q. Okay. And that's a list of exceptions to the 15 prohibition on discharging firearms, correct? 16 A. Correct. 17 Q. Okay. And it's safe to say that if a discharge 18 of a firearm is not covered by one of these exceptions, 19 then it's still prohibited, correct? 20 MR. HIGHTOWER: Objection. Form of the 21 question. 22 THE WITNESS: I would say generally, yes. 23 Q. (By Mr. Weldon) Yeah. And that's how 24 exceptions work? 25 A. Yeah.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I would agree it's -- 2 MR. HIGHTOWER: Object to the form of the 3 question. 4 THE WITNESS: Yeah, I would agree it's 5 mandatory language. I would say significant is the 6 keyword in there. 7 Q (By Mr. Weldon) Okay. 8 MR. WELDON: I'd like to introduce 9 Exhibit 6, and this is going to be College Station's 10 firearm ordinance regarding -- 11 (Court reporter clarification.) 12 MR. WELDON: College Stations firearms 13 ordinance regarding the discharge of firearms. 14 (Exhibit 6 marked for identification.) 15 THE WITNESS: Okay. 16 Q (By Mr. Weldon) Have you seen this ordinance 17 before? 18 A. I have. 19 Q. Okay. 20 A. And it appears to be our ordinance. 21 Q. Thank you. 22 Can you take a look at Section 26-2(A), 23 and that section provides a definition for firearms, 24 correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 33</p> <p>1 MR. HIGHTOWER: Objection. Form of the 2 question. 3 Q. (By Mr. Weldon) Can you take look at 4 Section 26-2(C)5? 5 A. Okay. 6 Q. And that lists certain exceptions to the 7 prohibition on discharging firearms for properties in 8 the ETJ, correct? 9 A. That's correct. 10 (Court reporter clarification) 11 MR. WELDON: Discharging firearms for 12 properties in the ETJ. I'll just ask the question 13 again. 14 Q (By Mr. Weldon) That lists certain exceptions 15 to the prohibition on discharging firearms for 16 properties in the ETJ, correct? 17 A. Correct. 18 Q. Does that provision say that any discharge of a 19 firearm on properties in the ETJ is permissible? 20 MR. HIGHTOWER: Objection. Form of the 21 question. 22 MR. WELDON: Let me rephrase the question. 23 Q (By Mr. Weldon) That provision does not say 24 that any discharge of a firearm on properties in the ETJ 25 is permissible, does it?</p>

