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condition to leasing. That ordinance has turned out to be one of the most controversial issues to ever hit Farmers Branch and, in fact, has torn the city apart and has deeply divided its citizens.

More importantly, the ordinance was adopted in violation of the Texas Open Meetings Act. In Defendants' own words, they drafted, discussed, debated, and agreed to concessions and compromises with respect to the ordinance "behind closed doors." On November 13, 2006, the City Council hastily approved the ordinance immediately upon its publication, and only *after* the law's adoption did Defendants permit public comment. A clearer deviation from the strict mandates of the Texas Open Meetings Act would be difficult to imagine.

In any event, in the absence of a temporary restraining order, the illegal ordinance will take effect and become enforceable on January 12, 2007, *before* this Court will have the opportunity to consider and resolve Plaintiff's motion for a temporary injunction – which is set for hearing on January 22, 2007. Accordingly, Plaintiff respectfully requests that this Court issue a temporary restraining order enjoining Defendants from putting the ordinance into effect or otherwise enforcing its terms pending the Court's ruling on Plaintiff's application for temporary injunctive relief.

II.

PROCEDURAL HISTORY

On December 4, 2006, Plaintiff filed this suit against Defendants based on Defendants' violations of the Texas Open Meetings Act.¹ On December 22, 2006, Defendants filed their Plea to the Jurisdiction, Special Exceptions, Motion to Dismiss, Motion for Protective Order, and Original Answer to Plaintiff's Original Petition. The Plea to the Jurisdiction is set for hearing on January 12, 2007. Plaintiff's request for a temporary injunction is set for hearing on

¹ See Ramos Affidavit at p. 7, par. 15; *see also* Plaintiff's Original Petition for Declaratory and Injunctive Relief ("Plaintiff's Original Petition").

January 22, 2007.

III.

STATEMENT OF FACTS

A. The City Council Adopts Ordinance No. 2892

On November 13, 2006, the Farmers Branch City Council approved and adopted, as a so-called “emergency measure,” Ordinance No. 2892 (the “Ordinance”), entitled “An Ordinance Amending Chapter 26, Businesses, Article IV Apartment Complex Rental, Mandating a Citizenship Certificate Requirement Pursuant to 24 C.F.R. 5 *et seq.*; Providing for Enforcement; Providing a Penalty; Providing a Severability Clause; Providing an Effective Date; and Declaring an Emergency.”²

The Ordinance provides, as a condition to entering into any “apartment complex” lease or rental agreement, including any renewals or extensions thereof, that “the owner and/or property manager” shall require the submission of satisfactory “evidence of citizenship or eligible immigration status for each tenant family,” and that such evidence is required of “[e]ach family member, regardless of age.”³ The Ordinance recites that its “sole intention” is “for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws.”⁴ The Ordinance has generated an extraordinary amount of controversy nationwide and, regrettably, has divided the City and residents of Farmers Branch.⁵

² See Ramos Affidavit at pp. 1-2, par. 3; see also Exhibit “1” to Ramos Affidavit.

³ See Ramos Affidavit at p. 2, par. 4; see also Exhibit “1” to Ramos Affidavit.

⁴ See *id.*

⁵ See Ramos Affidavit at p. 2, par. 5.

B. The Farmers Branch City Council Adopted The Ordinance In Absence Of Any Open And Public Deliberation

CNN, citing the Associated Press, reported that the Farmers Branch City Council passed the Ordinance by a unanimous vote “without discussion,” and only “took comment from the public afterward.”⁶ The minutes of the City Council’s regular meeting on November 13, 2006, confirm that account. Specifically, the minutes demonstrate that, after the Council’s adoption of the “Resolution Declaring English as the Official Language of Farmers Branch” (Resolution No. 2006-130), “Mayor Phelps read into the record Ordinance No. 2892 in its entirety,” which was followed immediately by “[a] motion by Deputy Mayor Pro Tem O’Hare seconded by Mayor Pro Tem Robinson, all voting ‘aye,’ adopt[ing] Ordinance No. 2892 with effective date beginning January 12, 2007.”⁸ Only after adoption of the Ordinance do the minutes reflect that the Council permitted “public comments from Farmers Branch residents,”⁹ as well as from “non-Farmers Branch residents.”¹⁰

Another news source, MSNBC, also reported that the City Council’s action was undertaken “without discussion,” albeit after “an all-day closed meeting” with, among other persons, attorneys with the Mexican American Legal Defense and Education Fund, who

⁶ See Ramos Affidavit at p. 2, par. 6; *see also* Exhibit “2” to Ramos Affidavit, CNN.com article entitled, “Dallas suburb cracks down on illegal immigrants,” dated November 14, 2006.

