

CAUSE NO. _____

AZAEL SEPULVEDA,

Plaintiff,

v.

CITY OF PASADENA, TEXAS; JEFF WAGNER, in his official capacity as City Mayor; DEANNA SCHMIDT, in her official capacity as director of the City Planning Department; ORNALDO YBARRA, in his official capacity as City Council member; BIANCA VALERIO, in her official capacity as City Council member; PAT VAN HOUTE, in her official capacity as City Council member; DON HARRISON, in his official capacity as City Council member; JONATHAN ESTRADA, in his official capacity as City Council member; PHIL CAYTEN, in his official capacity as City Council member; CARY BASS, in his official capacity as City Council member; THOMAS SCHOENBEIN, in his official capacity as City Council member; JAMES GUTHRIE, in his official capacity as City Planning and Zoning Commission member; MARY ANN KLUSMAN, in her official capacity as City Planning and Zoning Commission member; MARK BENOIT, in his official capacity as City Planning and Zoning Commission member; BILL BEZDEK, in his official capacity as City Planning and Zoning Commission member; DOLAN DOW, in his official capacity as City Planning and Zoning Commission member; LETICIA GARCIA, in her official capacity as City Planning and Zoning Commission member; BUDDY LAND, in his official capacity as City Planning and Zoning Commission member; MICHELLE PARTIN, in her official capacity as City Planning and Zoning Commission member; AND MICHELE JANNISE, in her official capacity as the head of the City Permit Department,

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

Defendants.

**PLAINTIFF’S VERIFIED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY INJUNCTION, INJUNCTIVE RELIEF, AND
DECLARATORY RELIEF AND IN THE ALTERNATIVE, REQUEST FOR WRIT OF
MANDAMUS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Azael Sepulveda and files his Verified Original Petition and Application for Temporary Injunction, Injunctive Relief, and Declaratory Relief and in the Alternative, Request for Writ of Mandamus against Defendants City of Pasadena, Texas; Jeff Wagner, in his official capacity as City Mayor; Deanna Schmidt, in her official capacity as director of the City Planning Department; Orinaldo Ybarra, in his official capacity as City Council member; Bianca Valerio, in her official capacity as City Council member; Pat Van Houte, in her official capacity as City Council member; Don Harrison, in his official capacity as City Council member; Jonathan Estrada, in his official capacity as City Council member; Phil Cayten, in his official capacity as City Council member; Cary Bass, in his official capacity as City Council member; Thomas Schoenbein, in his official capacity as City Council member; James Guthrie, in his official capacity as City Planning and Zoning Commission member; Mary Ann Klusman, in her official capacity as City Planning and Zoning Commission member; Mark Benoit, in his official capacity as City Planning and Zoning Commission member; Bill Bezdek, in his official capacity as City Planning and Zoning Commission member; Dolan Dow, in his official capacity as City Planning and Zoning Commission member; Leticia Garcia, in her official capacity as City Planning and Zoning Commission member; Buddy Land, in his official capacity as City Planning and Zoning Commission member; Michelle Partin, in her official capacity as City Planning and Zoning

Commission member; and Michele Jannise, in her official capacity as the head of the City Permit Department. Plaintiff would show the Court the following:

I. INTRODUCTION

1. This lawsuit challenges the constitutionality of the City of Pasadena, Texas's off-street parking requirements that it imposes on businesses. Pasadena requires almost every business in the city to provide off-street parking before it can open. Pasadena's parking requirements are some of the strictest requirements in the state—if not the strictest—and have prevented multiple small businesses from being able to open their doors.

2. The latest casualty of the City's parking requirements is Plaintiff Azael Sepulveda and his auto repair business, Oz Mechanics. Azael first opened his business in a leased space in 2013. Recently, Azael decided to purchase a property so that he could be the owner of his own storefront instead of leasing. To make the purchase, Azael used all of his savings and put up his home as collateral for a loan. Yet the City will not let Azael open his new storefront unless he first provides 28 outdoor parking spaces for potential customers at the property.

3. Azael neither wants nor needs 28 parking spaces. Azael is the only worker in his small business, and the five parking spaces that already exist at the property—in addition to the four spaces for cars inside his shop—are more than enough for his needs. He does not want more than nine cars at his business at one time.

4. Moreover, Azael cannot afford to provide 28 parking spaces. Providing the extra parking would require Azael to pay about \$40,000 to install a second parking lot at his property—which is almost half of what Azael paid for the property. Azael should not be forced to pay \$40,000 to install a second parking lot, just so that parking lot would sit vacant.

5. When Azael talked to City officials to see if there was a way around this requirement, City officials told him he could submit a variance application. With the help of the undersigned pro bono attorneys, Azael put together an application and tried to submit it to the City on October 18, 2021.

6. The application argued that the City should grant Azael a variance. The application also argued that Azael's shop should be grandfathered under the code as a preexisting nonconforming use because the shop was previously used by an auto machine shop that operated since 1990 with the exact number of parking spots that exist today—five—without problems.

7. Inexplicably, however, the City refused to accept the application and the application fee, telling Azael he was ineligible for the variance and grandfathering. When Azael asked for an explanation in writing, the City refused to provide one.

8. The City also repeatedly refused to speak to Azael's attorneys or otherwise provide his attorneys an explanation for their refusal to accept Azael's application.

9. In the meantime, Azael is under extreme financial stress. He is forced to continue paying rent at his leased location to keep his business running, in addition to paying the monthly payments on the loan for his new storefront that the City will not let him open. Azael cannot afford to continue making both payments, and his business is in jeopardy.

10. Azael is not the only one who has been harmed by the City's burdensome and arbitrary parking requirements. Multiple other small businesses have been unable to open because of these requirements, including several businesses in the last year.

11. Meanwhile, the City seems to arbitrarily pick and choose what businesses should carry the biggest burden under its parking requirements. For instance, although the City requires auto repair shops—like Azael's shop—to provide many spaces before they can open, it imposes

much lesser requirements on other businesses—like car dealers, office spaces, gyms, and hotels—even though they have greater parking needs than an auto repair shop.

