

Practice & Remedies Code, may be served by service of citation on the City of Amarillo's Mayor, Ginger Nelson, 601 South Buchanan Street, Amarillo, Texas 79101.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action and the requested relief sought under Tex. Civ. Prac. & Rem. Code §§ 37.003 and 65.011. The matter in controversy includes the City of Amarillo City Council's passage of Ordinance 7985, purportedly issuing approximately \$260 Million in anticipation notes without voter approval - indeed, against and despite express voter disapproval – to be paid from ad valorem taxation to be assessed against the taxpayers of the City of Amarillo without their consent. Accordingly, the amount in controversy is in excess of \$260 Million.

4. Venue in this Court is proper under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and (a)(3) because a substantial part of the events or omissions giving rise to the claim occurred in Potter County and the Defendant's principal office is in Potter County.

DISCOVERY

5. Discovery is intended to be conducted under a Level 3 Discovery Control Plan, as set forth in Rule 190.4 of the Texas Rules of Civil Procedure, to be issued by the trial court. Plaintiff will submit a proposed Discovery Control Plan

upon request of the Court or upon conferring with counsel for the Defendant upon its appearance in the case.

FACTUAL BACKGROUND

6. On May 24, 2022, the City of Amarillo City Council voted to approve Ordinance 7985 purporting to authorize the issuance debt obligating the City to in excess of \$260 Million in unbudgeted debt through tax anticipation notes named “City of Amarillo, Texas, Tax Notes, Taxable Series 2022A” (hereinafter “Anticipation Notes”) ostensibly authorized pursuant to and under the auspices of Chapter 1431 of the Texas Government Code. The City Council voted to approve Ordinance 7985 without prior notice to Plaintiff and other Amarillo taxpayers as to the terms of the debt and the taxes that would be imposed and pledged to pay for it, and without any form of public hearing, in violation of the rights of Plaintiff and other taxpayers secured and guaranteed by Texas Constitution Article VIII, Section 21. The indebtedness is intended to secure funding for a project (a Civic Center new construction and renovation project previously rejected by voters) that will be an unauthorized use of anticipation note proceeds. Further, the City of Amarillo intends to incur debt and finance a project through an ad valorem tax increase that exceeds the permissible increase in annual tax rates beyond that permitted without voter approval in an election. Plaintiff seeks declaratory and injunctive relief to prevent the issuance and negotiation of the notes and the incurring of unlawful debt.

7. This lawsuit arises from the City of Amarillo's, through the City Council, City Manager and other professional government career employees, ongoing efforts to thwart and contravene the will of Amarillo's citizens and voters by attempting to incur public debt and otherwise expend public funds for projects that were expressly rejected by the voters in the 2020 General Election. Plaintiff seeks both a declaratory judgment that such actions are unlawful and invalid and injunctive relief preventing the City of Amarillo from incurring such debt and spending public funds through the issuance of Anticipation Notes, against the clear will of the voters and in violation of Texas law and in dereliction of the City Council's duty and responsibility to serve the taxpaying citizens and voters of Amarillo in accordance with the will of the people.

8. In the November, 2020, General Election, the citizens of Amarillo soundly rejected the matter identified on that ballot as "Proposition A," which sought the issuance of \$275 Million in bonds for various projects involving "the City's Civic Center complex" including the construction of new facilities and renovations to old ones similar to the proposed project for which the Anticipation Notes made the basis of this case were predicated.

8. Immediately following the rejection of Proposition A, the Amarillo City Council began efforts to make an end run around the voters and proceed with alternative plans for renovating the City's Civic Center with a newly-constructed

arena and exhibit hall. The minutes of the November 17, 2020, Amarillo City Council meeting expressly show the council's intention to proceed despite the will of the voters, stating verbatim: "Even though Proposition A failed, the needs at City Hall and the Civic Center still exist[s]." When the voters rejected Proposition A, the City began to concoct an alternative means to secure funding for its plans, cavalierly dismissing the will of its citizens and taxpayers as clearly communicated by the negative vote against the issuance of bonds that were intended to have been used in part for this purpose.

