

CAUSE NO. 2024CCV-61174-3

AJIT DAVID

Plaintiff,

v.

CITY OF CORPUS CHRISTI, TEXAS
Defendant

§ **IN COUNTY COURT**

§

§

§

§

AT LAW NO. ____

§

§

NUECES COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION FOR DECLARATORY JUDGMENT

NOW COMES Ajit David, Plaintiff herein, and makes and files this Plaintiff’s Original Petition for Declaratory Judgment complaining of City of Corpus Christi, Texas (“City”), and in support of same would show:

I.
Executive Summary ¹

1. Plaintiff seeks declaration that City Ordinance 24 – 0256 is void. Mayor Guajardo

Political Donors:

- a) paid BIG money to the Mayor Guajardo campaign;
- b) made application requesting \$2,000,000.000 of taxpayers’ dollars;
- c) created a false narrative, scheme to point the finger at FEMA by altering a federal document; and
- d) were rewarded by grant of the \$2,000,000.00.

Mayor Guajardo’s **MISSION ACCOMPLISHED.** This bad behavior must not be rewarded.

¹ All capitalized terms are defined, below.

2. To make it all happen, we see on video Mayor Guajardo insisting FEMA Maps changed after start of the Project (***but this is false***); we see Mayor Guajardo lobbying two other councilmen off-microphone (***although it is supposed to be a public discussion***); and we see Mayor Guajardo advocating for her Political Donors \$2,000,000.00 grant (***knowing an altered federal document was the original basis for Mayor Guajardo Political Donors' request***). The Mayor's false statements, private lobbying, and willingness to turn a blind-eye to bad (perhaps corrupt) behavior not valid reasons to then violate the City's internal safeguards (e.g., the 'two-reading' rule). No applicant requesting grant of \$2,000,000.00 of tax-payer money should be given leeway to behave so badly – even if the applicant is a good Political Donor to the Mayor Guajardo campaign.

3. Mayor Guajardo's Political Donors were granted \$2,000,000.00, and without having to follow the City processes designed to safeguard the grant of tax-payer money. This transaction (Ordinance 24 – 0256) is void because: (1) the City's two-reading rule was not followed; and (2) Texas public policy does not allow for such a reward to an applicant who alters a FEMA (federal) document and then lies about it (even if the applicant is a good political donor).

II. Discovery Control Plan

4. Plaintiff requests that formal legal discovery be conducted under a Level 3 plan pursuant to Texas Rule of Civil Procedure 190.4.

III. Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this matter under Texas Government Code §§ 25.0003 and 25.1802, as well as the common law of the State of Texas. This Court has

personal jurisdiction over the City of Corpus Christi (“City”) because it is a political subdivision of the State of Texas.

6. Venue is proper in Nueces County, Texas because the City’s principal office in this state is in Nueces County, and it is domiciled in Nueces County.² In addition, venue is proper in Nueces County because all or a substantial part of the events and omissions giving rise to the Plaintiff’s claims occurred in Nueces County, Texas.³

IV. Parties

7. Ajit David, Plaintiff herein, is a resident of Nueces County, Texas. The last three (3) digits of Plaintiff’s Texas Driver’s License are 700; and of Plaintiff’s social security number are 827. All notices and other communications directed to Plaintiff for purposes of these legal proceeding may be through his legal counsel: Douglas Allison, 403 N. Tancanhua Street, Corpus Christi, Texas 78401; and Roger Borgelt, 614 S. Capital of Texas Highway, Austin, Texas 78746.

8. The City of Corpus Christi (“City”) is a Texas political subdivision located in Nueces County, Texas. It is domiciled in Nueces County, and its principal office is in Nueces County. Pursuant to Texas Civil Practice and Remedies Code § 17.024(b), the City can be served with process by serving its mayor (Mayor Paulette Guajardo) at the following address or wherever Mayor Paulette Guajardo may be found: Corpus Christi City Hall, 1201 Leopard Street, Corpus Christi, Texas 78401.

² TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2).

³ TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

V.
The City is the Proper Defendant

9. The City is the proper Defendant because this is a declaratory judgment action seeking a declaration that City's Ordinance No. 24 – 0256 void, voidable, and not enforceable. The Supreme Court has held that in "suits challenging the validity of ordinances," the "relevant governmental entities" must be parties.⁴ The City, therefore, is the proper defendant in this lawsuit.

VI.
Texas Legislature has Waived the City's Governmental Immunity

10. As a Texas political subdivision, the City has governmental immunity in some circumstances.⁵ However, the City's governmental immunity can be waived by the Texas Legislature.⁶ In the present circumstance, the Texas Legislature has waived, and thus the City does not have governmental immunity regarding the Plaintiff's claims asserted in this action.

11. The Texas Supreme Court has held that the Texas Legislature has waived cities' governmental immunity to declaratory judgment actions brought to challenge the cities' ordinances.⁷ The Texas Declaratory Judgment Act allows any person "whose rights, status, or other legal relations are affected by" a "municipal ordinance" to bring a declaratory judgment action to determine "any question of construction or validity arising under" the "ordinance" and to "obtain a declaration of rights, status, or other legal relations thereunder."⁸ Texas Civil Practice and Remedies Code § 37.006(b) provides that in "any proceeding that involves the validity of a

⁴ *Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 633-34 (Tex. 2010); *see also City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 n.6 (Tex. 2009) ("For claims challenging the validity of ordinances or statutes, however, the Declaratory Judgment Act requires that the relevant governmental entities be made parties...."); TEX. CIV. PRAC. & REM. CODE § 37.006(b) ("In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party....").

⁵ *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Texas Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 324 (Tex. 2006).

⁶ *Reata Const. Corp. v. City of Dallas*, 197 S.W.3d 371, 375 (Tex. 2006).

⁷ *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

⁸ TEX. CIV. PRAC. & REM. CODE § 37.004(a).

municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard....”⁹ The Supreme Court has held that for “claims challenging the validity of ordinances or statutes,” the “Declaratory Judgment Act requires that the relevant governmental entities be made parties, and thereby waives immunity.”¹⁰ The Supreme Court has held that because the Declaratory Judgment Act “contemplates that governmental entities may be—indeed, must be—joined in suits to construe their legislative pronouncements,” the Legislature has waived a city’s governmental immunity as to declaratory action lawsuits brought to challenge one of the city’s ordinances.¹¹

VII. Damages

12. Plaintiff is not seeking monetary damages. Instead, Plaintiff is seeking a declaratory judgment and attorneys’ fees and costs.

VIII. Timeline

13. A full understanding of the timeline reveals relevant history that led to the \$2,000,000.00 “incentive”¹² grant (City Ordinance 24 – 0256). The details of how the “incentive” grant came to pass require – pursuant to Texas law – a declaration that City Ordinance 24 – 0256 is void, voidable, not valid, and not enforceable. Please consider the following.

14. On or about January 13, 2022, Elevate Corpus Christi LLC purchased properties now known as 403 Lomax Street (the “Property”). At this time of purchase of the Property (and since at least 1985), the Federal Emergency Management Agency (“FEMA”) had identified the

⁹ TEX. CIV. PRAC. & REM. CODE § 37.006(b).

¹⁰ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 373 (Tex. 2009).

¹¹ *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

¹² To be clear, this “incentive” grant – from the outset – was treachery. The project made the subject of this legal action was already committed, in-construction, and fully funded; thereby not qualifying for any “incentive” grant (no incentive needed since it was already here).

Property as within/below the “Flood Boundary.”¹³

15. On April 13, 2022, FEMA released FEMA’s “finalized,”¹⁴ new Nueces County, Texas, Flood Maps (“Flood Maps”). These Flood Maps, again like the 1985 FEMA maps, identify the Property as below base flood elevation (“BFE”).¹⁵

16. In July 2022, Elevate Corpus Christi LLC (at time of presentation, Elevate QOF LLC (“QOF”)) “re-imagined”¹⁶ their commercial development project as a 126-room hotel development (the “Project”). Again, this Project location had been previously identified as within/below “Flood Boundary” since at least 1985 by FEMA; and was, again, previously identified as below “base flood elevation” by FEMA’s new Flood Maps “finalized” as of April 13, 2022.¹⁷ **The elevation of this location has not changed for decades.**

17. On or about December 29, 2022, Elevate Corpus Christi LLC deeded the Property to Elevate QOF LLC (“QOF”) to develop / construct the Project. The principal(s) / partner(s) in the QOF Project may be referred to as “QOF” or “Mayor Guajardo Political Donors” (sometimes “Political Donors”).¹⁸ As more fully discussed below, QOF is recipient of the City’s \$2,000,000.00 “incentive” grant (Ordinance 24 – 0256).