<p style="text-align: right;">Page 34</p> <p>1 MR. HIGHTOWER: Objection. Form of the</p> <p>2 question.</p> <p>3 THE WITNESS: No, it doesn't say any, it</p> <p>4 provides specific set of circumstance.</p> <p>5 Q (By Mr. Weldon) Thank you.</p> <p>6 It lists some that are permissible and</p> <p>7 some remain prohibited, correct?</p> <p>8 MR. HIGHTOWER: Objection. Form of the</p> <p>9 question.</p> <p>10 THE WITNESS: I think it lists what is</p> <p>11 permissible.</p> <p>12 Q. (By Mr. Weldon) Okay. So, are there additional</p> <p>13 firearms discharges that are permissible outside of the</p> <p>14 scope of this ordinance?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. Okay. In the list of exceptions in 26-2(C)5,</p> <p>17 does it specifically exempt bows and arrows?</p> <p>18 MR. HIGHTOWER: Objection. Form of the</p> <p>19 question.</p> <p>20 THE WITNESS: It does not specifically.</p> <p>21 Q (By Mr. Weldon) Does it specifically exempt</p> <p>22 discharging firearms on properties less than 10 acres?</p> <p>23 MR. HIGHTOWER: Objection. Form of the</p> <p>24 question.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Correct.</p> <p>2 Q. And you didn't base it on a written policy that</p> <p>3 says that you can't enforce those ordinances, correct?</p> <p>4 A. Correct.</p> <p>5 Q. You based it on past practice of</p> <p>6 non-enforcement?</p> <p>7 A. I based it on the fact that we have not</p> <p>8 enforced them.</p> <p>9 Q. In the past?</p> <p>10 A. No record of enforcing them.</p> <p>11 Q. Okay. So, it's based on the fact that to this</p> <p>12 date you have not enforced them?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 MR. WELDON: I'll pass the witness.</p> <p>16 MR. HIGHTOWER: This is John Hightower,</p> <p>17 Ms. Soto.</p> <p>18 Just a couple of questions, Mr. Woods.</p> <p>19 EXAMINATION</p> <p>20 BY MR. HIGHTOWER:</p> <p>21 Q. You were asked about one sentence out of the</p> <p>22 sign ordinance.</p> <p>23 You remember being asked the question</p> <p>24 about --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q (By Mr. Weldon) So, that section leaves those</p> <p>2 activities prohibited then, correct?</p> <p>3 MR. HIGHTOWER: Objection. Form of the</p> <p>4 question.</p> <p>5 THE WITNESS: It doesn't specifically list</p> <p>6 them.</p> <p>7 MR. WELDON: Can we take five?</p> <p>8 MR. HIGHTOWER: Sure.</p> <p>9 (Off the record 1:28 p.m. to 1:32 p.m.)</p> <p>10 Q (By Mr. Weldon) Okay. We talked a little bit</p> <p>11 earlier in your -- in your affidavit that the city does</p> <p>12 not enforce certain ordinances against residential</p> <p>13 properties in the ETJ, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. When you made that claim in your</p> <p>16 affidavit, did you base that on any official ordinance</p> <p>17 that says that you can't enforce in the ETJ?</p> <p>18 A. No. I based it on the specific items that</p> <p>19 your -- that the plaintiff alleged and checking to see</p> <p>20 if we'd enforced those specific items or anything</p> <p>21 against the plaintiffs.</p> <p>22 Q. So, to unpack that.</p> <p>23 You didn't base it on any specific written</p> <p>24 ordinance that says you can't enforce those ordinances,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. -- off-premise signs?</p> <p>2 Do you know whether or not the --</p> <p>3 MR. WELDON: One second -- this is</p> <p>4 Exhibit -- I just want to -- this is Exhibit 4?</p> <p>5 MR. HIGHTOWER: This is Exhibit 4.</p> <p>6 MR. WELDON: I just want to clarify for</p> <p>7 the record.</p> <p>8 MR. HIGHTOWER: Yes.</p> <p>9 Q (By Mr. Hightower) Do you know whether or not</p> <p>10 city ordinances, lengthy city ordinances, typically have</p> <p>11 definition sections?</p> <p>12 A. Typically, they do.</p> <p>13 Q. Okay. And do you know what the definition in</p> <p>14 the sign ordinance you have for definition of an</p> <p>15 off-premise sign is?</p> <p>16 A. I do not know that off the top of my head.</p> <p>17 Q. Okay. And do you know whether or not the</p> <p>18 proposed signs that the plaintiffs talk about in their</p> <p>19 affidavit -- you've testified that the ordinance is not</p> <p>20 being enforced against them.</p> <p>21 Do you know whether it's even applicable</p> <p>22 to them?</p> <p>23 A. I do not.</p> <p>24 Q. Okay. The firearms ordinance, which was</p> <p>25 Exhibit Number 6, you recall being asked about the --</p>

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1 about Section 26-2(B)?

2 A. Correct.

3 Q. And it -- is that the -- is there -- is that  
4 the provision that defines what's unlawful in the city  
5 in its ordinances?

6 A. It's my understanding, yes.

7 Q. Yes. Does anything in this ordinance define it  
8 as unlawful to discharge any firearm or use a bow and  
9 arrow in the ETJ?

10 A. No. It only defines what is allowed.

11 Q. So, again, just to make sure it's clear. Is  
12 there any language in this ordinance that says it --  
13 those activities are prohibited in the ETJ?

14 A. Not that I'm aware of.

15 Q. Okay.

16 MR. HIGHTOWER: Pass the witness.

17 (Deposition concluded at 1:36. p.m.)

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1 CAUSE NO. 22-00122-CV-85

2 SHANA ELLIOTT and, ) IN THE DISTRICT COURT OF  
3 LAWRENCE KALKE )

4 Plaintiff, )

5 vs. )

6 CITY OF COLLEGE STATION, )

7 TEXAS, KARL MOONEY, ) BRAZOS COUNTY, TEXAS

8 MAYOR OF THE CITY OF )

9 COLLEGE STATION and BRYAN )

10 WOODS, CITY MANAGER OF )

11 OF COLLEGE STATION )

12 Defendant(s). ) 85TH JUDICIAL DISTRICT

13 REPORTER'S CERTIFICATION

14 BRYAN WOODS

15 SEPTEMBER 7, 2022

16 I, Belen A. Soto, Certified Shorthand Reporter in  
17 and for the State of Texas, hereby certify to the  
18 following:19 That the witness, BRYAN WOODS, was duly sworn by  
20 the officer and that the transcript of the oral  
21 deposition is a true record of the testimony given by  
22 the witness;23 That the deposition transcript was submitted on  
24 September 9, 2022, to the witness or to the attorney  
25 for the witness for examination, signature and return  
to me by September 29, 2022;26 That the amount of time used by each party at the  
deposition is as follows:

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1 Mr. Chance Weldon - 0 hour(s), 39 minutes

2 Mr. John J. Hightower - 0 hour(s), 2 minutes

3 That pursuant to information given to the  
4 deposition officer at the time said testimony was  
5 taken, the following includes counsel for all parties  
6 of record:7 Mr. Chance Weldon and Mr. Christian Townsend,  
Attorneys for Plaintiff;

8

9 Mr. John J. Hightower and Mr. Adam C. Falco,  
Attorney for Defendants;

10

11 I further certify that I am neither counsel for,  
12 related to, nor employed by any of the parties or  
13 attorneys in the action in which this proceeding was  
14 taken, and further that I am not financially or  
15 otherwise interested in the outcome of the action.16 Further certification requirements pursuant to  
17 Rule 203 of TRCP will be certified to after they have  
18 occurred.

19 Certified to me by this SEPTEMBER 8, 2022.

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25

Belen A. Soto, RMR, Texas CSR 2072  
Firm Registration #660

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1 CHANGES AND SIGNATURE

2 BRYAN WOODS SEPTEMBER 7, 2022

3 PAGE LINE CHANGE REASON

4

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1 I, BRYAN WOODS, have read the foregoing deposition  
2 and hereby affix my signature that same is true and  
3 correct, except as noted above.  
4  
5

BRYAN WOODS

6 THE STATE OF TEXAS)  
7  
8 COUNTY OF \_\_\_\_\_ )  
9

10 Before me, \_\_\_\_\_, on this  
11 day personally appeared BRYAN WOODS, known to me (or  
12 proved to me under oath or through  
13 \_\_\_\_\_) to be the person whose name is  
14 subscribed to the foregoing instrument and acknowledged  
15 to me that they executed the same for the purposes and  
16 consideration therein expressed.  
17 Given under my hand and seal of office this  
18 \_\_\_\_\_ day of \_\_\_\_\_, 2022.  
19  
20

21 NOTARY PUBLIC IN AND FOR  
22 THE STATE OF \_\_\_\_\_  
23 COMMISSION EXPIRES: \_\_\_\_\_  
24  
25

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP  
2 The original deposition was/was not returned to  
3 the deposition officer on \_\_\_\_\_;  
4 If returned, the attached Changes and Signature  
5 page contains any changes and the reasons therefor;  
6 If returned, the original deposition was delivered  
7 to \_\_\_\_\_, Custodial Attorney;  
8 That \$\_\_\_\_\_ is the deposition officer's  
9 charges to the Defendants, for preparing the original  
10 deposition transcript and any copies of exhibits;  
11 That the deposition was delivered in accordance  
12 with Rule 203.3, and that a copy of this certificate  
13 was served on all parties shown herein on  
14 \_\_\_\_\_ and filed with the Clerk.  
15 Certified to by me this \_\_\_\_\_ day of  
16 \_\_\_\_\_, 2022.  
17  
18

*Belén A. Soto*

19 Belén A. Soto, RMR, Texas CSR 2072  
20 Expiration Date: 06/30/2023  
21 Firm Registration #660  
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**SHANA ELLIOTT, ET AL. vs CITY OF COLLEGE STATION, TEXAS, ET AL.**

**Bryan Woods on 09/07/2022**

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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. dismiss’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,

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College Station, Texas 77842  
Telephone: (979) 764-3507  
Facsimile: (979) 764-3481

**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  
Austin, Texas 78701  
[cweldon@texaspolicy.com](mailto:cweldon@texaspolicy.com)  
[rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com)  
[ctownsend@texaspolicy.com](mailto:ctownsend@texaspolicy.com)

***Via electronic service***

/s/ John J. Hightower

John J. Hightower

CAUSE NO. 22-001122-CV-85

SHANA ELLIOTT AND	§	IN THE DISTRICT COURT OF
LAWRENCE KALKE,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
CITY OF COLLEGE STATION,	§	
TEXAS; KARL MOONEY, IN	§	
HIS OFFICIAL CAPACITY AS	§	BRAZOS COUNTY, TEXAS
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.	§	85 <sup>TH</sup> 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 ever 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.

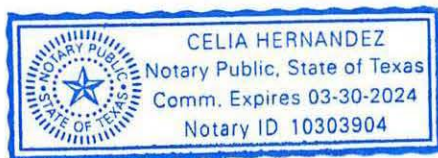
8. Finally, both Mr. Kalke and Ms. Elliott testify that they have a desire to place signs on their lots expressing their disapproval of the City of College Station having any regulatory authority in its ETJ. They testify further that to do so would be a violation of the City's ordinances and would put 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.