9. In June of 2021, the Amarillo City Council signaled its plans to forge ahead with an alternative financing arrangement for a large Civic Center project despite acknowledging the failure of Proposition A. At that time, Council entered into an agreement with Garfield Public/Private, LLC, a consulting firm retained, in part, due to its experience with establishing public-private partnerships or joint ventures between governmental entities and private enterprises. From that date until May 2022, some (but not all) members of City Council met with the consultant and a private citizens' committee to explore alternative designs and funding options for a new Civic Center. After being unable to secure any firm commitments from private enterprises to join in the venture, the consultant and the committee developed a plan to use anticipation notes as a financing device that, the City believed, would enable it to saddle Amarillo taxpayers with over one-quarter of a billion dollars in multi-

decade debt burdens without being required to secure their consent and approval, thereby avoiding the risk of yet another taxpayer rejection of such a massive Civic Center project funded by the taxpayers.

10. One to two business days prior to the City Council's regular meeting on May 24, 2022 (the precise timing to be proven after further investigation and discovery), the City Secretary posted an agenda for the meeting on the City's website. The agenda included two "Non-Consent" items (numbered 3 (K) and (L) on page 6 of an agenda consisting of 206 pages, including addenda) mentioning the receipt of a report from the consultant and the citizen's committee and consideration of Ordinance 7985 relating to the issuance of anticipation notes and ancillary agreements. Other than these vague references on a late-posted agenda, the City never gave the public any notice of the scope and cost of the proposed Civic Center project and the amount of the principal and proposed terms for the financing options recommended (certificates of obligation – unavailable until November 2023) or otherwise considered (anticipation notes). Importantly, the City never provided Amarillo citizens with any notice of the anticipated impact of the proposed project and financing upon tax rates prior to the City Council meeting on May 24, provided no notice of the proposed tax to be imposed to support the anticipation notes (the agenda item neither mentioned nor implied a proposal for the imposition of a tax at

all) , and never gave the taxpayers an opportunity to be heard with respect to the tax increase that will be required to support this new massive debt.

11. Defendant, through its City Council in a 4-1 vote at a regular meeting on May 24, approved the issuance of approximately \$260 Million in Anticipation Notes for new construction at the Civic Center, a project remarkably similar to the project the City previously intended to fund with Proposition A bond proceeds before the taxpayers rejected the project in the 2020 General Election. Defendant clearly intended to bypass the voters this time, to proceed with a project that will substantially increase the taxes of every Amarillo taxpayer, potentially for decades, against their will and without notice and an opportunity to be heard. Plaintiff seeks injunctive relief preventing such an expenditure of public monies in contravention of the expressed will of the citizens of Amarillo without notice and hearing and a declaratory judgment that Defendant's attempt to circumvent the election results is violative of the Texas Constitution, particularly Article VIII, Section 21, Chapter 26 of the Texas Tax Code, and Chapter 1431 of the Government Code.

12. This lawsuit seeks to prevent the City of Amarillo from issuing Anticipation Notes in violation of law and the rights of Plaintiff and Amarillo taxpayers. The actions of the City of Amarillo in proceeding with the process to issue such Anticipation Notes violate Article VIII, Section 21, as the Anticipation Notes will result in a tax increase to Plaintiff and all other Amarillo taxpayers without their

consent and without notice and hearing. Further, the issuance of the Anticipation Notes will violate Section 1431.008(b) because Ordinance 7985 does not impose any specific tax. (The agenda item and memoranda attached to the agenda for the May 24 meeting did not make any mention of the imposition of a tax in connection with the ordinance.) The agenda made no reference to the consideration of a tax increase at all, and the Ordinance itself, at best, only references a future intention to impose a tax in future tax years, rather than imposing a specific tax as would be required under Section 1431.008(b).