12. Plaintiff alleges that the City’s parking requirement for auto repair shops is unconstitutional, both as applied to him and on its face, under the due process provision of Article 1, § 19 of the Texas Constitution. As Plaintiff shows, the parking requirement violates the substantive due process provision because it infringes on his right to earn an honest living and lacks a “rational[] relat[ion] to a legitimate governmental interest.” *See Patel v. Tex. Dep’t of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015). And even if the ordinance arguably was rationally related to a legitimate government interest, it would still be unconstitutional, because the “actual, real-world effect” of the ordinance “as applied to” Azael “is so burdensome as to be oppressive in light of . . . the governmental interest.” *Id.*

13. Plaintiff also alleges that the City’s parking requirement for auto repair shops is unconstitutional under the equal protection provision of Article 1, § 3 of the Texas Constitution, both as applied to him and on its face. As Plaintiff shows, the parking requirement violates the equal protection provision because it imposes extremely burdensome parking requirements on auto repair shops while imposing much lesser requirements on similarly situated businesses, such as auto dealers, office spaces, gyms, and hotels.

14. Plaintiff Azael Sepulveda urges this Court to grant declaratory relief, injunctive relief, and nominal damages against the City’s parking requirements for auto repair shops both as applied to Plaintiff and on their face under Article 1, § 19 and Article 1, § 3 of the Texas Constitution.

15. Plaintiff additionally argues that the City’s treatment of Azael’s application for a variance and grandfathering was unconstitutional under the procedural due process protections of

Article 1, § 19 of the Texas Constitution. That is because the City gave Azael no notice or opportunity to be heard regarding his application, and even refused to communicate with Azael's attorneys or even put their decision on the application in writing. Thus, Plaintiff asks that the Court grant declaratory relief and nominal damages for Azael on his procedural due process claim.

16. In the alternative to immediately considering Plaintiff's constitutional claims, Plaintiff requests that this Court grant him mandamus relief. Specifically, Plaintiff requests that the Court order the City to consider his variance application (which includes both his request for a variance and his request to be grandfathered into the code as a preexisting nonconforming use) and issue a written decision regarding the application. If the Court grants this relief, Azael requests that the Court keep this case open so that he can continue to litigate his constitutional claims in the event his application is denied.

II. JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction based on the Texas Constitution and the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code § 37.003, as well as under Tex. Gov't Code §§ 24.007(a) and 24.011 (giving district courts power to issue writs of mandamus).

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

III. PARTIES

Named Plaintiff

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

Defendants and Service of Process

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

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

22. Defendant Deanna Schmidt is the director of the City of Pasadena Planning Department. She is responsible for accepting variance applications regarding the City's parking requirements and is empowered to grant these variances with City Council's approval. *See* attached Exhibit 1; City Code § 9-79. She also shares authority with the Permit Department to determine if a property should be grandfathered as a preexisting nonconforming use. She is sued in her official capacity.

23. Defendant Ornaldo Ybarra is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt and amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Ybarra is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

24. Defendant Bianca Valerio is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city

ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Ms. Valerio is sued in her official capacity. She may be served with process at her place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

25. Defendant Pat Van Houte is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Ms. Van Houte is sued in his official capacity. She may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

26. Defendant Don Harrison is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Harrison is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

27. Defendant Jonathan Estrada is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Estrada is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

28. Defendant Phil Cayten is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Cayten is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

29. Defendant Cary Bass is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Bass is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

30. Defendant Thomas Schoenbein is a member of the Pasadena City Council, the legislative body of the City. The City Council exercises final authority about whether to adopt or amend city ordinances and whether to grant a variance from the provisions of the city ordinances, including the City's parking requirements. City Code, Charter, Article II, § 10; § 9-79. Mr. Schoenbein is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

31. Defendant James Guthrie is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See* Exhibit 1; *see also* City

Code § 28-41. Mr. Guthrie is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

32. Defendant Mary Ann Klusman is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See Exhibit 1; see also* City Code § 28-41. Ms. Klusman is sued in her official capacity. She may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

33. Defendant Mark Benoit is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See Exhibit 1; see also* City Code § 28-41. Mr. Benoit is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

34. Defendant Bill Bezdek is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See Exhibit 1; see also* City Code § 28-41. Mr. Bezdek is sued in his official capacity. He may be served with process at his

place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

35. Defendant Dolan Dow is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See* Exhibit 1; *see also* City Code § 28-41. Mr. Dow is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

36. Defendant Leticia Garcia is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See* Exhibit 1; *see also* City Code § 28-41. Ms. Garcia is sued in her official capacity. She may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

37. Defendant Buddy Land is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See* Exhibit 1; *see also* City Code § 28-41. Mr. Land is sued in his official capacity. He may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else he may be found.

38. Defendant Michelle Partin is a member of the Pasadena Planning and Zoning Commission, a city body whose members are appointed by the mayor and confirmed by City Council. City Code § 28-33. The Commission is responsible for reviewing variance applications and making recommendations on these applications for City Council. *See* Exhibit 1; *see also* City Code § 28-41. Ms. Partin is sued in her official capacity. She may be served with process at his place of business, Pasadena City Hall, 1149 Ellsworth Drive, Pasadena, TX 77506, or wherever else she may be found.

39. Defendant Michele Jannise is the head of the City of Pasadena Permit Department, which is in charge of issuing permits and licenses, including certificates of occupancy for small businesses. City Code § 9-60(3)(a)(20). The Department also shares authority with the Defendant Planning Department to determine if a property should be grandfathered as a preexisting nonconforming use. *See, e.g., id.*

IV. DISCOVERY CONTROL PLAN

40. Plaintiff intends to conduct Level 2 discovery under Rule 190.3 of the Texas Rules of Civil Procedure.

V. FACTUAL ALLEGATIONS

41. Azael is 34 years old and is an immigrant from Mexico. He is a U.S. citizen.

42. Azael has lived in Pasadena for 31 years. He feels pride in his city and is happy to be part of its community. He volunteered as a firefighter for the Pasadena Fire Department for three years.