18. On December 23, 2023, Mayor Guajardo Political Donors appeared before the

¹³ “100-Year Flood Boundary.” See Federal Emergency Management Agency (“FEMA”), National Insurance Program; Floodway, Flood Boundary and Floodway Map, City of Corpus Christi, Texas; Nueces and Kleberg County Panel 167 of 405, Map revised July 18, 1985.

¹⁴ fema.gov (<https://www.fema.gov/press-release/20220413/nueces-county-texas-flood-maps-become-final>).

¹⁵ fema.gov (<https://www.fema.gov/press-release/20220413/nueces-county-texas-flood-maps-become-final>).

¹⁶ See QOF/Political Donors’ presentation to City’s Type B Board (December 23, 2023).

¹⁷ See reference documentation noted above.

¹⁸ The principal(s) of QOF, or his/her family members, made political contributions to Mayor Paulette Guajardo for these years/dates in the following amounts: 2024 (little or none, as one might expect given the pending request for a \$2,000,000.00 grant); 2023 (\$2,000); December 2022, in advance of initiating request for grant (\$1500 + \$2000 + \$1500 + \$2500 + \$1500); and remainder of 2022 (\$500). The partner may or may not have contributed to the Mayor’s campaign.

City's Type B Board having applied for a \$2,000,000.00 "incentive"¹⁹ grant. During this recorded City Type B Board meeting, the Political Donors' presentation confirmed:

- the Mayor Guajardo Political Donors are partners;
- the "Project was re-imagined in July 2022 as a 126 Room Hotel Project"
- that, to qualify for the \$2,000,000.00 grant, these Political Donors (falsely) claimed that:
 - "the one thing that came up that we were not anticipating . . . , the FEMA maps were preliminary, but they became finalized and adopted as part of the process for the City; in order to get a building permit, we needed to comply with the new FEMA requirements that came into effect on October the 13th."
 - "It kind of hit us mid-stream . . . it threw us for a little bit of a loop for some aspects of the project that we were not planning on"
 - "It did certainly throw a wrinkle and an aspect to the project from a constructability perspective but also just an added cost that we were not anticipating when we first started moving forward with the project."
 - "So, we had to do some things obviously to mitigate these new [FEMA] requirements. . . . We had to elevate the first floor of the building; we had to provide some flood proofing; we had to provide some new infrastructure from AEP's perspective, we were not able to tie into an existing transformer that existed across the street because that was under the flood plain."
 - " . . . so, there were some [FEMA] requirements and parameters that we certainly did not anticipate. . . . Certainly, we wanted to be good stewards and comply with all these [FEMA] things, . . . and meet the [FEMA] requirements."²⁰

¹⁹ See City Type B meeting agenda. Again, to be clear, the Project referred to herein was already committed, in-construction, and fully funded at the time the "incentive" grant was approved (no incentive needed since it was already here).

²⁰ These exact statements were made during the City's Type B Board meeting as part of Mayor Guajardo Political Donors' presentation.

NOTE: The Mayor Guajardo Political Donors' narrative is clearly that the new October 13, 2023, FEMA Flood Maps were 'not anticipated,' 'threw them for a loop,' 'hit us mid-stream,' 'were a wrinkle,' and 'added cost' that were the basis for the Mayor Guajardo Political Donors' request for \$2,000,000.00. **Mayor Guajardo Political Donors' narrative is a false and misleading narrative made to the City's Type B Board Members to solicit \$2,000,000.00 of our tax money. The narrative is false because FEMA flood maps identified the area as below the flood boundary since at least 1985; and the specific FEMA Flood Maps referred to by Mayor Guajardo Political Donors were finalized and released in April 2022 (not October 2022) – and, of course, April 2022 is a date 3 months in advance of when the Project was “re-imagined” as a 126-room hotel development, and 8 months in advance of when the Property was sold to QOF.**