13. Not only does Defendant's intended issuance of Anticipation Notes for the construction of a new Civic Center (with some renovations of the old structures) violate the Texas constitutional requirements and statutes referenced above, but it also contravenes the Amarillo City Council's obligation to respect and to act in conformance with the will of the voters. Although Sections 1431.001 *et seq.* of the Government Code allow for the issuance of Anticipation Notes when the requisite conditions are satisfied, it does not give municipalities free reign to ignore the wishes of the governed. 1431.008(b) requires the imposition of the tax within the body of the ordinance authorizing issuance of anticipation notes, implicitly adopting and incorporating all due process, taxpayer notice, hearing and consent requirements that must be followed when any new tax is imposed. Further, Defendant's ongoing conduct in attempting to accomplish through the issuance of anticipation notes a

project, and tax-funded debt financing for that project, expressly rejected by the voters, plainly violates the spirit of the Amarillo City Charter and the Texas Constitution.

14. Defendant's actions in attempting to spend public funds and obligating Amarillo tax payers to the service of public debt to support a massive project, in spite of the voters' previous rejection of the project and public debt financing, without the consent of the taxpayers after notice and hearing, is violative of the Texas Constitution, Texas Government Code and Texas Tax Code. Plaintiff has no adequate remedy at law, and brings this action to prevent such expenditures, the unlawful assumption of public debt, and the decades of tax burden that would inevitably become necessary. Plaintiff accordingly seeks a declaratory judgment and injunctive relief.

CAUSE OF ACTION:

Violation of Local Government Code § 1431.008(b)

15. Plaintiff incorporates all prior paragraphs of this Original Petition.

16. Defendant's ongoing plan to issue \$260 Million in Anticipation Notes to be paid by ad valorem taxation in future fiscal years, without notice and hearing and without the imposition of the tax in Ordinance 7985, is in direct violation of Texas Constitution Article VIII, Section 21 and Section 1431.008(b) of the Government Code.

17. The Anticipation Notes are to be paid by ad valorem taxes in future years, but Ordinance 7985 does not impose a specific ad valorem tax. At best, Section 9 of Ordinance 7985 merely promises to impose “ample and sufficient” taxes in future years to service the debt so assumed. The ambiguity is in direct contravention of the law, and appears to be an abdication of the responsibility of the City of Amarillo to provide due process to its taxpaying citizens.

18. As a property owner and taxpayer within the City of Amarillo, Plaintiff will suffer irreparable harm if Defendant unlawfully expends public funds and incurs public debt in direct violation of the Government Code. Ordinance 7985, as passed, would result in currently unbudgeted annual ad valorem tax collections increasing from \$39,235,000 in 2024 to \$47,835,000 in 2029. At the May 24, 2022 meeting, City Manager’s officials suggested these amounts will likely be “refinanced” (without providing any details) in Spring 2023, for a multiple-decades encumbrance. Regardless of the term, once incurred, the proposed public debt and the resultant harm to Plaintiff will be for all practical purposes permanent and irrevocable.

19. Pursuant to Section 37.004 of the Texas Civil Practice & Remedies Code, Plaintiff is entitled to have this Court determine and declare the invalidity of the Defendant’s issuance of these Anticipation Notes through the passage of Ordinance 7985. Further, Plaintiff is entitled to a declaration that the imposition of the future taxes necessary to service debt financing between \$39 Million and \$47

Million in unbudgeted annual expenditures will inevitably and necessarily result in an increase in taxes without notice and hearing to the taxpayers, resulting in an unlawful increase in taxes in violation of Article VIII, Section 21 of the Texas Constitution and the Local Government Code. Further, Plaintiff is entitled to a declaration that the Anticipation Notes to be issued and negotiated pursuant to Ordinance 7985 are not “debt” under the definition assigned by Tax Code Section 26.012 such that service on the debt created by the notes must be included in calculations of future tax rates. Further, Plaintiff is entitled to a declaration that the inevitable tax increases will, by obvious and indisputable necessity, result in a tax rate increase in future years in excess of the threshold necessary to require voter approval under Texas Tax Code Chapter 26.

20. Pursuant to Section 65.011 of the Texas Civil Practice & Remedies Code, Plaintiff is entitled to injunctive relief prohibiting Defendant from issuing the Ordinance 7985 Anticipation Notes, Series 2022A, in violation of 1431.008 of the Government Code. Injunctive relief is appropriate because Defendant’s conduct in incurring public debt in an unlawful manner will result in irreparable harm to the taxpayers of Amarillo, including Plaintiff, and there is no viable and adequate remedy at law. Plaintiff is entitled to injunctive relief under the principles of equity.