⁷ See Ramos Affidavit at pp. 2-3, par. 6; *see also* Exhibit “3” to Ramos Affidavit, City of Farmers Branch City Council Regular Meeting, Monday, November 13, 2006, 6:30 p.m., at Vol. 98, page 31.

⁸ See Ramos Affidavit at p. 3, par. 6; *see also* Exhibit “3” to Ramos Affidavit at page 36.

⁹ See Ramos Affidavit at p. 3, par. 6; *see also* Exhibit “3” to Ramos Affidavit at pages 36-38.

¹⁰ See Ramos Affidavit at p. 3, par. 6; *see also* Exhibit “3” to Ramos Affidavit at pages 41-42.

apparently told Council members that the Ordinance and other proposed measures would “violate federal law.”¹¹

Although agenda items for City Council “study sessions” on August 7 and 21, 2006, show that the Council was to discuss “immigration issues”¹² and “issues related to illegal immigration”¹³ on those occasions, that was several *months prior* to the drafting and public disclosure of the Ordinance (and, therefore, did not directly relate to the Ordinance). Indeed, at no time prior to November 13, 2006, did the members of the City Council openly and publicly debate, deliberate on, or otherwise discuss, express, or exchange comments or opinions regarding the terms, provisions, substance, purpose, or effect of the Ordinance. Clearly, the Ordinance represented a “secret deal” among the Council’s members – struck, in Defendants’ words, “behind closed doors.” It is no wonder, then, why CNN quoted City Councilman Tim O’Hare as having said: “We passed this expecting to be sued.”¹⁴

Furthermore, the terms and provisions of the Ordinance were not published or otherwise made known to the citizens of Farmers Branch prior to the regular meeting of the City Council on the evening of November 13, 2006, when, apparently for the first time, the Ordinance was disclosed (by reading it aloud) and then, immediately thereafter, voted upon and approved by the Council members without any public discussion or debate. The agenda for the meeting, which was purportedly posted on the bulletin board at City Hall on Friday, November 10, 2006, at 1:30

¹¹ See Ramos Affidavit at p. 3, par. 7; see also Exhibit “4” to Ramos Affidavit, MSNBC.com article entitled, “Texas town OKs anti-immigrant measures,” dated November 14, 2006.

¹² See Ramos Affidavit at p. 3, par. 8; see also Exhibit “5” to Ramos Affidavit, City of Farmers Branch City Council Study Session Agenda for meeting scheduled for August 7, 2006.

¹³ See Ramos Affidavit at p. 3, par. 8; see also Exhibit “6” to Ramos Affidavit, City of Farmers Branch City Council Study Session Agenda for meeting scheduled for August 21, 2006.

¹⁴ See Ramos Affidavit at pp. 3-4, par. 8; see also Exhibit “2” to Ramos Affidavit.

p.m.¹⁵ did not mention, let alone describe, the Ordinance – although there are numerous other proposed ordinances and resolutions identified therein.¹⁶ In fact, *The Dallas Morning News* reported in late October that the City Council was merely “expected to discuss *potential* ordinances regarding illegal immigration at its November 13 meeting,” and that it was “unclear” just “what will be presented by the city attorney next month.”¹⁷ Thus, not only was the ordinance passed without open discussion, it was apparently not even made known to the public (and then only orally) until minutes before passage.