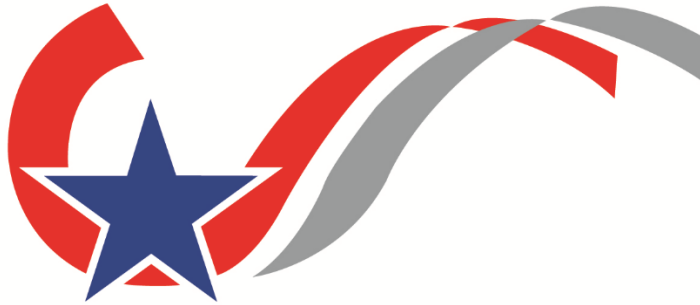
Further affiant sayeth not.

  
Bryan Woods

SWORN TO AND SUBSCRIBED before me by Bryan Woods on the 9th day of August 2022.



Celia Hernandez  
Notary Public, State of Texas  
Notary's printed name: Celia Hernandez  
My commission expires: 3/30/24



CITY OF COLLEGE STATION  
*Home of Texas A&M University®*

# CITY CHARTER

November 2, 2021

14<sup>th</sup> Edition

# **ARTICLE I**

## **INCORPORATION: FORM OF GOVERNMENT: TERRITORY**

### **Incorporation**

Section 1. The inhabitants of the City of College Station, within the corporate limits as now established or as hereafter established in the manner provided by this charter, shall continue to be a municipal body politic and corporate in perpetuity, under the name of the “City of College Station”.

### **Form of Government**

Section 2. The municipal government provided by this charter shall be known as the “council-manager government”. Pursuant to its provisions and subject only to the limitations imposed by the state constitution and by this charter, all powers of the City shall be vested in an elective council, hereinafter referred to as the “City Council”, which shall enact local legislation, adopt budgets, determine policies, and employ the city manager, who shall execute the laws and administer the government of the City. All powers of the City shall be exercised in the manner prescribed by this charter, or, if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

### **Boundaries**

Section 3. The bounds and limits of the City of College Station are hereby established and described as shown by the articles of incorporation, the several annexation ordinances and the official zoning map of said city.

### **Creation of Precinct Boundaries**

Section 4. The City Council shall divide the City of College Station into precincts for voting purposes only, and when practicable they shall conform to the county voting precincts.

# **ARTICLE II**

## **CORPORATE AND GENERAL POWERS**

### **Powers of the City**

Section 5. The City shall have all the powers granted to Home Rule Cities by the Constitution and laws of this State, as fully and completely as though they were specifically enumerated in this Charter, together with all the implied powers necessary to carry into execution such granted powers, and the powers are hereby adopted that are conferred upon cities by Article XI, Section 5, of the Constitution of the State of Texas (Home Rule Amendment). Among other powers, the City shall have the power to contract and be contracted with; to acquire property in fee simple within or without its corporate limits for any municipal purpose, or any lesser interest or estates, by purchase, gift, devise, lease, or condemnation, and may sell, lease, mortgage, hold, manage and control such property as its interests may require, except as prohibited by the Constitution or restricted by this Charter. The City may use a corporate seal; may cooperate with the government of the State of Texas or any agency thereof, or any political subdivision of the State of Texas, or with the United States or any agency thereof, to accomplish any lawful purpose for the



and retirement system for any or all groups of officers and employees on such basis as it may determine consistent with or authorized by state laws. Such system may be in cooperation with or participation in any district or statewide pension or retirement system which has been or which may be hereafter authorized or established by the legislature of the State of Texas.

## **ARTICLE IV**

### **THE CITY MANAGER**

#### **Qualifications**

Section 40. The City Manager shall be chosen by the City Council solely on the basis of the prospective City Manager's executive and administrative qualifications with special reference to the applicant's actual experience, knowledge, and accepted practice in respect to the duties of the office as hereinafter set forth. During their tenure as City Manager, the City Manager must reside either within the City or within the City's extraterritorial jurisdiction.

#### **Powers and Duties**

Section 41. The City Manager shall be the chief executive officer and the head of the administrative branch of the city government and shall be responsible to the City Council for the proper administration of all affairs of the City. To that end the City Manager shall have power and shall be required to:

- (1) Appoint and, when necessary for the good of the service, remove all officers and employees of the City except as otherwise provided by this Charter and except as the City Manager may authorize the head of a department to appoint and remove subordinates in such department.
- (2) Prepare the budget annually and submit it to the City Council and be responsible for its administration after adoption.
- (3) Prepare and submit to the City Council at the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year.
- (4) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem to him desirable and proper.
- (5) Perform such other duties as may be prescribed by this charter or required by the City Council.

