

FRANCISCA ACUNA, <i>et al.</i> ,	§	IN THE DISTRICT COURT
<i>Plaintiffs</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
THE CITY OF AUSTIN, TEXAS, <i>et al.</i>	§	
<i>Defendants</i>	§	201st JUDICIAL DISTRICT

REQUEST FOR CLARIFICATION REGARDING
THE SCOPE OF THE COURT’S FINAL JUDGMENT

TO THE HONORABLE JUDGE SOIFER:

The City Defendants file this request that the Court clarify the scope of the March 18, 2020, Final Judgment in this action to confirm that the injunctive relief extends only to City’s current efforts to adopt a revision to its Land Development Code (“LDC”) because that is the sole record and issue that was before the Court and actually litigated in this action.

The City Defendants consulted with Plaintiffs before filing this request. Plaintiffs oppose this request for clarification.

REQUEST FOR CLARIFICATION

A. The actual litigation was limited to the LDC Revision.

Through this action, Plaintiffs sought declaratory and injunctive relief relating to the LDC revision and the notice and protest requirements that should apply to that effort. The Final Judgment found that the City failed to follow statutory notice and protest provisions in its “attempt to adopt a comprehensive revised Land Development Code” and granted declaratory and injunctive relief to that effect. The City Defendants have appealed

the Final Judgment, and the appeal has been transferred to the Fourteenth Court of Appeals pursuant to docket equalization. The City Defendants did not oppose Plaintiffs' request to post bond in order to have the Final Judgment continue in effect pending appeal.

The pleadings, argument, and evidence before this Court in this action were limited in substance to the LDC revision. The evidence was limited to documents relating to the LDC revision process, including Planning Commission and City Council actions relating to the LDC revision (and its predecessor, CodeNEXT), Plaintiffs' protests relating to the LDC revision, a draft conversion table demonstrating the nature of the LDC revision, and demonstratives regarding the practical result if the individual notice and protest requirements applied to the city-wide LDC revision. The argument at trial was limited to the LDC revision as well, and whether certain statutory notice and protest requirements could apply to the LDC revision.

The injunction language in the Final Judgment however, is not expressly limited to the LDC revision. Specifically, the Final Judgment includes the following language regarding injunctive relief:

“Defendants be, and hereby are commanded to send written notice to all property owners in the City of Austin, and surrounding property owners within 200 feet, whose zoning regulations or zoning district boundaries are being changed....” (emphasis added).

City Defendants suggest that the scope of the injunction is unnecessarily broad by applying the notice provision to *either* zoning regulation changes or zoning district boundary changes. In reality, the LDC revisions included a combination of text amendments to regulations as well as city-wide changes to zoning classifications and boundaries. Had the

Final Judgment used “and,” it may have more accurately reflected the specific issues and record that were actually before the Court.

Meanwhile, during the time the appeal is pending and the Final Judgment is in place, the City has unrelated pending and anticipated regulatory efforts that will amend zoning regulations within the City’s current Land Development Code.¹ These efforts are amendments to zoning regulations that will apply within existing zoning district boundaries and do not amend zoning district classifications or boundaries. Further, they are not part of the LDC revision effort at issue before this Court. The below-described pending and anticipated amendments to the text of current regulations would not change zoning boundaries or classifications but would instead amend zoning regulations that apply within existing boundaries. Out of an abundance of caution, and to ensure that they are not in violation of any portion of the Court’s Final Judgment, the City Defendants ask this Court to clarify that the injunctive relief in the Final Judgment is limited to the LDC revision process.

This Court retains continuing jurisdiction over the Final Judgment and its injunction and thus may clarify the scope. *See Morath v. The Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 886 (Tex. 2016). The City Defendants do not seek to amend the injunction, but rather simply to clarify that its scope is limited to the LDC Revision.

¹ Title 25 of the City of Austin Code.

- B. The Court was never asked to determine whether “zoning regulation” changes that are not part of the LDC revision and do not change zoning boundaries are subject to the statutory individual notice and protest provisions.