- While Mayor Guajardo Political Donors were laying out the false narrative referenced above, the PowerPoint slide on-screen for the City's Type B Board members was a copy of an on-line page from “fema.gov” (<https://www.fema.gov/press-release/20220413/nueces-county-texas-flood-maps-become-final>); except that the FEMA document – a federal document – had been **electronically altered** for Mayor Guajardo Political Donors' presentation (the “Altered Federal Document”). The *original, unaltered* FEMA document conspicuously confirms that the new FEMA Flood Maps had “been finalized” with a “Release Date” of “April 13, 2022.” The banner on the *original, unaltered* FEMA federal document shows:

“

Release Date	Release Number
April 13, 2022	R6-009

Release Date: April 13, 2022”²¹ ,

yet this information of the “Release Date” had been intentionally removed/erased for purposes of Mayor Guajardo Political Donors’ presentation to solicit \$2,000,000.00 of our tax money. **As such, Mayor Guajardo Political Donors’ false and misleading narrative was obviously an intentional effort for the purpose of soliciting \$2,000,000.00 of our tax money by reliance upon a falsified, altered federal document – such funds for the benefit of the Mayor Guajardo Political Donors.**

- A majority of the Type B Board Members voted in favor of the Mayor Guajardo Political Donors’ request for the \$2,000,000.00 “incentive” grant (again, although no “incentive” was needed given that construction had commenced on this already fully funded Project).

19. On February 20, 2024, the matter came before the City Council (as required by law).

The City’s agenda item was properly in the form of an ordinance (Ordinance 24-0256). The ordinance was worded, as follows:

Ordinance authorizing an agreement between the Corpus Christi B Corporation and Elevate QOF LLC, for costs associated with FEMA AE Flood Zone requirements and exterior upgrades for Homewood Suites by Hilton at the corner of Chaparral Street and Lomax Street; appropriating \$2,000,000.00 for a non-reimbursable grant from the Type B Economic Development

²¹ fema.gov (<https://www.fema.gov/press-release/20220413/nueces-county-texas-flood-maps-become-final>).

Fund; and amending the budget.

The agenda item speaks for itself. Mayor Guajardo's Political Donors were soliciting the City to approve that which the City's Type B Board had approved; that is, \$2,000,000.00 in favor of the Mayor Guajardo Political Donors' Project "for costs associated with FEMA AE Flood Zone requirements and exterior upgrades" (the "\$2MM for FEMA Compliance Ordinance"). The City Council discussion confirmed that the justification for the \$2MM for FEMA Compliance Ordinance was the *on-going false narrative* about the Project's need for more money because of unanticipated, new FEMA regulations. Please consider the following:

- With the same Altered Federal Document on-screen before the City Counsel, the City spokesperson explained the reason the City Type B Board increased the amount of the award from approximately \$1,000,040.00 (as originally approved by CCREDC) to \$2,000,000.00 (now stated in the \$2MM for FEMA Compliance Ordinance): " . . . it was expressed by the developer [Mayor Guajardo's Political Donors] that they really were holding with the \$2,000,000.00 request, and that they believed that to do the type of flood mitigation [required by FEMA]. . . ."
- One councilman high-lighted Mayor Guajardo's argument advocating for approval of the \$2MM for FEMA Compliance Ordinance for the Mayor Guajardo Political Donors: " . . . but I will go along, I think what the Mayor is saying is important – not every hotel is going to have to be built in a flood zone where they have to elevate the hotel 4 feet . . . sort of special circumstances" The Mayor responded: "That's exactly my point."
- To further support approval of the \$2MM for FEMA Compliance Ordinance, another councilman noted: " . . . so we either have to have flexibility involved, or

we have to recognize outliers, circumstances that are not the norm like operating in the flood zone for example, or *some rules that change* and all of the sudden there was an *undue burden to the developer* that they didn't foresee" (emphasis added).