#### **Absence of City Manager**

Section 42. To perform the City Manager's duties during a temporary leave of absence or disability, the Mayor may designate by letter filed with the City Secretary a qualified administrative officer of the City to serve for the City Manager. Concerning out of town business, illness, or vacation the City Manager may be delegated authority to designate an individual to serve in the absence of the City Manager.

#### **Director of Departments**

Section 43. At the head of each administrative department there shall be a director who shall be an officer of the City and shall have supervision and control of the department subject to the City Manager.

Two or more departments may be headed by the same individual; the City Manager may head one or more departments, and directors of departments may also serve as chiefs of divisions.

#### **Departmental Divisions**

Section 44. The work of each administrative department may be distributed among the divisions thereof subject to approval of the City Manager.

## **ARTICLE V THE BUDGET**

#### **Fiscal Year**

Section 45. The fiscal year of the City of College Station shall be determined by ordinance of the Council. Such fiscal year shall also constitute the budget and accounting year.

#### **Preparation and Submission of Budget**

Section 46. The City Manager, between thirty (30) and ninety (90) days prior to the beginning of each fiscal year, shall submit to the City Council a proposed budget which shall provide a complete financial plan for the fiscal year.

#### **Proposed Expenditures Compared With Other Years**

Section 47. The City Manager shall, in the preparation of the budget, place in parallel columns opposite the various items of expenditures the actual amount of such items of expenditures for the last completed fiscal year, the estimated for the current fiscal year, and the proposed amount for the ensuing fiscal year.

#### **Budget a Public Record**

Section 48. The budget and all supporting schedules shall be filed with the City Secretary when submitted to the City Council and shall be a public record for inspection by anyone. The City Manager shall cause copies to be made for distribution to all interested persons.

#### **Notice of Public Hearing on Budget**

Section 49. At the meeting at which the budget is submitted, the City Council shall fix the time and place of a public hearing on the budget and shall cause to be published a notice of the hearing setting forth the time and place thereof at least five (5) days before the date of the hearing.

#### **Public Hearing on Budget**

Section 50. At the time and place set for a public hearing on the budget, or at any time and place to which such public hearing shall from time to time be adjourned, the City Council shall hold a public hearing on the budget submitted, and all interested persons shall be given an opportunity to be heard for or against any item or the amount of any item therein contained.

#### **Proceedings on Budget After Public Hearing Amending or Supplementing Budget**

4.B of the Code of Ordinances, are permitted as a part of the Special Event License and shall be limited to the property holding the event.

2. The Special Event Signage is allowed up to fourteen (14) days prior to the event and must be removed within twenty-four (24) hours of the end of the event.

**Y. Vehicle Signs.**

1. Signs that are displayed on motor vehicles that are being operated or stored in the normal course of a business, such as signs indicating the name or the type of business, excluding all banners, that are located on moving vans, delivery trucks, trailers or other commercial vehicles are permitted; but only if the primary purpose of such vehicles is not for the display of the signs thereon, and only if such vehicles are parked or stored in areas appropriate to their use as commercial or delivery vehicles, such as service areas or locations close to the business building away from public traffic areas.
2. Signs or advertisements permanently attached to non-commercial vehicles, excluding all banners, are permitted.

**Z. Signs for Conditional Uses.**

1. Signs for Conditional Uses shall comply with the regulations for the zoning district in which the Conditional Use is permitted.
2. Signs for Conditional Uses in residential or rural zoning districts shall comply with Section 7.5.F, Sign Standards, "Low Profile Signs."

**AA. Signs for Permitted Non-residential Uses in Residential or Rural Districts.**

1. Signs for permitted non-residential uses in residential or rural zoning districts shall comply with Section 7.5.F, Sign Standards, "Low Profile Signs."
2. Signs for Places of Worship with frontage on a street classified as Freeway/Expressway on the Thoroughfare Plan are allowed one (1) "Freestanding Sign" in accordance with Section 7.5.N, "Freestanding Commercial Signs" or "Low Profile Signs" in accordance with Section 7.5.F, Sign Standards, "Low Profile Signs." The "Freestanding Sign" must be adjacent to and orient to the Freeway/Expressway.
3. Signs for Places of Worship and Government Facilities in residential or rural zoning districts may utilize signage in accordance with Section 7.5.I, Sign Standards, "Attached Signs" and Section 7.5.J, "Commercial Banners."