43. Azael loves everything to do with cars. At 25 years old, he opened Oz Mechanics in Pasadena. Since then, he has built an excellent reputation. For example, he has 72 5-star reviews on Google Reviews.

44. Azael leases his current space at 2713 Almondale Ave, Pasadena. But now that Azael and his wife are expecting their first child, Azael wanted to expand his business by buying his own storefront instead of leasing.

45. Azael purchased a storefront at 1615 Main Street, Pasadena in July 2021. It is commonly known as 1615 Shaver Street. Azael used all of his savings to purchase the property. He also put his house up as collateral to get a personal loan to pay the rest of the sales price.

46. The storefront is in an industrial looking area with other auto shops nearby.

47. The storefront was previously used as an auto machine shop by Houston Engine and Balancing Service, and so Azael believed it would only need a few minor modifications. Houston Engine and Balancing Service's website, with a description of the scope of its business, is available here: <http://www.houstonengine.com/services.htm>.

48. Houston Engine and Balancing Service operated since 1990 with a parking lot with five parking spaces. It never had any problems or complaints with having only five parking spaces. It also has room for four additional cars inside the shop in its service bays. These spaces are more than enough for Azael's business.

49. For instance, Azael measured parking at his current leased location over a three-week period from September 13 to October 6, 2021. During this time, Azael averaged less than two cars parked outside his current leased location per day (not including his own car). (Attached as Exhibit 2.) This is despite the fact that Azael's leased location has room for only two cars inside the shop.

50. Azael does not expect to have more customers at his new storefront than he has at his leased location.

51. Thus, the new storefront's five outdoor parking spaces and four indoor parking spaces are more than enough for Azael's needs. It never occurred to Azael that the City might disagree.

The City's Parking Requirements

52. The City's Code has parking requirements for almost every type of business. City Code § 9-7, Ex. A (attached as Exhibit 3).¹ These parking requirements are based on the type of business and are usually also based on the business's "G.F.A.," which is the gross floor area of the inside of the business's building.

53. Complying with these parking requirements is necessary for a business to secure a certificate of occupancy from the City. City Code § 9-7(b). In other words, the City Code does not allow a new business to open unless it complies with the parking requirements or unless it gets a variance from these requirements.

54. Parking requirements are increasingly going out of favor nationwide, with many cities—including multiple cities in Texas—abolishing them in whole or in part. There is a growing view among city planners and economists that parking requirements cause more harm than good, as they are extremely expensive for businesses to satisfy, often leave prime real estate empty, and deprive cities of green space.

¹ This attachment is also available from the City at <https://www.pasadenatx.gov/DocumentCenter/View/472/Off-Street-Parking-Ordinance-PDF>.

55. Yet instead of scaling back or eliminating its parking requirements, Pasadena increased some of its parking requirements in January 2021. One type of business subject to the increased parking requirements is “auto repair establishments.”

56. Under the new ordinance, an “auto repair establishment” needs “ten (10) spaces per one thousand (1,000) square feet of G.F.A.” City Code § 9-7, Ex. A (Exhibit 3, p. 10). This is twice what it used to be before the January change. Before the change, auto repair shops needed five spaces per 1,000 G.F.A.

57. The new ordinance’s parking requirements for auto repair establishments (also known as “auto repair shops”) far exceed the parking requirements for auto repair shops in the top five most populous cities in Texas: Houston, San Antonio, Dallas, Austin, and Fort Worth. Houston Code of Ordinances §§ 26-492, 26-471(b)(6) (requiring 5 spaces per 1,000 sq. ft., except in areas of the city with no parking requirements, such as the central business downtown area and portions of east downtown and Midtown); Dallas City Code § 51A-4.202(14) (2 spaces per 1,000 sq. ft., with a minimum of 5 spaces); Austin City Code § 25-6-591(B) & Ch. 25-6, Appx. A (3.6 spaces per 1,000 sq. ft., except in areas of the city with no parking requirements, such as the central business district, downtown mixed-use zoning district, and two other districts); San Antonio Unified Development Code § 35-526 & table 526-3b (2 spaces per 1,000 sq. ft., plus two additional spaces for each service bay, except in areas of the city with no parking requirements, such as downtown); Fort Worth Code of Ordinances § 6.201(b) (no minimum if not in or near residential zone; otherwise, 4 spaces per 1,000 sq. ft.).

58. The new ordinance’s parking requirements also far exceed those in all Texas cities with comparably sized populations to Pasadena’s, such as Amarillo, Grand Prairie, McKinney, Brownsville, Mesquite, Killeen, McAllen, Denton, and Waco.²

59. The new ordinance’s parking requirements for auto repair shops are among the strictest—if not *the* strictest—in the state.

60. Oz Mechanics is an auto repair establishment under the code. Oz Mechanics’ would-be storefront at 1615 Main Street has about 2,760 square feet.

61. As a result, the City has told Azael that he is required to have 28 total outdoor parking spaces before he can open Oz Mechanics at 1615 Main Street.

62. Azael had no idea about these parking requirements when he purchased his property.

63. In fact, while the City has made most aspects of its building code available in full on the Municode website,³ the city’s parking requirements for specific businesses (including auto-repair shops) are not included there.

² Amarillo Municipal Code § 4-10-211 (“One (1) space per each five hundred (500) square feet of gross Floor Area or one (1) space per each two (2) employees, whichever is greater”); Grand Prairie Unified Development Code § 10.7.2 (“Three parking spaces per service bay plus one space per max. number of employees on a shift, with a minimum of six spaces per use.”); McKinney Code of Ordinances § 146-130 (“2 parking spaces for each service bay with a minimum of 5 spaces plus parking requirements for office and overnight storage of vehicle.”); Killeen City Code § 31-489(7)(b) (2 spaces/1000 sq ft with a 5-space minimum); Mesquite City Code Appx. C, § 3-405 (same); McAllen City Code Article VII & § 138-395 (no specific parking requirements for auto repair shops, but “commercial development[s]” must provide “[f]our parking spaces for up to 400 square feet of floor area plus one parking space for each additional 400 square feet of floor area”); Denton City Code § 7.9.4, Table 7.9-I: (“1 space per 500 sq. ft. of indoor sales/leasing/office area; plus 1 space per service bay”); Waco Code of Ordinances § 28-1021(b)(17) (“one space for each 200 square feet of floor area plus one space for each island of pumps and two spaces for each service stall”).