- When another councilman emphasized that the developer should have been aware of the FEMA Flood Maps in advance of the developer's decision to design and start construction of the Project (that is should have been 'anticipated,' was not something that 'hit the developer mid-stream,' should not have been a 'new wrinkle that added cost'), Mayor Guajardo – on behalf of her Political Donors – *falsely* urged the FEMA Flood Map could not have been known by her Political Donors: *"because it [FEMA] changed," "it [FEMA] changed."* Mayor Guajardo's false statements were clearly intended to support the false narrative so that Mayor Guajardo could deliver \$2,000,000.00 to her Political Donors by favorable vote on the \$2MM for FEMA Compliance Ordinance.
- Worse yet, the CCREDC spokesperson bluntly sought to justify the \$2MM for FEMA Compliance Ordinance by saying: *"The [FEMA] rules had come out later."* *Again, false.* Mayor Guajardo chimed in again to deliver \$2,000,000.00 to her Political Donors: *"it [FEMA] changed"* – *again, false*, no matter how many times the Mayor asserted the false narrative. Unequivocally, the FEMA maps existed as of at least 1985; and the FEMA Flood Map referenced by the CCREDC spokesperson and Mayor Guajardo Political Donors were 'finalized and released' April 2022 – months in advance of when the Mayor Guajardo Political Donors "re-imagined" the concept of a 127-room hotel for the location in July 2022. It [FEMA]

did not change – never, never – after this July 2022 date. ***Despite the truth of the matter, Mayor Guajardo and her Political Donors insisted upon the lie.***

20. On March 1, 2024, KIII-TV 3 heard and reported the false narrative. Heather Hurlbert, City spokesperson, stated:

“Once newly defined FEMA Flood Zone requirements came into play in 2023, the developer of the Homewood Suites Hotel built in downtown Corpus Christi needed to make some changes to meet those requirements. Assistant City Manager Heather Hurlbert said thanks to a \$2,000,000.00 investment from the City’s Type B fund, the hotel will be able to meet those demands.”

The “scheme,” the “shenanigans,” “that shit” as later described by others was the ***continuing false narrative*** being believed by some (for the moment) to support Mayor Guajardo Political Donors’ receipt of the \$2MM for FEMA Compliance Ordinance money.

21. As one might expect, the giving-away of \$2,000,000.00 of tax-payer dollars to Mayor Guajardo’s Political Donors because of “changed,”²² “new FEMA requirements”²³ that allegedly “hit [Political Donors] mid-stream”²⁴ with their Project grabbed some attention. To many, the fact that Mayor Guajardo Political Donors’ solicitation of this tax-payer money (\$2,000,000.00) “incentive” relied upon an intentionally, electronically Altered Federal Document was of great offense.²⁵ As such, several community members endeavored to expose the fraud:

- On March 7, 2024, Plaintiff emailed City Manager Peter Zanoni. Portions of the email highlight what was really happening:

“[At CCREDC, the application was for] \$1,510,087 for New FEMA Flood Zone Requirements. Take a closer look at the FEMA screenshot in the attached presentation. Every FEMA

²² Mayor Guajardo words.

²³ Mayor Guajardo’s Political Donors’ words.

²⁴ Mayor Guajardo’s Political Donors’ words.

²⁵ See 18 U.S. section 1002; see also Texas Penal Code, Title 8, Chapter 37.

notice clearly has the Release Date and Release Number. Strangely, these are missing or hidden from the screenshot in the application. How did this disappear? . . . Investigating this would open a can of worms. Every project takes flood maps into account[] during the design phase. It is rather questionable that the developer is using this as an excuse to seek incentives.”

Mayor Guajardo knew of the Altered Federal Document.

- On April 16, 2024, Plaintiff made a presentation to the City Council during public comment about the “2,000,000.00 hand-out” of City’s tax-payer money. Plaintiff stood directly in front of Mayor Paulette Guajardo during the City Council meeting, and made clear during public comment that: 1) a previous presentation by the CCREDC chief was supportive for the grant of “\$1,510,087.50 for FEMA AE Flood Zone requirements that the applicant claimed was just updated by FEMA;” 2) that applicant’s claim about the timing of the new FEMA Flood Maps was false; 3) that the PowerPoint slide previously presented to the City Council had been “photoshopped and edited to support the [false] narrative,” and 4) “if true [and it is true], this is an act of falsifying, forging, or tampering with federal documents with an intent to deceive for financial gain -- \$2,000,000.00 to be precise.” . . .