C. The Council’s Deliberations Regarding The Ordinance Took Place “Behind Closed Doors”

In Defendants’ Original Answer, Defendants admit that the City Council had “discussions and deliberations” relating to the Ordinance “behind closed doors” and in “closed session,” but assert that such communications were for the purpose of soliciting and receiving attorney-client advice and discussing contemplated litigation.¹⁸ Given the fact that there was no open and public discussion or debate by the City Council about the substance and language of the Ordinance itself, all such discussion must have been conducted in private meetings closed off from any public scrutiny or citizen participation. For example, in an interview with Sam Baker of KERA Channel 13 television and 90.1 radio in Dallas, Farmers Branch Mayor Bob Phelps, commenting upon the City Council’s passage of the Ordinance, stated: “I thought there would

¹⁵ See Ramos Affidavit at p. 4, par. 9; see also Exhibit “7” to Ramos Affidavit, City of Farmers Branch City Council Regular Meeting Agenda for meeting scheduled November 13, 2006, at 5.

¹⁶ See Ramos Affidavit at p. 4, par. 9; see also Exhibit “7” to Ramos Affidavit at 1-5.

¹⁷ See Ramos Affidavit at p. 4, par. 9; see also Exhibit “8” to Ramos Affidavit, DallasNews.com article entitled, “Illegal immigration rules still on table,” dated October 25, 2006 (emphasis added).

¹⁸ See Defendants’ Plea to the Jurisdiction, Special Exceptions, Motion to Dismiss, Motion for Protective Order, and Original Answer, filed December 22, 2006, at 2.

be a split vote, but there was not.”¹⁹ Of course, it is clear from the comment by Mayor Phelps that he had spoken with Council members regarding the outcome of the vote prior to the official vote and not in an open meeting.

City Council members have admitted that private discussions occurred regarding the Ordinance. On Tuesday, November 14, 2006, Farmers Branch Mayor Bob Phelps admitted to having conversations with Council members before the “public” vote on the Ordinance, which occurred on November 13, 2006.²⁰ Mayor Phelps said that he had tried to talk to Council members “til he was blue in the face” to get them to vote against the Ordinance.²¹ He also admitted to having discussions with Council members in which he asked them how they were likely to vote and in which he attempted to persuade them to vote against the Ordinance.²² Mayor Phelps further disclosed that, based on those discussions with Council members, he thought the vote would be 3 to 2 against the Ordinance.²³ However, he said that Councilmen Moses and Byrd were ultimately pressured by fellow Councilman Tim O’Hare to vote in favor of the Ordinance.²⁴ None of the Mayor’s above-described discussions with City Council members took place in open or public meetings.²⁵

¹⁹ See Ramos Affidavit at p. 5, par. 10; *see also* Exhibit “9” to Ramos Affidavit, transcript of Sam Baker interview of Farmers Branch Mayor Bob Phelps, conducted on December 7, 2006.

²⁰ See Salerno Affidavit at p. 2, par. 4.

²¹ See *id.*

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

More recently, City Councilman Jim Smith disclosed that the reason he voted in favor of the Ordinance on November 13, 2006, was a concession made by some of the other City Council members with respect to the resolution made by some of the other City Council members with respect to the resolution declaring English as the official language of the City of Farmers Branch.²⁶ Specifically, Councilman Smith stated that he voted in favor of the Ordinance in consideration of the agreement by some of the other Council members not to make the English-as-an-official-language resolution (which was also adopted on November 13, 2006) applicable to public libraries and recreation centers.²⁷ The discussions, deliberations, and informal votes among the members of the City Council described by Councilman Smith did not occur in open and public deliberations.²⁸

Thus, it is *impossible* for the Ordinance to have been conceived, drafted, reviewed, revised, edited, shared with City Council members, and thereafter voted upon without at least *some* discussion or comment between and among those members regarding its content, operation, and effect (going beyond the solicitation or receipt of legal advice or contemplation of litigation).²⁹ In fact, members of the City Council's own statements show that discussions and even negotiations were conducted by the City Council in violation of TOMA.³⁰

²⁶ See *id.* at pp. 2-3, par. 6.

²⁷ See *id.*

²⁸ See *id.*

²⁹ See Ramos Affidavit at p. 5, par. 11.

³⁰ See *id.*; see also, Salerno Affidavit at pp. 2-3, par. 4-6.