³ The City Code is available online: https://library.municode.com/tx/pasadena/codes/code_of_ordinances.

64. Azael first learned of the parking requirements when he applied for his certificate of occupancy from the City of Pasadena around August 2021.

65. The City of Pasadena denied him the certificate of occupancy until Azael could provide 28 spaces.

Azael Cannot Add the Parking Spaces to His Property, Nor Would He Ever Need So Many Parking Spaces

66. After speaking with contractors, Azael learned that it would cost Azael at least \$40,000 to hire a contractor to install a parking lot with enough spaces on his property.

67. Azael cannot afford to install a new parking lot. Since Azael already used all of his personal savings to purchase the new storefront, and also put his house as collateral to get a loan for the new storefront, he has no other means to pay for a new parking lot.

68. Nor does Azael need 28 outdoor parking spaces for his business.

69. Azael is the only worker in his one-man shop. He takes cars only by appointment and does only small jobs involving electrical issues and diagnosis.

70. Azael runs his business by working on one car at a time and encouraging the customer to immediately pick the car up when he is done; he actively discourages customers from leaving their car at his shop by charging a storage fee.

71. Azael recorded parking data at his current leased space for three weeks from September 13 to October 6, 2021. He averaged less than two cars outside per day, with four cars on his busiest day (not including his own car).

72. Notably, while his current location has parking for only two spaces inside his shop, the new storefront has four spaces inside the new storefront. As a result of the additional indoor parking, he would need even less outdoor parking at his new location.

73. In addition, the auto machine shop that previously operated at 1615 Main Street operated with only five outdoor parking spaces.

74. Upon information and belief, that auto machine shop had no difficulties operating with only five outdoor parking spaces. Houston Engine and Balancing Service operated since 1990 at 1615 Main Street and never had any complaints or problems associated with having only five outdoor parking spaces.

75. Thus, Azael has no need for more parking spaces at his business, and certainly not 23 more outdoor spaces.

76. Azael is willing to provide more than the five outdoor and four indoor parking spaces at his business if necessary. The City has informed Azael that the property's current parking lot can easily support eight total outdoor spaces without installing a second parking lot. Azael might even be able to fit 10 outdoor spaces in the current parking lot without installing a second parking lot.

77. Even if Azael did have to install a whole new parking lot, the fewer spaces the parking lot is required to have, the less expensive the parking lot will be. So while it would still be burdensome and unnecessary, it is possible Azael could afford to install a second parking lot if the second parking lot was very small.

78. But Azael absolutely cannot afford to provide a total of 28 outdoor parking spaces, which would require installing a second parking lot with 23 spaces, at the cost of at least \$40,000. Yet the City will not let Azael open his shop without a total of 28 outdoor parking spaces.

79. As a result, Azael continues to operate Oz Mechanics at his leased space. He's paying rent for that space while also making monthly payments on his loan for the new storefront

the City will not allow him to use. This has put Azael's business in a dire financial situation and his family under immense financial and emotional stress.

80. Azael's business is not the only one that the City has recently stopped from opening under the code.

81. On information and belief, the City also recently told multiple other businesses they could not open without complying with the parking requirements, which were greater than their properties could support or the business owners could afford. On information and belief, these other businesses have not been able to open as a result.

City's Parking Requirements on Other Businesses

82. The City's parking requirements are more stringent for some businesses than others.

83. Compared to auto repair shops needing 10 spaces per 1,000 G.F.A., other businesses have much less stringent requirements, even though they have greater parking needs than auto repair businesses.

84. Examples of other parking requirements under the City's Code include:

- Auto dealer: 5.5 spaces per 1,000 sq ft of G.F.A.
- Medical/dental office: five spaces per 1,000 sq ft of G.F.A.
- Mini warehouse/storage: three spaces total.
- Bank, hotels, and offices: three spaces per the first 1,000 sq ft of G.F.A and one additional space per each additional 200 square feet.
- Gym: one space per 150 sq ft of G.F.A.

85. While the City increased the parking spaces required for auto repair shops in January 2021, it did not increase the parking requirements for most of the above businesses.

86. Each of these above businesses is similarly situated to an auto repair shop. For example, each provides services to customers while their cars are parked at the business. But the City treats these businesses differently from an auto repair shop without a good reason.

87. It would be more financially viable for Azael to comply with the above parking requirements than the parking requirements for auto repair shops.

88. Upon information and belief, the City has never tried to justify why it imposes more parking requirements on auto repair shops than these other businesses, even though auto repair shops have less parking needs than these other businesses. Nor can the City justify this differential treatment.

89. In addition, the ordinance imposes the same parking requirements on auto repair shops as it does certain other establishments, even though those other establishments would seem to have much greater parking needs than auto repair, such as:

- Restaurants;
- Barber and beauty shops; and
- Nightclubs/dancehalls.

City Code § 9-7, Ex. A (Exhibit 3, pp. 8–10).

90. Restaurants, night clubs, dance halls, and beauty shops would have more parking needs than an auto repair shop. Yet the City arbitrary imposes the same parking space requirements on auto repair shops as on each of these other businesses.

91. When Azael first learned of the parking requirements, he tried talking to various city officials for help, with no luck. A family member then posted about Azael's plight on Facebook, and the local news got wind of the situation.

The Media Covers Azael's Story

92. Azael's plight was reported on in both print and local television news in late August 2021.

93. When asked for comment, local city officials told ABC News that Azael could apply to the City for a variance to exempt him from the parking requirements. ABC News subsequently reported this comment. *See, e.g.,* Roxie Bustamante, *Small business owner fights city's parking ordinance that could possibly shut his shop down*, ABC13 News (Aug. 27, 2021), <https://abc13.com/pasadena-small-business-parking-lot-ordinance-oz-mechanics-in-car-shop/10981143/>.