Mayor Guajardo was directly, publicly told of the bad acts of her Political Donors.

Mayor Guajardo knew of the Altered Federal Document.

- On or about March 7, 2024, City Manager Peter Zanoni (by text to Plaintiff) stated: “The FEMA flood issues are not believable either.” If the City Manager knew, then Mayor Guajardo knew of the Altered Federal Document.
- On or about March 11, 2024, Plaintiff (by text to Zanoni) stated: “[After looking at the City Council presentation], it was very specific to the FEMA changes which the

applicant tried as an excuse.” Again, Mayor Guajardo knew of the Altered Federal Document.

- On or about April 6, 2024, Plaintiff (by text to Zanoni) stated: “An investigation on who tampered the Federal portal and favorably presented it to the City is what this comes down to. The act of falsifying, forging, tampering, etc. of government documents with an intent to deceive for financial gain is a federal crime under U.S. code section 1002 [Texas Penal Code, Title 8, Chapter 37].” Zanoni replied: “Agreed Ajit. It doesn’t look good, and we need Philip to have an explanation which they did not have yesterday.” Again, Mayor Guajardo knew of the Altered Federal Document.
- On April 8, 2024, Sony Peronel (Assistant City Manager) stated: ‘After meeting the applicant, it was obvious that Philip [Mayor Guajardo Political Donor] and team altered the [FEMA] document. Philip came in person. We asked him and he started stammering and couldn’t complete a sentence. Ajit please don’t present anything in front of the Council tomorrow. Peter advised them not to touch this item.’
- On April 15, 2024, City Manager Peter Zanoni confirmed (a voice recorded statement):
 - That City Council was informed of “improper information, some tampering and all that involved;”
 - “It [the FEMA federal document] was altered. And then you read the entire PowerPoint, it is so obvious that the . . . writer wanted one to be led to believe that the FEMA was just recent, even where it says recently released and this and that. And part of it goes back to the narrative, Mike Culbertson

says ‘hey, you know, this has to be tied to infrastructure,’ and so they catch the scheme that okay FEMA flood plain that’s infrastructure, fixing the bottom floor so that it meets the flood plain, and they stuck with it. Then they developed a narrative to fit it that they just found out because people would say ‘like shit, they should have known about this a long time ago’ – like Councilman Hunter. So, I think . . . the Council right now seem like they’re strong and they’re going to vote, but we’ve seen it time and again that once one or two or more start talking at the Council and citizens, they change their mind really quick. They could ram it through but it’s on them.”

. . . “I’m not recommending it because I don’t have the information I need.”

. . . “I’m not going to fall on my sword for that shit.”

. . . “Somebody told me today that 7 ‘yeses’ and only 2 ‘nos.’” . . .

Again, Mayor Guajardo knew of the Altered Federal Document.

22. At some point in time prior to April 23, 2024, the Mayor’s / Political Donors’ plan changed. We know the plan changed because Ordinance 24 – 0256 was completely re-written before it was posted to the April 23, 2024, City Council agenda. Obviously, someone decided that passing an ordinance based upon the Altered Federal Document was not a good idea.

23. On April 23, 2024, Ordinance 24-0256 supposedly came for second reading before the City Council – but it was not the same ordinance (although given the same number). No City Council member ever moved to modify or amend Ordinance 24-0256, yet the wording and meaning was completely changed. On April 23, 2024, the new ordinance was worded, as follows:

Ordinance authorizing an agreement between the Type B Corporation And Elevate QOF LLC, for a total incentive amount not to exceed \$2,000,000 for Homewood Suites by Hilton at the corner of N Chaparral Street and Lomax Street; for costs associated with

the street level retail, public space, and outdoor dining area activation including gray box and finish out including necessary floodwall and dry flood proofing to allow for consistent street level access; authorizing the expenditure of up to \$2,000,000 from the Type B unreserved fund balance; and amending the fiscal year 2023-24 budget to increase expenditures by \$2,000,000.00.”