21. Plaintiff is further entitled to injunctive relief because Ordinance 7985 imposes new taxes upon Plaintiff and other Amarillo taxpayers without notice and

hearing, resulting in irreparable harm for which there is no viable and adequate remedy at law.

22. Plaintiff is additionally entitled to injunctive relief because the tax rate necessary to service the debt created by the Anticipation Notes will result in a tax increase necessitating voter approval pursuant to Tax Code 26.07. Defendant should be enjoined from issuing and negotiating the Anticipation Notes until such voter approval and consent is secured. Alternatively, Defendant should be enjoined from entering contracts associated with the construction of the Civic Center projects to be funded by the Anticipation Notes until such voter approval and consent is secured.

CAUSE OF ACTION:
Violation of Local Government Code § 1431.004

23. Plaintiff incorporates all prior paragraphs of this Original Petition.

24. Additionally and in the alternative, Defendant's plan to issue \$260 Million in anticipation notes is in direct violation of Chapter 1431 because the proceeds of the Anticipation Notes the City plans to issue are not intended for a use authorized by law for such notes. The Civic Center is not a project that has been lawfully authorized (rather, it has been expressly unauthorized by the voters) and is not a public work related to necessary City infrastructure. The harm to be suffered by Plaintiff upon the issuance of the Anticipation Notes to be sold to fund unauthorized uses is imminent and will be irreparable for all of the same reasons

alleged elsewhere herein. There is no adequate and viable remedy at law once the debt is incurred and Civic Center design, planning, contract negotiation and construction begins. Once incurred, the proposed public debt and contractual obligations associated with the project will, for all practical purposes, result in permanent and irrevocable harm to Plaintiff and similarly-situated Amarillo taxpayers.

TEMPORARY INJUNCTION

25. Plaintiff incorporates all prior paragraphs of this Original Petition.

26. Plaintiff would show that all requirements necessary for the issuance of a temporary injunction prohibiting Defendant from issuing Anticipation Notes in violation of Section 1431.008(b) of the Government Code are satisfied. Plaintiff seeks a temporary injunction, and subsequently a permanent injunction, prohibiting Defendant from issuing the Anticipation Notes described hereinabove unless and until the matter is submitted to the voters of Amarillo in an election or Defendant complies with Section 1431.008(b) and Article VIII, Section 21, of the Texas Constitution.

27. Consistent with the standards articulated in Chapter 65 of the Texas Civil Practice & Remedies Code, Plaintiff would show that he is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the applicant. Namely, as described hereinabove, the unlawful issuance of

Anticipation Notes by Defendant will result in irreparable harm to Plaintiff and other property owners and taxpayers of Amarillo by encumbering them and their real property with public debt for a period of multiple decades and result in tax increases necessary to service that debt in the immediate future and in the years to come.

28. Defendant will be placed upon immediate notice of the filing of this Petition by electronic delivery of the Petition to the City Attorney for the City of Amarillo. Assuming Defendant will continue in its pursuit of the issuance and sale of the Anticipation Notes despite the pending litigation, the City will be performing an act relating to the subject of pending litigation, in violation of the rights of the applicant, which act would tend to render a later judgment in this litigation ineffectual. Namely, the declarations requested by Plaintiff's request for Declaratory Judgment would tend to be rendered moot or ineffectual if during the pendency of this lawsuit the Defendant nonetheless proceeds with the issuance of the unlawful Anticipation Notes.

29. In light of the unlawful nature of Defendant's intended issuance of Anticipation Notes without Constitutional due process (notice and hearing of its intent to impose and raise taxes to fund and service such Notes, in violation of Article VIII, Section 21 of the Texas Constitution), without passing an ordinance imposing the necessary ad valorem taxes after such notice and hearing as required by Section 1431.008(b) of the Texas Government Code, and assuming debt for a project against

the expressed will of the voters voting on Proposition A in the 2020 General Election, the irrevocable nature of the harm to Plaintiff and to other property owners and taxpayers, and the unavailability of an adequate remedy at law, Plaintiff would show that he is entitled to a writ of injunction under both the principles of equity and the statutes of the State of Texas relating to injunctions.