94. But when Azael actually applied for a variance, the City had a different story.

Azael Applies For a Variance

95. Initially, Azael was optimistic about his chances of obtaining a variance from the City.

96. The City's public records show that the City has previously granted variances from its parking requirements.

97. Azael spoke to Defendant Department of Planning Director Deanna Schmidt several times about the possibility of getting a variance. Ms. Schmidt encouraged him to apply.

98. Ms. Schmidt sent Azael a City policy document that outlined the process to apply for a variance from the off street parking requirements. *See* Exhibit 1.

99. According to the City's policy document, applicants submit their variance application to Ms. Schmidt at the Department of Planning. Ms. Schmidt then gives the application to the City Planning and Zoning Commission, which comes up with a recommendation on how to handle the application. The Commission's recommendation then goes to the City Council, which

can either adopt or ignore the Commission’s recommendation. City Council is the final decision maker on the variance application.

100. The policy document cites § 9-79 of the City Code, which seems to be the applicable code provision governing variance applications for different requirements in the City’s Building and General Building Regulations, including parking requirements.

101. According to § 9-79, a “building official, with City Council’s approval,” can provide a variance when the variance application meets five criteria:

- That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of his land; and
- That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
- That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- That the granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this article. Such findings of the building official, together with the specific facts upon which such findings are based, shall be kept on file in the office of the building official. Variances may be granted only when in harmony with the general purpose and intent of this article so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to those seeking the variance, standing alone, shall not be deemed to constitute undue hardship.

- The city traffic director has made a favorable recommendation relative to the effect on traffic safety of the proposed variance.

102. Azael managed to find the undersigned pro bono counsel, and together they submitted the variance application on October 18, 2021, by email to Ms. Schmidt. The application (attached as Exhibit 4) explained how Azael's request met all five criteria.

103. The variance application also argued in the alternative that Azael's use of his five parking spaces was grandfathered in as a preexisting nonconforming use, based on Houston Engine and Balancing Service's previous use of those spaces and the similarity between Azael's business and Houston Engine and Balancing Service's business.

104. Pasadena's City Code explicitly provides that preexisting nonconforming uses should be grandfathered into the code and should not have to comply with new parking requirements. As the code states, "If there is no change within the use group classification by the new occupant of any existing structure to be used for a commercial purpose, the existing off-street parking requirements shall be deemed to be adequate." City Code § 9-60(3)(a)(20). As there is no meaningful change between how Azael wants to use the property and how the previous auto machine shop used the property, the property's five parking spaces should be enough and the property should be grandfathered into the code.

105. Azael's attorneys submitted Azael's application for a variance and grandfathering to Ms. Schmidt by email, as Ms. Schmidt had instructed. But Ms. Schmidt did not confirm receipt, even after the attorneys followed up with her. And when Azael tried to drop off his \$400 check to Ms. Schmidt for his application fee, she refused to accept it.

106. Ms. Schmidt told Azael that the City could not accept or otherwise consider his application because he was ineligible for a variance or grandfathering. But when Azael asked Ms. Schmidt to explain why or put the refusal to accept the application in writing, Ms. Schmidt refused.

107. The undersigned attorneys—Ms. Harlan, Mr. McFarland, and Ms. Smith—then emailed Ms. Schmidt to confirm that she had refused to accept Azael’s application. But although the attorneys attempted to contact Ms. Schmidt—as well as City attorney Jay Dale—repeatedly, neither Ms. Schmidt, Mr. Dale, nor any other City official would provide any comment on Azael’s application. Instead, Ms. Schmidt and Mr. Dale repeatedly refused to speak with the undersigned attorneys.

108. Ms. Marie Harlan first stated in an email to Ms. Schmidt on October 25 that, “It is our understanding that the City either refused to consider Azael’s application, or denied it outright. We would like to request a meeting with you to learn the bases for the City’s decision. Alternatively, please send us the City’s decision, and the bases for the City’s decision, in writing.”

109. When Ms. Schmidt did not respond, Ms. Smith wrote, “We haven’t heard back from you. Please inform us when you can meet with us.”

110. Ms. Schmidt emailed back on October 26 and said, “Hi; I have referred this matter to the City Attorney.”

111. Following Ms. Schmidt’s email, the undersigned attorneys tried calling the City Attorney, Jay Dale, but he never returned their calls.

112. On October 29, Ms. Harlan emailed Ms. Schmidt stating, “The City Attorney has been unresponsive. We are still trying to obtain clarity on whether Mr. Sepulveda’s variance application was accepted for review, and if so, whether the application has been denied. We would really appreciate your help answering these basic questions.”

113. Ms. Schmidt responded on November 1, stating, “Good morning; I will speak with the City Attorney as his schedule allows.”

114. Mr. McFarland emailed Ms. Schmidt on November 2, stating, “We are still waiting on a response to this. Please advise.”

115. Ms. Schmidt never responded and to this day has not contacted either Azael or his attorneys about his variance application. To this day, the City attorney has also not returned Azael’s attorneys’ calls.

116. The city’s public records also show that Azael’s variance application has never been considered by either the Planning and Zoning Commission or the City Council.

117. Azael submitted his variance application and the City refused to accept it, even after multiple attempts by Azael’s attorneys to convince the City to change its mind. Thus, the City has constructively denied Azael’s application and Azael has exhausted his administrative remedies and/or administrative exhaustion is futile.

VI. INJURY TO PLAINTIFF

118. Azael purchased his new storefront at 1615 Main Street using all his savings and his own home as collateral for the loan, but the City will not grant him a certificate of occupancy to open the storefront until he provides a total of 28 outdoor parking spaces.

119. Azael cannot afford to provide these spaces. His current property has five outdoor parking spaces, and it would cost him at least \$40,000 to hire a contractor to install a parking lot on his property to accommodate the additional 23 spaces.