The used-to-be \$2MM for FEMA Compliance Ordinance no longer even mentioned “FEMA.” The used-to-be \$2MM for FEMA Compliance Ordinance no longer mentioned “Flood Zone requirements.” Instead, this new, different, unique proposed ordinance (still referred to as Ordinance 24 – 0256) concerned itself with ***“costs associated with the street level retail, public space, and outdoor dining area”*** This new, different, unique proposed ordinance may be sometimes referred to as the “\$2MM for Public Space Ordinance.”

24. On April 23, 2024, there was a presentation supporting passage of the \$2MM for Public Space Ordinance. A view of the video presentation confirms:

- No one used the Altered Federal Documents slide in the PowerPoint presentation (in fact, there was no FEMA slide whatsoever);
- Mike Culbertson stated: “So, here’s a chance that Type B saw. They did it based on – not FEMA, not any of that other stuff – but the catalytic nature of this.” It is usually whatever ‘they’ say it is not.
- On April 23, 2024, one City Council member noted: “I think everyone saw the news. . . . There were some shenanigans that happened. . . .”

25. Mayor Paulette Guajardo voted in favor of the \$2MM for FEMA Compliance Ordinance, and voted in favor of the \$2MM for Public Space Ordinance – both ordinances in favor of Mayor Guajardo Political Donors (\$2,000,000.00).

26. Immediately after the City Council’s vote on the \$2MM for Public Space Ordinance,

City Manager Peter Zanoni text: “I got screwed on this item and had nothing to do with it from the get-go. I know what happened, and it’s too bad people weren’t truthful or even willing to communicate and made me take the fall for their shortcomings. Pretty disappointing.”

IX. Purpose of this Action

27. The purpose of this action is to void / find invalid the \$2MM for FEMA Compliance Ordinance / \$2MM for Public Space Ordinance (generally, City’s Ordinance 24 – 0256). Neither the \$2MM for FEMA Compliance Ordinance nor the \$2MM for Public Space Ordinance are valid since neither were “considered and voted upon at two regular meetings”²⁶ Moreover, the \$2MM for FEMA Compliance Ordinance is void / voidable (invalid and unenforceable) as against public policy (its passage relying upon violation of federal and/or state law). Finally, both were passed by processes in violation of the Texas Open Meetings Act. For these and other reasons, both (\$2MM for FEMA Compliance Ordinance / \$2MM for Public Space Ordinance (generally, City’s Ordinance 24 – 0256)) are void / voidable / invalid / not enforceable.

X. Texas Law Supporting Judicial Relief

28. The Texas Declaratory Judgment Act, codified in Chapter 37 of the Texas Civil Practice and Remedies Code, permits Plaintiff to file this action and to obtain a judgment declaring that the City’s Ordinance 24 – 0256 is void, voidable, invalid, and/or unenforceable. Texas law gives this Court the power “to declare rights, status, and other legal relations,”²⁷ and specifically identifies a “municipal ordinance” as being the appropriate subject of an action seeking declaratory judgment.²⁸

²⁶ See City of Corpus Christi Charter, at section 14(f).

²⁷ TEX. CIV. PRAC. & REM. CODE § 37.003.

²⁸ TEX. CIV. PRAC. & REM. CODE §§ 37.003 & 37.006(b).

29. Plaintiff seeks a declaratory judgment finding that City Ordinance 24 – 0256 is void, voidable, invalid, and/or unenforceable. The City of Corpus Christi Charter, section 14, requires: (1) “[t]he [City] council shall act only by ordinance, resolution, or motion;” and that (2) “[n]o ordinance shall be passed finally on the date it is introduced but the same shall be considered and voted upon at two regular meetings” (emphasis added) A simple reading of the \$2MM for FEMA Compliance Ordinance compared to the \$2MM for Public Space Ordinance makes obvious these two proposed ordinances are not the “**same**” – as required by City Charter. As such, the evidence is unequivocal that: (1) the \$2MM for FEMA Compliance Ordinance was only voted upon at the February 20, 2024 City Council meeting (that is, voted upon at one (1) meeting only); and (2) the \$2MM for Public Space Ordinance was only voted upon at the April 24, 2024 City Council meeting (that is, voted upon at one (1) meeting only). Again, per City’s Charter, “NO ORDINANCE SHALL BE PASSED FINALLY ON THE DATE IT IS INTRODUCED BUT THE SAME SHALL BE CONSIDERED AND VOTED AT TWO REGULAR MEETINGS” – and this did not occur. If the two (2) versions of City Ordinance 24 – 0256 were the “**same**,” there would have been no reason to dramatically change from *version 1* of City Ordinance 24 – 0256 to *version 2* of City Ordinance 24 – 0256; but City staff did so dramatically change the words, the reasons, and the very purpose for which the funds (\$2,000,000.00) must be utilized. Therefore, both are void / voidable / invalid / and unenforceable.