**BB. Abandoned, Damaged, or Unsafe Signs.**

1. The provisions of this Section shall apply when in conflict with the provisions of the Building Code; but where the provisions of both ordinances are consistent, the enforcement of either shall be permissible and remedies or penalties cumulative.
2. Nonconforming signs that have become deteriorated or damaged to an extent that the cost of the reconstruction or restoration of such signs is in excess of fifty (50) percent of its replacement value exclusive of foundations, will be required to be removed or brought into full compliance with the current sign regulations.
3. All abandoned signs and their supports shall be removed within sixty (60) days from the date of abandonment. All damaged signs shall be repaired or removed within sixty (60) days. The Administrator shall have authority to grant a thirty-day time extension where he determines there is a reasonable necessity for same.
4. Discontinuance of use or removal of any nonconforming sign or any sign in connection with a nonconforming use shall create a presumption of intent to abandon said sign. A nonconforming sign that is damaged and not repaired within sixty (60) days shall be presumed to be abandoned.
5. When a building is demolished, the associated signs and sign structures shall also be removed.

**CC. Signs in the Extraterritorial Jurisdiction.**

All off-premise and portable signs shall be prohibited within the Extraterritorial Jurisdiction of the City of College Station.

**EXHIBIT**

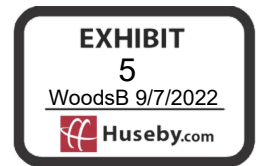
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WoodsB 9/7/2022



Huseby.com

## ARTICLE II. - STREET, SIDEWALK, RIGHT-OF-WAY AND DRIVEWAY CONSTRUCTION AND REPAIR



### Sec. 34-29. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bikeway* means a trail, path, part of a highway shoulder, or any other means specifically marked and assigned for bicycle use. Bikeway facilities are further classified as bike paths, lanes, and routes.

*Corner* means the point of intersection of the lines of two street curbs extended into the street intersection.

*Cul-de-sac* means a street having only one outlet to another street and terminating on the other end in a vehicular turnaround.

*Curb return* means that portion of a curb which is constructed on a curve, to connect normal street curbs at a street intersection, or at driveway approaches connecting the street curb to the driveway approach.

*Driveway* means a place on private property for vehicular traffic.

*Driveway approach* means an area or facility between the street and private property intended to provide access for vehicles from the street to private property. A driveway approach must provide access to something definite on private property, such as a parking area, a driveway, or a door at least eight feet in width, intended and used for entrance of vehicles.

*Extraterritorial jurisdiction* (within the terms of the Texas Local Government Code) means the unincorporated area, not a part of any other City, which is contiguous to the corporate limits of the City, the outer boundaries of which are measured from the extremities of the corporate limits of the City, outward for such distances as may be stipulated in the Texas Local Government Code, in which area, the City may enjoin the violations of this street regulations article.

*Major streets* means and includes major and minor arterial and major collector streets.

*Minor streets* means and include residential, minor, collector, and rural streets.

*Parking* means parallel parking (parallel to traffic lanes).

*Principal streets* includes all major streets and minor collector streets as designated on the thoroughfare and transportation improvement plan.

*Right-of-way* (in this case) refers to rights-of-way for streets and alleys, which includes pavement, sidewalks, bikeways, utilities, and other public use.

*Shall* is always mandatory.

*Sidewalk* means a paved way for pedestrian traffic.

*Street* means a way for vehicular traffic or parking, whether designated as a highway, arterial street, collector street, or local street.

*Street, collector*, means a street that collects traffic from local streets and connects with minor and major arterials. This includes minor and major collectors.

*Street, local*, means a street that provides vehicular access to abutting property.

*Street, major arterial*, means a street that collects traffic from the collector and minor arterial system and connects with the freeway system.

*Street, minor arterial*, means a street that collects traffic from the collector system and connects with the major arterial system.

*Street width* means the distance as measured from back of curb to the back of curb. In the case where there is no curb, the term "street width" shall mean the distance between the edges of pavement.

*Thoroughfare plan* means a plan adopted with the comprehensive plan establishing the location, classification, and contexts for certain principal traffic ways within the corporate limits of the City; and within the extraterritorial jurisdiction of the City.

(Code 2011 (Repub.), § 3-3(B); altered in 2017 recodification)

Sec. 34-30. - Penalty for violation.

Any person who violates or fails to comply with the requirements of this section shall be punished as provided in Section 1-7. Nothing herein contained shall prevent the City from taking such other lawful action as may be necessary to prevent or remedy any violation.

(Code 2011 (Repub.), § 3-3(H)(2))

Sec. 34-31. - Scope and purpose.

- (a) This article shall govern all streets, sidewalks, and driveways within the corporate limits of the City, including both the subdivided and unsubdivided portion of the City, and within the extraterritorial jurisdiction of the City as established by the Texas Local Government Code.
- (b) The regulation of streets and the associated utilities affects the welfare of the entire community in many important aspects. These regulations are deemed to be the minimum requirements as adopted by the City Council for the protection of the public health, safety, and welfare.