120. Azael has no means to pay for this expense.

121. Nor does Azael need or want 28 parking spaces for his business. As he is a one-man auto repair shop, the existing five parking spaces outside his business and the four spaces inside his shop are more than enough for his needs.

122. Even if Azael did take the time, effort, and significant expense to install the extra parking spots, the parking spots would just sit vacant and prevent Azael from making productive use of this portion of his property.

123. Yet the City still will not let Azael open his business until he installs the extra parking spaces.

124. As a result, Azael is forced to make monthly payments on a loan for the storefront that he is not allowed to open.

125. In addition to paying the monthly payments for the storefront, Azael is forced to pay \$1,200 in monthly rent at his leased location so that he can continue running his business.

126. Azael wants to open his business at 1615 Main Street. But, as it is a financial burden to own property that he cannot use, he has considered renting or selling it to another auto repair shop. Yet any other auto repair shop will face the City's parking requirements, making the property difficult to rent out or sell.

127. The parking restrictions significantly reduce the value of Azael's storefront.

128. Nor can Azael buy another storefront in the City for his auto repair business, as other storefronts in the City will also be subject to the parking requirements. Nor could Azael afford to purchase another property.

129. The City also will not accept Azael's application for a variance and grandfathering and will not let the application proceed along the normal application process.

130. The City has also not given sufficient notice of its decision regarding Azael's application or any opportunity to be heard. This is despite the fact that the City encouraged Azael to submit his application and has previously granted parking variances from its parking requirements. The City has also previously grandfathered businesses into the code so that they would not have to comply with its parking requirements.

131. The City's refusal to consider Azael's application imposes additional stress and uncertainty on Azael, his business, and his family.

132. Because of the City's Code and actions, Azael's finances have become extremely strained and he is at risk of losing his business.

133. The City's Code and actions have also caused both Azael and his wife a significant amount of stress, all while they prepare for the birth of their first child in March.

VII. CLAIMS

FIRST CAUSE OF ACTION

(TEX. CONST. ART. I, § 19 – SUBSTANTIVE DUE PROCESS; DEPRIVATION OF ECONOMIC LIBERTY AND PROPERTY RIGHTS)

134. Plaintiff hereby incorporates the allegations set forth above in paragraphs 1 to 133, all of which are fully re-alleged here.

135. Article I, Section 19 of the Texas Constitution provides that: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

136. This "due course of the law of the land" guarantee of the Texas Constitution is commonly known as the Constitution's "due process" provision. Among the rights protected by the due process provision is substantive due process. Substantive due process protects, among

other things, the right to economic liberty, the right to earn an honest living in the occupation of one's choice, and property rights.

137. To show that an economic regulation has violated substantive due process under this provision, a plaintiff must show either that (1) the regulation's purpose is not rationally related to a legitimate governmental interest, or (2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest. *See Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 87 (Tex. 2015).

138. Defendants' ordinance governing the parking requirements for auto repair shops that requires all auto repair shops to have 10 parking spaces per 1,000 G.F.A. of their storefront before they can open (City Code § 9-7, Ex. A; Exhibit 3, p. 10) ("the parking requirement") is an economic regulation.

139. The parking requirement violates the due process guarantee both as applied to Plaintiff and generally by unreasonably restricting auto repair shops.

140. The parking requirement interferes with Plaintiff Azael's right to economic liberty, specifically his right to earn an honest living. It also interferes with right of other owners of auto repair shops to earn an honest living. The parking requiring also interferes with Azael's property rights and the property rights of owners of other auto repair shops.

141. Defendants lack a legitimate reason for imposing the parking requirement on Plaintiff's auto repair shop specifically or auto repair shops generally.

142. Nor is applying the parking requirement—on Plaintiff's auto repair shop specifically or auto repair shops generally—rationally related to a legitimate government interest.

143. Even if the parking requirement was rationally related to a legitimate government interest, the requirement's actual, real-world effect is so burdensome as to be oppressive in light of the governmental interest, both as applied to Plaintiff and on its face.

144. Plaintiff would never need 28 outdoor parking spaces to provide for his customers. Plaintiff is the sole worker at his business and Plaintiff actively discourages customers from leaving cars at his shop. In addition, Plaintiff's new storefront at 1615 Main Street already has space for four cars inside the shop.

145. The auto shop that previously operated at this property only had five parking spaces, and it had no problems or complaints with having only five parking spaces, and thus there is no evidence that these five spaces were insufficient.

146. Forcing Plaintiff to provide 28 outdoor parking spaces for his customer essentially bans Plaintiff from opening his business, because he cannot afford to install so many parking spaces.

147. Requiring Plaintiff to have 28 parking spots outside his storefront before he can open is thus completely irrational and so burdensome as to be oppressive.

148. Moreover, calculating required parking by G.F.A. is particularly irrational for auto repair shops. Unlike other establishments, the greater square footage an auto repair shop has, the fewer parking spaces it needs, because it will have more room for cars inside the shop in the service bays.

149. There is also no evidence that auto shops in Pasadena would require more parking than auto repair shops in other cities in Texas, including the five largest cities in Texas (Houston, San Antonio, Dallas, Austin, and Fort Worth) and the cities with comparable sized populations to Pasadena (Amarillo, Grand Prairie, McKinney, Brownsville, Killeen, Mesquite, McAllen, Denton,

and Waco). Yet Pasadena's parking requirements are severely more restrictive than those in these other cities.

150. The state's police power and/or zoning power does not extend to allow such as restrictive burdensome parking requirement as Pasadena's.

151. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that the parking requirement violates substantive due process under the Texas Constitution both as applied to Plaintiff and on its face.

SECOND CAUSE OF ACTION

(TEX. CONST. ART. I, § 3 – EQUAL PROTECTION UNDER THE LAW)

152. Plaintiff hereby incorporates the allegations set forth above, in paragraphs 1 to 133, all of which are fully re-alleged here.

153. Article I, § 3 of the Texas Constitution, also known as the "Equal Protection Clause," provides: "All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services."

154. Article I, § 3 of the Texas Constitution guarantees equality of rights to all persons and is generally known as Texas's equal protection provision.