This request for clarification was prompted initially by the City’s pending amendment to its regulation of land near Austin-Bergstrom International Airport. Land near the airport is subject to three zoning overlays known as AO-1, AO-2, and AO-3. The City regulates land within the three overlays to ensure public health and safety that is both consistent with federal requirements and, where allowed, exceed noise requirements related to airports. General changes to the requirements within the airport overlays have never been subject to individual notice and protest, and ordinarily the City would proceed with the airport overlay revisions without sending individual notice or recognizing protest rights. That is what the City has done consistently in the past.

But the language of the Final Judgment is broad, and taken literally it orders the City to send individual notice to neighboring property owners if any “zoning regulations” are “being changed.”

There are additional examples of the unintended reach of the language of the Final Judgment. For example, the City’s Planning Commission recently initiated amendments to the sign regulations that are part of the University Neighborhood Overlay District and such amendments would also apply in Transit Oriented Development Districts.² Again, the anticipated amendments change the text of zoning regulations within a boundary but do not change a zoning classification or alter district boundaries. Yet, the plain language of

² http://austintexas.gov/cityclerk/boards_commissions/meetings/40_1.htm Planning Commission May 26, 2020 agenda Item No C-02.

the injunction appears to expand the individual notice and protest requirements to zoning regulation changes, regardless of whether there is a change in zoning boundaries or classification.

The City's Planning Commission recently initiated a code amendment to amend North Burnet Gateway's regulating plan to allow for additional civic uses to support an electric utility substation in an area experiencing rapid growth. This does not alter zoning classifications or district boundaries but changes the regulations that apply within that area.³

Additionally, without changing a zoning classification or changing an individual property classification, the City may seek to amend the zoning regulations that apply to property within existing Single-Family (SF) zoning districts such as SF-2 and SF-3 to address affordable housing policy goals by changes such as reducing minimum lot sizes or eliminating duplex restrictions. Such amendments meet the definition of a zoning regulation under §211.003 yet do not ordinarily require individualized notice and protest rights because the changes to regulations do not alter zoning classifications or boundaries that already exist.

All of these examples, which represent current matters ripe for City determination, would ordinarily not be subject to the individual notice and protest provisions. But under the broad, literal language of the Final Judgment, it is unclear whether those provisions might now apply.

³ http://austintexas.gov/cityclerk/boards_commissions/meetings/40_1.htm Planning Commission June 23, 2020 agenda Item No. C-01.

Out of an abundance of caution, and to ensure that they do not violate this Court’s injunction, the City Defendants ask this Court to clarify that the Final Judgment and its injunction are limited to the LDC revision—which was a combination of city-wide changes to zoning classifications, boundaries, and changes to zoning regulations within the newly amended boundaries and classifications—because that is the sole subject matter that was actually litigated in this action.

The airport overlay amendments and other potential regulation revisions were not the subject of any pleadings, evidence, or argument in this lawsuit. This Court was never asked—and was never given the opportunity—to analyze the nature of the airport overlays or the other matters to determine whether proposed revisions are “changes” to “zoning regulations” that trigger the statutory individual notice and protest requirements. The facts and nature of the airport overlays and other similar text amendments that might meet the definition of a zoning regulation under §211.003 were never before the Court, and for that reason the City Defendants seek clarification that the Court did not address them in the scope of the Final Judgment.

The City Defendants believe that this issue could be resolved on submission, with the Court simply clarifying that the scope of the Final Judgment’s declaratory and injunctive relief is limited to the LDC revision. If this Court intended that the Final Judgment have a wider reach, then the City Defendants suggest that the Court set up a process to resolve whether the airport overlays and other anticipated zoning regulation amendments properly come within its scope. The issue can be resolved summarily, but it

will require evidence to illustrate the nature of the revisions and briefing on whether those revisions come within the statutory notice and protest requirements.

The City Defendants pray that this Court clarify that the Final Judgment in this suit, including the injunctive language, is limited to the LDC revision.

Respectfully submitted,

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THE CITY DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that I conferred with Doug Becker regarding this pleading. He informed me that Plaintiffs oppose the relief sought through this request for clarification.

/s/ Jane Webre
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CERTIFICATE OF SERVICE

I certify that the foregoing pleading was served on all counsel as listed below by e-filing and e-mail on July 16, 2020:

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