30. Defendant's intended unlawful conduct in issuing Anticipation Notes will result in irreparable harm to Plaintiff and other property owners and taxpayers of Amarillo by encumbering them and their real property with public debt for a period of multiple decades and result in tax increases necessary to service that debt in the immediate future and in the years to come.

31. Defendant's conduct in approving an Ordinance issuing Anticipation Notes to be funded by ad valorem taxes collected in future years without the imposition of the tax in that same ordinance, and without due process accorded the voters as required by the Texas Constitution, constitutes a *prima facie* and a *per se* violation of Section 1431.008(b) of the Texas Government Code and Article VIII, Section 21 of the Texas Constitution. Accordingly, Plaintiff has a probable right to recover on his cause of action seeking declaratory and injunctive relief to stop this unlawful action by Defendant and to prevent its recurrence.

32. The harm to Plaintiff and other property owners and taxpayers is imminent and is in no way remote or speculative, as City officials from the City

Manager's office, the Mayor and other City Council members urged at the regular meeting on May 24 that they believed that it was imperative that they act immediately, refusing a request by the dissenting Councilman for an additional two weeks to study the proposal and provide more notice and information regarding the issues to Amarillo citizens. To put it succinctly: The City is in a hurry to burden Amarillo taxpayers with an obligation to fund its project against the voters' will as quickly as possible. The City does not want to poll and hear from its citizens and doesn't care whether the taxpayers consent to taxes upon their property to pay for a new Civic Center. The City already knows how the majority of taxpayers feel about paying for this project with debt, because the City has already asked them and received a resounding rejection of the proposal. Nevertheless, the City has expressed a desire to move as quickly as possible to incur over one-quarter billion dollars in unbudgeted debt and to tax Amarilloans' property to service that debt, in direction contravention to the will of an overwhelming majority of Amarilloans. Accordingly, the requirement that the harm be imminent is satisfied.

33. If the Anticipation Notes are issued and the debt is taken, the injury and harm to Plaintiff, Plaintiff's real property, and to the property owners and taxpayers of Amarillo will be irreparable. There is no "recall provision" or other means by which the encumbrance of the real property of Plaintiff and other Amarillo property owners by such public debt can be undone. The anticipated encumbrance represented

at the May 24 meeting by the Assistant City Manager will be for a term of multiple decades after anticipated refinancing. The harm and injury to Plaintiff and to other property owners and taxpayers in Amarillo will thus be irreparable and enduring for generations.

34. The notice requirement of Rule 681 of the Texas Rules of Civil Procedure for Plaintiff's request for a temporary injunction has been satisfied by service of this Original Petition on the City Attorney by electronic delivery (email). Additionally, Defendant will be provided with notice of the hearing on Plaintiff's request for a temporary injunction.

35. In satisfaction of Rule 682 of the Texas Rules of Civil Procedure, this pleading is verified by the affidavit of Plaintiff, Alex Fairly. This pleading contains a plain and intelligible statement of the grounds for relief supporting Plaintiff's request for a temporary injunction.

36. Plaintiff will comply with all orders of the Court pertaining to bond requirements pursuant to Rule 684 of the Texas Rules of Civil Procedure.

DECLARATORY RELIEF

37. Plaintiff adopts all allegations made in this Petition in support of his claim for declaratory relief.

38. Plaintiff seeks declarations of fact and law supporting his claims for relief herein, including:

The City of Amarillo did not provide notice to taxpayers of a measure that will necessarily require a tax increase;

The City of Amarillo failed to provide a public hearing on the tax increase necessary to service the debt to be assumed by the City of Amarillo through Anticipation Notes 2022A purportedly approved by Ordinance 7985;

The Anticipation Notes Series 2022A purportedly authorized by the City of Amarillo in Ordinance 7985 are void and without value;

Ordinance 7985, purportedly authorizing the issuance of Anticipation Notes Series 2022A, pledged future an ad valorem tax to be imposed in a future fiscal year but did not impose the tax in the ordinance;

Anticipation Notes 2022A are void and of no value because Ordinance 7985 did not impose the ad valorem tax to be imposed in a future fiscal year that was purportedly pledged to fund the payments on the notes;