155. To prevail under Texas's equal protection provision, Plaintiff must show that (1) he has been treated differently from others similarly situated and (2) the challenged distinction is not rationally related to a legitimate governmental purpose. Real-world effects and evidence are important to this analysis.

156. Here, the City’s parking ordinance treats Plaintiff and other auto repair shops differently from other similarly situated businesses—auto dealers, medical/dental offices, mini warehouses/storage facilities, banks, hotels, offices and gyms—all of which have significantly lower parking requirements than auto repair shops.

157. There is no evidence that auto repair shops have greater parking needs than these other businesses.

158. Imposing greater parking requirements on Plaintiff’s auto repair shop specifically and auto repair shops generally than those on other similarly situated businesses is not rationally related to a legitimate government purpose.

159. Thus, the City’s Parking Requirement for auto repair shops violates the equal protection provision of the Texas Constitution both as applied to Plaintiff and on its face.

160. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that the parking requirement violates the equal protection provision of the Texas Constitution both as applied to Plaintiff and on its face.

THIRD CAUSE OF ACTION

(TEX. CONST. ART. I, § 19 – PROCEDURAL DUE PROCESS)

161. Plaintiff hereby incorporates the allegations set forth above, in paragraphs 1 to 133, all of which are fully re-alleged here.

162. Article I, Section 19 of the Texas Constitution provides that: “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”

163. Among other things, the “due course of law provision” protects procedural due process rights. Procedural due process at a minimum requires that the government provide notice and an opportunity to be heard at a meaningful time and in a meaningful manner before affecting a person’s private interests.

164. Here, Defendants violated Plaintiff’s procedural due process rights by refusing to accept his application for a variance and grandfathering without providing Plaintiff notice and an opportunity to be heard.

165. Instead, the City refused to communicate with either Plaintiff or his attorneys about his application, and even refused to confirm in writing that they had in fact refused to accept his application.

166. To the extent that City Code § 9-79 does not require notice (including a written decision on an application for variance and grandfathering) or an opportunity to be heard, City Code § 9-79 is unconstitutional as applied to Plaintiff and on its face.

167. Pursuant to the Uniform Declaratory Judgments Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.001 *et seq.*, Plaintiff respectfully requests the Court enter a judgment declaring that (1) the City’s actions violated Plaintiff’s procedural due process rights, and (2) City Code § 9-79 is unconstitutional as applied to Plaintiff and on its face.

FOURTH CAUSE OF ACTION

(Request for Mandamus, in the Alternative)

168. Plaintiff hereby incorporates the allegations set forth above, in paragraphs 1 to 133, all of which are fully re-alleged here.

169. In the alternative to this Court first deciding Plaintiff’s constitutional claims, Plaintiff requests that this Court grant Plaintiff mandamus relief to force the City to consider his

application (which argued both for a variance and that Azael’s shop is grandfathered into the code as a preexisting nonconforming use)—and issue a written decision on that application.

170. Texas courts will issue a writ of mandamus to compel a government official to act in two circumstances: (1) when the act to be compelled is “ministerial,” which means that the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion, or (2) when the act to be compelled is discretionary, but only if the discretionary decision is a clear abuse of discretion.

171. Here, Plaintiff’s request for mandamus relief falls under the first category, or, in the alternative, the second category.

172. First, the City has refused to carry out its ministerial obligation to issue an official decision on an application for a variance. The City has an official policy and practice of considering applications for variances from its parking requirements. According to the City’s own public documents describing this policy, applicants submit the application to the Department of Planning. The Department then gives the application to the City Planning and Zoning Commission for their recommendation to City Council. Finally, the application goes to the City Council, which can either adopt or ignore the Commission’s recommendation. *See* Exhibit 1. The clear implication of this policy and practice is that the City must issue decisions on variance requests in writing.

173. Similarly, the City Code states a “building official, with city council approval, may authorize a variance” from the parking requirements, along with criteria for the City to consider in deciding the application. City Code § 9-79. The clear implication of that ordinance is that if the City decides not to accept an application or to otherwise deny it, then the City will issue this decision in writing with a clear explanation.

174. In addition, on information and brief, the City has a long practice of issuing decisions on variance requests regarding the parking requirements in writing.

175. Thus, if the City decides not to accept an application for a variance or to otherwise deny it, the City has a ministerial duty to issue that decision in writing with a clear explanation. At the very least, if the applicant requests that decision in writing, the City has a ministerial duty to provide that decision in writing.

176. Here, however, Plaintiff Azael and his attorneys repeatedly requested the City to issue its decision in writing with a clear explanation, and the City refused. In fact, the City refused to even verbally confirm or explain its decision on Azael's application.

177. In addition, the City has a ministerial duty to grandfather businesses into the code as a preexisting nonconforming use when they satisfy the criteria under City Code § 9-60(3)(a)(20). Section 9-60(3)(a)(20) says, "[i]f there is no change within the use group classification by the new occupant of any existing structure to be used for a commercial purpose, the existing off-street parking requirements shall be deemed to be adequate." This "shall" language shows that this provision is ministerial.

178. In addition, the clear implication of Section 9-60(3)(a)(20) is that if the City decides not to accept an application for a grandfathering or to otherwise deny it, the City has a ministerial duty to issue that decision in writing with a clear explanation. At the very least, if the applicant requests that decision in writing, the City has a ministerial duty to provide that decision in writing.

179. However, the City has either refused to consider Plaintiff Azael's application or denied it outright without any written decision, explanation, or even confirmation that this is in fact what the City did.

180. The City thus failed to perform a ministerial duty in two ways: (1) It failed to accept Plaintiff Azael's application for a variance and grandfathering and let that application proceed along the normal process for such applications; and (2) it failed to confirm its decision on Plaintiff's application in writing and/or explain its decision.

181. At the very least, these failures significantly conflict with the City's normal procedures and past practices and are an abuse of discretion.

182. Plaintiff thus requests that the Court grant him mandamus relief ordering the City to state in writing whether and why it refused to accept Azael's application for consideration or otherwise denied it.