D. The Council Compounded One Violation Of The Texas Open Meetings Act With Another

Following the passage of the Ordinance, Plaintiff and a number of other citizens of Farmers Branch organized to challenge the new law by means of a referendum petition.³¹ Pursuant to the City Charter, if five percent (5%) of the City's registered voters petition the City, the Ordinance must be either: (1) repealed by the City Council; or (2) submitted to the voters of the City for approval or disapproval.³² On December 13, 2006, Plaintiff filed a referendum petition with the City protesting the "adoption, application and enforcement of the Ordinance in the absence of voter approval."³³ The petition contained over 1,700 signatures, including those of over 1,200 Farmers Branch registered voters (well in excess of the threshold necessary to cause the City Council to either repeal the Ordinance or submit it to a vote).³⁴

On or about December 28, 2006, City Secretary Cindee Peters verified that at least 5% of the City's registered voters had signed the referendum petition and, as a result, she forwarded the petition to the City Council for consideration.³⁵ The City Council was then required to consider at its next regularly-scheduled meeting (on January 8, 2007) whether to repeal the Ordinance or submit the Ordinance to a vote in connection with the next scheduled City election (in May 2007).³⁶

³¹ See Ramos Affidavit at p. 6, par. 12.

³² See Farmers Branch Code of Ordinances, Article XI, sections 11.04, 11.05; *see also* Ramos Affidavit at p. 6, par. 12.

³³ See Ramos Affidavit at p. 6, par. 12.

³⁴ See *id.*

³⁵ See *id.* at p. 6, par. 13.

³⁶ See *id.*; *see also* Farmers Branch Code of Ordinances, Article XI, sections 11.04, 11.05.

However, prior to the meeting of the Farmers Branch City Council on January 8, 2007, City officials made statements indicating that the Council had already discussed, and perhaps had even decided, to forego repealing the Ordinance and, instead, to submit it to a vote in May 2007.³⁷ Specifically, *The Dallas Morning News* reported on December 19, 2006, that City Attorney Matthew Boyle stated that “Farmers Branch plans to call an election on the issue.”³⁸ In addition, Mayor Phelps said in a television interview on December 27, 2006: “I really think it will go to a vote of the citizens . . . at least from *past discussions* I think that’s what will wind up” happening.³⁹ Neither the “past discussions” to which Mayor Phelps referred nor any other discussions or deliberations among City Council members or other City officials regarding the repeal-vs.-vote issue were conducted in open or public meetings.⁴⁰ Thus, it appears that the City compounded one Texas Open Meetings Act violation with another.

E. **The Importance Of The Ordinance And The Preservation Of Open Government**

The Ordinance and other related laws and resolutions recently passed by the Farmers Branch City Council are of great concern to thousands of Farmers Branch residents.⁴¹ The citizens of Farmers Branch are entitled to know and understand how the City’s elected officials reached their decision to approve and adopt the Ordinance as written – including the details of any discussions, negotiations, debates, compromises, concessions, revisions, or modifications

³⁷ See Ramos Affidavit at p. 6, par. 14.

³⁸ See *id.*; see also Exhibit “10” to Ramos Affidavit, *The Dallas Morning News* article entitled, “Migrant rental rule deal may be sought,” dated December 19, 2006.

³⁹ See Ramos Affidavit at pp. 6-7, par. 14; see also Exhibit “11” to Ramos Affidavit, News 8 WFAA-TV interview with Mayor Bob Phelps on December 27, 2006 (emphasis added).

⁴⁰ See Ramos Affidavit at p. 7, par. 14.

⁴¹ See *id.* at p. 7, par. 15.

that were made with respect thereto.⁴² Based upon the foregoing facts, however, the citizens and residents of Farmers Branch were denied that right as a result of the manner in which the Ordinance was privately and secretly drafted, discussed, and agreed upon.⁴³

Accordingly, Plaintiff respectfully requests that the Court enjoin the Ordinance from going into effect pending final resolution of his claims under the Texas Open Meetings Act. Furthermore, because the City Council refused to repeal the Ordinance at its meeting on January 8, 2007, and in light of the fact that the Ordinance by its terms will become effective on January 12, 2007, Plaintiff respectfully requests that the Court issue a temporary restraining order prohibiting the Ordinance from taking effect until the Court has ruled on his motion for temporary injunction, which is set for hearing on January 22, 2007.⁴⁴

IV.