(Code 2011 (Repub.), § 3-3(A))

**State Law reference**— Extraterritorial jurisdiction, Texas Local Government Code § 42.021.

Sec. 34-32. - Administration and enforcement.

- (a) The City Engineer is designated as the administrative official of the City, to administer the provisions of this article.
- (b) If the City Engineer shall find or if any person files with the City Engineer a complaint in writing alleging that any of the provisions of this article are being violated, the City Engineer shall immediately investigate and, when necessary, give written notice to the person responsible to cease such violations, forthwith.
- (c) Notice may be delivered in person or by certified mail to the violator or to any person in charge of the property where the violation is occurring.

(Code 2011 (Repub.), § 3-3(H)(1))

Sec. 34-33. - Unusual conditions.

The City Engineer is hereby authorized to grant, in writing, variances from the strict application of the principles of this article; provided that the City Engineer first determines that the following conditions are present:

- (1) The exception or variance desired arises from peculiar conditions not ordinarily existing in similar districts in the City, or due to the nature of the business or operation on the abutting property.
- (2) That the exception or variance desired is not against the public interest, particularly safety, convenience, and general welfare.
- (3) That the granting of the permit for the exception or variance will not adversely affect the rights of adjacent property owners or tenants.
- (4) That the strict application of the terms of this article will not cause unnecessary hardship on the property owner or tenant.

(Code 2011 (Repub.), § 3-3(G))

#### Sec. 34-34. - Streets.

##### (a) *Paving and repaving of existing streets.*

- (1) In the established and platted parts of the City, priority in minor street construction will be determined and established from time to time by the City Council, based upon recommendations by the City staff.
- (2) Where the owners of more than 50 percent of the abutting lots along any existing minor street or way shall request paving or repaving of same by petition presented to the City Council showing the signatures of each of the record owners of such lots, the City staff shall review the proposed project and present its conclusions concerning same to the City Council within 45 days. The Council shall give priority to such projects where feasible, consistent with the needs of the public for safe and adequate streets and public ways and the financial circumstances pertinent to the project.
- (3) Paving or repaving of existing streets shall be in accordance with plans and specifications reviewed and approved by the City Engineer or designee.
- (4) The City Council may require the execution of a mechanic's and materialmen's

lien contract, approved by the City Attorney, from the owners of at least 90 percent of the abutting lot owners to cover the estimated portions of the construction cost for each such lot, prior to the approval of any proposed paving or repaving.

(b) *Planting on street right-of-way.*

- (1) *Unpaved areas.* There will be no restrictions on planting and care of grass on unpaved areas, and no permit shall be required.
- (2) *Obstructions.* It shall be unlawful to plant flowers, shrubs, or trees to obstruct the view of or access to fire hydrants, mail boxes, traffic control devices, police or fire call boxes.
- (3) *Permit requirements.* Other plantings will be permitted only if an application, together with a plan of planting, has been filed with the City Engineer and the City Engineer in turn has issued a permit for such planting.

(Code 2011 (Repub.), § 3-3(C))

Sec. 34-35. - Priority in sidewalk construction.

In the established and platted part of the City, priority in sidewalk construction will be established by the City Council, based on recommendations of the City Manager and City Engineer. Lengths shall be one block or more. First consideration will be given to major streets, second consideration to minor streets; however, no consideration will be given until petitioned by property owners representing a percentage of the front footage of the property as established by policy of the City Council, and funds are available. The Council may, however, at its discretion, when a situation warrants, arrange for construction without a signed petition.

(Code 2011 (Repub.), § 3-3(D))

Sec. 34-36. - Driveways.

- (a) *Interference.* No driveway approach shall interfere with municipal facilities such as street light or traffic signal poles, signs, fire hydrants, cross walks, bus loading zones, utility poles, fire alarm supports, drainage structures, or other necessary street structures. The City Engineer is authorized to order and effect the removal or



reconstruction of any driveway approach which is constructed in conflict with street structures. The cost of reconstructing or relocating such driveway approaches shall be at the expense of the abutting property owner.