183. If, on the other hand, the City claims it has accepted the application for consideration, Plaintiff requests that the Court order the City to decide the application according to a swift and reasonable timeline.

184. If the City ultimately denies Azael's application, Plaintiff requests that the Court then decide his constitutional claims in his first and second causes of action.

VIII. APPLICATION FOR A TEMPORARY INJUNCTION

185. Plaintiff requests that the Defendants named herein be temporarily enjoined from enforcing the parking requirement against Plaintiff, thus allowing Plaintiff to receive a temporary certificate of occupancy to open and operate his business during the pendency of this case.

186. Plaintiff will experience immediate and irreparable injury unless the Defendants are so enjoined. Plaintiff has no other adequate remedy at law.

IX. APPLICATION FOR PERMANENT INJUNCTION

187. After adjudication of this case on the merits, Plaintiff requests that the Court enter a permanent injunction (1) enjoining Defendants named herein from enforcing the parking

requirement against Plaintiff, thus allowing Plaintiff to receive a certificate of occupancy to open his business, and (2) enjoining Defendants named herein from enforcing the parking requirement against other auto repair shops.

X. ATTORNEYS' FEES

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

XI. REQUEST FOR JURY TRIAL

189. Plaintiff requests a trial by jury.

XII. PRAYER AND RELIEF REQUESTED

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

A. A temporary injunction granting Plaintiff a temporary certificate of occupancy to open Oz Mechanics at 1615 Main Street, without having to add any additional parking spots at that address, for the pendency of this litigation.

B. A declaratory judgment that the Defendants' ordinance governing the parking requirements for auto repair shops that requires all auto repair shops to have 10 parking spaces per 1,000 G.F.A. of their storefront before they can open (City Code § 9-7, Ex. A; Exhibit 3 at p. 10) ("parking requirement") is unconstitutional under the substantive due process protections of Article 1, Section 19 of Texas Constitution both on its face and as applied to Plaintiff Azael's intended location for his business, Oz Mechanics, at 1615 Main Street.

C. A declaratory judgment that the City's parking requirement is unconstitutional under the equal protection protections of Article 1, Section 3 the Texas Constitution both on its

face and as applied to Plaintiff Azael's intended location for his business, Oz Mechanics, at 1615 Main Street.

D. A declaratory judgment that the City violated Plaintiff Azael's procedural due process rights under Article 1, Section 19 of the Texas Constitution by failing to give him notice and opportunity to be heard on his application for a variance and grandfathering.

E. A permanent injunction granting Plaintiff a certificate of occupancy to open Oz Mechanics at 1615 Main Street, without adding any additional parking spots to that address.

F. An award of \$1 in nominal damages for Plaintiff for each violation of his constitutional rights;

G. An award of reasonable attorneys' fees and costs; and

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

OR, IN THE ALTERNATIVE

I. Mandamus relief forcing the Defendant (1) to accept Plaintiff's application for a variance and grandfathering that he submitted to Defendants on Oct. 18, 2021, and (2) to decide the application in a swift and timely fashion, and (3) to provide its decision in writing.

J. If, after the Court grants the mandamus relief request outlined in I above, the City denies the variance application, then Plaintiff requests the relief outlined in A to H of the Demand for Relief above.

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

RESPECTFULLY SUBMITTED this 8th day of December 2021.

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Local counsel for Plaintiff

CAUSE NO. _____

AZael SEPULVEDA,

Plaintiff,

v.

CITY OF PASADENA, TEXAS; JEFF WAGNER, in his official capacity as City Mayor; DEANNA SCHMIDT, in her official capacity as director of the City Planning Department; ORNALDO YBARRA, in his official capacity as City Council member; BIANCA VALERIO, in her official capacity as City Council member; PAT VAN HOUTE, in her official capacity as City Council member; DON HARRISON, in his official capacity as City Council member; JONATHAN ESTRADA, in his official capacity as City Council member; PHIL CAYTEN, in his official capacity as City Council member; CARY BASS, in his official capacity as City Council member; THOMAS SCHOENBEIN, in his official capacity as City Council member; JAMES GUTHRIE, in his official capacity as City Planning and Zoning Commission member; MARY ANN KLUSMAN, in her official capacity as City Planning and Zoning Commission member; MARK BENOIT, in his official capacity as City Planning and Zoning Commission member; BILL BEZDEK, in his official capacity as City Planning and Zoning Commission member; DOLAN DOW, in his official capacity as City Planning and Zoning Commission member; LETICIA GARCIA, in her official capacity as City Planning and Zoning Commission member; BUDDY LAND, in his official capacity as City Planning and Zoning Commission member; MICHELLE PARTIN, in her official capacity as City Planning and Zoning Commission member; AND MICHELE JANNISE, in her official capacity as the head of the City Permit Department.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

Defendants

JUDICIAL DISTRICT

DECLARATION OF AZAEL SEPULVEDA

My name is Azael Sepulveda, my date of birth is June 24, 1987, and my address is 3114 Earl Street, Pasadena, Texas 77503. I declare under penalty of perjury that the following paragraphs in the document, "Plaintiff's Verified Original Petition and Application for Temporary Injunction, Injunctive Relief, and Declaratory Relief and in the Alternative, Request for Writ of Mandamus," are true and correct according to my personal knowledge:

- Paragraphs 2–11;
- Paragraph 19;
- Paragraphs 41–56;
- Paragraphs 60–82;
- Paragraphs 87–88;
- Paragraphs 91–99;
- Paragraphs 102–133.

In addition, I declare under penalty of perjury that I personally collected and tabulated the parking data found in Exhibit 2 filed with the petition.

Executed in Harris County, State of Texas, on the 8th day of December, 2021.


Azael Sepulveda

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Victoria Clark on behalf of Victoria Clark
Bar No. 24109731
tclark@ij.org
Envelope ID: 59862493
Status as of 12/9/2021 11:10 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Victoria Clark		tclark@ij.org	12/9/2021 10:42:11 AM	SENT