30. Plaintiff further seeks a declaratory judgment finding that the City’s Ordinance 24 – 0256 is void, voidable, invalid, and/or unenforceable because the ordinance (supporting formation of a contract) is unconscionable. “If a contract is unconscionable, it is unenforceable.”

Ski River Development Inc. v. McCalla, 167 S.W.3d 121, 136 (Court of Appeals – Waco, 2005).²⁹

It is unconscionable that Mayor Guajardo’s Political Donors altered a FEMA document (the Altered Federal Document). It is unconscionable that the Altered Federal Document was used to solicit and procure \$2,000,000.00 of tax-payer funds. It is unconscionable that Mayor Guajardo ***repeatedly, publicly, and falsely*** claimed a ‘change’ in FEMA was basis for grant of \$2,000,000.00 to the Mayor Guajardo Political Donors. It is unconscionable for the City to grant a \$2,000,000.00 “incentive” to an on-going, fully committed, fully funded private project (to the exclusion of others who are not political contributors). It is against public policy (and law) to allow \$2,000,000.00 in benefits to benefit the project in question, given how the process relied upon the Altered Federal Document and obvious political favor. The process was unconscionable, and the substantive result is unconscionable. As such, City Ordinance 24 – 0256 and its related contract are void / voidable / invalid / unenforceable.

31. Further, Plaintiff seeks a declaratory judgment setting aside and finding void City Ordinance 24 – 0256 for apparent Texas Open Meetings Act violations (to wit: City Manager Peter Zanoni knowing days in advance of the City’s public meeting that the vote would be 7-2; and Mayor Paulette Guajardo’s privately soliciting a fellow councilman’s vote during the public meeting) in violation of Texas Government Code sections 551.021 and 551.143.

XI. Attorneys’ Fees

32. Plaintiff incorporates by reference all allegations raised in prior paragraphs. Plaintiff

²⁹ Citing *In re Turner Brothers Trucking Co.*, 8 S.W.3d 370, 375 (Tex.App. – Texarkana 1999, no petition); *El Paso Natural Gas Co. v. Minco Oil & Gas Co.*, 964 S.W.2d 54, 60 (Tex.App. – Amarillo 1997); RESTATEMENT (SECOND) OF CONTRACT, section 208.

is entitled to recover his costs and reasonable attorneys' fees for the prosecution of this declaratory judgment action.³⁰

XII. Prayer for Relief

33. Plaintiff respectfully requests that Defendant City of Corpus Christi, Texas, be cited to appear and answer and that the Plaintiff be awarded the following relief:

- (a) A declaration that City Ordinance 24 – 0256 is void, invalid, and not enforceable (given the City's failure to follow the 'two-reading' rule);
- (b) A declaration that City Ordinance 24 – 0256 is void, invalid, and not enforceable (given it offends public policy to have allowed solicitation of City's tax-payer dollars by use of an Altered Federal Document);
- (c) A declaration that City Ordinance 24 – 0256 is void, invalid, and not enforceable as there were violations of Texas Open Meetings Act associated with passing City Ordinance 24 – 0256;
- (d) That Plaintiff recover his reasonable attorneys' fees as authorized by law and recover his court costs; and
- (e) All other relief at law or in equity to which the Plaintiff may be justly entitled.

³⁰ TEX. CIV. PRAC. & REM. CODE §37.009; *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

Respectfully submitted,

/s/ Douglas A. Allison

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