The Amarillo Civic Center project proposed to be funded by the Anticipation Notes Series 2022A is not an authorized use of proceeds from the sale of such Notes;

Anticipation Notes Series 2022A, as purportedly approved by the City of Amarillo in Ordinance 7985, are not “debt” as defined by Texas Tax Code 206.012;

Anticipation Notes Series 2022A, as purportedly approved by the City of Amarillo in Ordinance 7985, will require a tax increase in excess of the voter-approved tax rate for years in which the ad valorem taxes are assessed and collected;

Anticipation Notes Series 2022A are unlawful assumptions of municipal debt without voter consent and approval;

Anticipation Notes Series 2022A are unconstitutional because their issuance requires the assessment of a tax increase above thresholds requiring voter approval without prior voter approval;

Anticipation Notes Series 2022A are unconstitutional because their issuance imposes a tax increase without notice and hearing;

Ordinance 7985 imposes a tax increase without notice and hearing required by Tax Code Chapter 26;

And other findings necessary to the relief sought by Plaintiff and supported by the evidence at the time of trial.

JURY DEMAND

39. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief and judgment:

- A. Judgment in favor of Plaintiff and against the Defendant, and under the authority of Tex. Civ. Prac. & Rem. Code § 65.011, entry of a temporary injunction, and after trial, a permanent injunction, enjoining the Defendant from issuing the proposed Anticipation Notes.
- B. A declaratory judgment in favor of the Plaintiff pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, finding and determining that:
1. Defendant's Ordinance 7925 is unconstitutional because it contemplates and requires a tax increase without notice and hearing to the taxpayers in violation of Article VIII, Section 21 of the Texas Constitution;
 2. Defendant's Ordinance 7925 is unconstitutional because it creates the necessity of a secret future tax without imposing the tax and without providing taxpayers due process guaranteed by the Texas Constitution;
 3. Defendant's Ordinance 7925 and the Anticipation Notes it purports to approve and issue are unlawful because Ordinance 7925 pledges to the payment of anticipation notes an ad valorem tax to be imposed in a subsequent fiscal year without imposing the tax in the ordinance, as required by Section 1431.008(b) of the Texas Government Code;
 4. Defendant's Ordinance 7925 will result in the necessity of a tax increase in excess of the voter-approval tax rate for the City of Amarillo, necessitating an election under Texas Tax Code Chapter 256 (but only after this massive debt encumbering the property of Amarillo citizens and businesses has already been incurred);
 5. Plaintiff's rights will be irreparably harmed without injunctive or declaratory relief from this Court; and
 6. Any other findings necessary to the relief sought by Plaintiff and supported by the evidence at the time of trial.

- C. An order and judgment that Plaintiff recover his court costs, reasonable litigation costs, and attorneys' fees.
- D. Such other and further relief to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,
WALDENREYNARD, P.L.L.C.

/s/ T. Lynn Walden

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all counsel of record on May 27, 2022, via electronic service and via email.

/s/ T. Lynn Walden

T. LYNN WALDEN

CAUSE NO. _____

ALEX FAIRLY

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§

IN THE DISTRICT COURT OF

VS.

POTTER COUNTY, TEXAS

CITY OF AMARILLO, TEXAS

_____ JUDICIAL DISTRICT

SWORN VERIFICATION TO
PLAINTIFF'S ORIGINAL PETITION

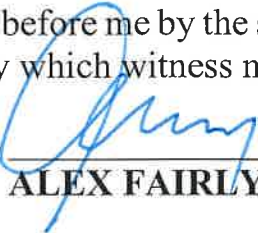
STATE OF TEXAS

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COUNTY OF Potter

ALEX FAIRLY, Plaintiff, being duly sworn upon his oath, deposes and states that the facts set forth in the foregoing Plaintiff's Original Petition for Declaratory Judgment, Temporary Injunction, and Permanent Injunction, are true and correct.

SUSCRIBED and SWORN TO before me by the said ALEX FAIRLY, on this the 27th day of May, 2022, to certify which witness my hand and seal of office.



ALEX FAIRLY



Notary Public, State of Texas



My Commission Expires: 6/15/2024