(b) *Permits.*

- (1) Any plans submitted for building approval which include or involve driveway approaches shall be referred to the City Engineer or designee for approval before a building permit is issued.
- (2) A written driveway permit for a new development shall not be issued or required. Approval of driveway location and design for new properties and other developments on a building plan or site plan shall be considered the permit for driveway installation.
- (3) Any property owner desiring a new driveway approach or an improvement to an existing driveway at an existing residential or other property shall make application for a driveway permit, in writing, and designating the contractor who will do the work, to the City Engineer or the building supervisor, accompanied by a sketch or drawing showing clearly the driveway, parking area, or doorway to be connected and the location of the nearest existing driveways on the same and opposite sides of the roadway. The City Engineer will prescribe the construction procedure to be followed. (See the Building Code for contractor's bond and permit requirement, for work on public property.)
- (4) A permit or building/site plan approval as per the procedure of either Subsection (b)(2) or (3) of this section shall be required for the location of all driveways which provide for access to property. Driveway permits will also be required for any significant structure change, land use change, or property boundary change.
- (5) The driveway permit fee is established in Section 2-117, which shall be of an amount to cover the cost of licensing and maintaining records.
- (6) All permits granted for the use of public property under the terms of this section shall be revocable at the will of the City Council.

(Code 2011 (Repub.), § 3-3(E); altered in 2017 recodification)



(a)

Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Effective consent means the consent of a person authorized to act, or whom the shooter reasonably believed was so authorized.

Firearm means specifically, but not exclusively, any shotgun, pistol, rifle, air rifle, air pistol, BB gun, bow and arrow, or any other mechanism that discharges or ejects any bullet, buckshot, or any other projectile of any size by force of combustion, mechanism, or air. The term "firearm" does not include pitching machines or similar devices that are designed and used only as a substitute for a human action.

One ownership means an undivided parcel or tract of land that may be owned by a person, corporation, or other entity, or by a combination thereof, or by a tenant in common.

(b)

Unlawful to shoot firearms within City. It shall be unlawful to willfully or intentionally or otherwise shoot a firearm within the limits of the City, except as provided hereafter. Pursuant to Texas Local Government Code § 229.001, this subsection does not prohibit the discharge of firearms or air guns at a sport shooting range. A person asserting an exception to prosecution under this section shall be required to prove the same as a defense under the provisions of the Texas Penal Code, as amended, and the Texas Code of Criminal Procedures, as amended.

(c)

Excepted from this provision. The following are excepted from the provisions of this section:

(1)

Shooting a shotgun, air rifle, air pistol, BB gun, or bow and arrow upon a tract of land of ten acres or more under one ownership, with the effective consent of the owner and any tenant residing thereon, and not within 300 feet of any residence or occupied building, provided that the firearm is not discharged in such a manner that it would reasonably be expected to cause any projectile to cross the boundary of the tract onto other premises. Under this subsection, the term "shotgun" shall mean a ten-gauge or smaller shotgun with shot no larger than size seven.

(2)

Shooting a center fire or rim fire rifle or pistol of any caliber upon a tract of land of 50 acres or more under one ownership, with the effective consent of the owner and any tenant residing thereon, and not within 300 feet of any residence or occupied building, provided that the firearm is not discharged in such a manner that it would reasonably be expected to cause any projectile to cross the boundary of the tract onto other premises.

(3)

Shooting any firearm in lawful defense of self, a third person, or property, provided that the firearm is not discharged in such a manner as to unreasonably endanger innocent persons.

(4)

Law Enforcement and Animal Control Officers while in the lawful discharge of their duties.

(5)

The discharge of firearms or other weapons in the extraterritorial jurisdiction of the City or in an area annexed by the City after September 1, 1981, if the firearm or other weapon is:

a.

A shotgun, air rifle or pistol, or BB gun, discharged:

1.

On a tract of land of ten acres or more and more than 150 feet from a residence or occupied building located on another property; and

2.

In a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

b.

A center fire or rim fire rifle or pistol of any caliber discharged:

1.

On a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and

2.

In a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

(d)

Penalty. A violation of this section shall constitute a misdemeanor and upon conviction thereof shall be punished as provided in [Section 1-7](#).

(Code 2011 (Repub.), § 1-16; altered in 2017 recodification)

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Chance Weldon

Bar No. 24076767

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Envelope ID: 68254542

Status as of 9/14/2022 3:07 PM CST

Associated Case Party: Shana Elliott

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	9/14/2022 2:21:39 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	9/14/2022 2:21:39 PM	SENT
Chance Weldon		cweldon@texaspolicy.com	9/14/2022 2:21:39 PM	SENT
Christian Townsend		ctownsend@texaspolicy.com	9/14/2022 2:21:39 PM	SENT

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Chance Weldon

Bar No. 24076767

cweldon@texaspolicy.com

Envelope ID: 68254542

Status as of 9/14/2022 3:07 PM CST

Associated Case Party: City of College Station, Texas

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Allison Killian	24099785	akillian@olsonllp.com	9/14/2022 2:21:39 PM	SENT