ARGUMENT AND AUTHORITIES

A. Standard For Temporary Injunctive Relief

The purpose of temporary injunctive relief is to preserve the status quo during the pendency of a legal proceeding.⁴⁵ Injunctive relief may be granted either on the basis of an express statutory provision or by application of general principles of equity.⁴⁶ Here, the

⁴² See *id.*; see also TEX. GOV'T CODE §§ 551.001 *et seq.* (Texas Open Meetings Act).

⁴³ See Ramos Affidavit at pp. 2-7; see also, Salerno Affidavit at pp. 2-3.

⁴⁴ See Ramos Affidavit at p. 7, par. 16.

⁴⁵ See *Fairfield v. Stonehenge Association Co.*, 678 S.W.2d 608, 612 (Tex. App. — Houston [14th Dist.] 1984).

⁴⁶ See *Garland v. Shepherd*, 445 S.W.2d 602, 604 (Tex. Civ. App. — Dallas 1969, no writ).

requested injunctive relief is authorized by TOMA,⁴⁷ Texas Civil Practice & Remedies Code § 65.011,⁴⁸ and principles of equity.⁴⁹

1. Injunctive relief under TOMA

Under Texas law, express statutory entitlements to injunctive relief (such as TOMA) supersede equitable requirements for injunctive relief.⁵⁰ Therefore, an applicant who seeks to enjoin statutory violations for which injunctive relief is specifically authorized is not required to show that legal remedies are inadequate or that it will suffer immediate or irreparable harm.⁵¹

TOMA specifically provides that “[a]n interested person . . . may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation.”⁵² Consequently, Plaintiff is entitled to a temporary injunction upon a showing that: (1) he pleaded a claim for permanent injunctive relief under TOMA; and (2) he has a probable right to the relief

⁴⁷ See TEX. GOV'T CODE § 551.142(a) (2006) (“An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body”).

⁴⁸ See TEX. CIV. PRAC. & REM. CODE § 65.011(1-5) (2006).

⁴⁹ See *Town of Palm Valley v. Johnson*, 87 S.W.3d 110, 111 (Tex. 2001) (holding that principles of equity apply in determining right to injunctive relief).

⁵⁰ See *Mortgagebank & Trust Inc. v. State*, 718 S.W.2d 865, 869 (Tex. App. — Austin 1986, no writ) (“The requirements for injunctive relief in this case, however, are defined by statute, and such express statutory language supersedes the equitable requirements argued by appellants which are generally applicable to common law injunctive relief.”).

⁵¹ See, e.g., *Republic Ins. Co. v. O'Donnell Motor Co.*, 289 S.W. 1064, 1066 (Tex. Civ. App. — Dallas 1926) (“The general rule at equity is that before injunctive relief can be obtained, it must appear that there does not exist an adequate remedy at law. This limitation, however, has no application where the right to relief is predicated on a statutory ground other than on the general principles of equity.”); *Furr v. Hall*, 553 S.W.2d 666, 672 (Tex. Civ. App. — Amarillo 1977); *Mortgagebank & Trust Inc.*, 718 S.W.2d at 869 (holding that applicant not required to show that it would suffer immediate or irreparable injury where injunctive relief was authorized by statute).

⁵² TEX. GOV'T CODE § 551.142(a) (2006).

he seeks.⁵³

2. Injunctive relief generally

To establish entitlement to temporary injunctive relief under Texas Civil Practice & Remedies Code § 65.011 or principles of equity, a claimant must: (1) plead some form of permanent relief; (2) demonstrate a probable right to the relief it seeks; and (3) show that it will suffer a probable, imminent, and irreparable harm in the interim.⁵⁴

B. The Court Should Issue A Temporary Restraining Order.

1. Plaintiff has pleaded a claim for permanent injunctive relief.

As required, Plaintiff has pleaded a claim for permanent injunctive relief against Defendants.⁵⁵

2. Plaintiff has demonstrated a probable right to recovery.

To establish a probable right of recovery, the applicant is not required to show that it will ultimately prevail on the merits at trial.⁵⁶ Instead, the applicant need only present evidence demonstrating that it has a probable right of recovery.⁵⁷

⁵³ See *id.*; see also TEX. GOV'T CODE § 551.142(a) (2006).

⁵⁴ See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 2002) (“[T]he Butnarus rely on general equitable principles, not a statutory injunctive-relief right, to enjoin Ford’s conduct. Thus, *Furr* does not apply. And the Butnarus had to establish in the trial court, in addition to the other temporary-injunction elements, an inadequate legal remedy.”); *Town of Palm Valley v. Johnson*, 87 S.W.3d at 111 (holding that injunctive relief under section 65.011(1) requires “the showing of irreparable harm otherwise required by equity.”).

⁵⁵ See Plaintiff’s Original Petition; *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968) (temporary injunction need only plead a cause of action and show a probable right of recovery).

⁵⁶ See *Keystone Life Ins. Co., v. Marketing Management, Inc.*, 687 S.W.2d 89, 92 (Tex. App. — Dallas 1985) (“To warrant a preliminary injunction an applicant . . . [plaintiff] is not required to establish that he will finally prevail in the litigation.”).

⁵⁷ See *Irving Bank & Trust Co. v. Second Land Corp.*, 544 S.W.2d 684, 687 (Tex. App. — Dallas 1976, writ ref’d, n.r.e.) (“[An applicant] need only offer evidence tending to prove a probable right to recovery and a probable injury if the injunction is not granted.”); *Baucum v. Texas Oil Corp.*, 423 S.W.2d 434, 439 (Tex. Civ. App. — El Paso 1967) (“We believe the law to be, when the petition alleges a cause

As demonstrated above and in the accompanying Ramos and Salerno Affidavits, Plaintiff has demonstrated a probable right of recovery. Pursuant to his Original Petition, Plaintiff seeks to enjoin the Ordinance because the City Council discussed, debated, negotiated, and agreed upon the terms of the Ordinance in closed, non-public meetings.⁵⁸ Indeed, it is evident that on November 13, 2006, the Farmers Branch City Council ratified that which had already been negotiated and agreed upon behind closed doors, thereby depriving the public its right to know how and why the City Council reached the decision to approve the controversial Ordinance.⁵⁹

TOMA requires that “[e]very regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”⁶⁰ Further, “[a]n action taken by a governmental body in violation of this chapter is voidable.”⁶¹ Additionally, as a matter of common law, actions taken in violation of TOMA are invalid because “it is axiomatic that local governing bodies are entities and that the members can perform no valid act except as a body at meetings properly convened and conducted.”⁶²

Based on these violations of TOMA in the adoption of the Ordinance and the continued violations of TOMA after the filing of this suit, the Court should suspend enforcement of the

of action and the evidence adduced tends to sustain it, that the trial court has broad discretion granted it in matters of this nature, and may issue a temporary injunction.”).

⁵⁸ See *id.*; see also Ramos Affidavit at pp. 2-7; Salerno Affidavit at pp. 2-3.

⁵⁹ See Ramos Affidavit at pp. 2-7; Salerno Affidavit at pp. 2-3.

⁶⁰ TEX. GOV'T CODE § 551.002 (2006).

⁶¹ TEX. GOV'T CODE § 551.002 (2006).

⁶² See *Toyah Ind. Sch. Dist. v. Pecos – Barstow Ind. Sch. Dist.*, 466 S.W.2d 377, 380 (Tex. Civ. App. — San Antonio 1971, no writ) (declaring action in violation of TOMA void although that version of TOMA did not so provide).

Ordinance pending a determination by this Court of Plaintiff's request for temporary injunction, and, thereafter, pending resolution of the merits of Plaintiff's case.⁶³

3. Plaintiff has demonstrated probable injury.

As set forth above, because TOMA specifically authorizes injunctive relief, Plaintiff is not required to show probable injury.⁶⁴ Nonetheless, it is evident that Plaintiff and other citizens of Farmers Branch will suffer irreparable harm unless a temporary restraining order and temporary injunction are issued. Indeed, courts have determined that violations of TOMA constitute irreparable injury.⁶⁵

In general, to show probable injury, a claimant must establish that it will suffer imminent

⁶³ See *id.*; see also *Esperanza Peace and Justice Center v. City of San Antonio*, 316 F.Supp.2d 433, 478 (W.D. Tex. 2001) ("It is apparent from the record that what occurred at the September 11, 1997 city council meeting was a mere ratification of the deal already struck in closed deliberations the day before. No deliberations occurred at the open meeting; those had already occurred in private. The council merely confirmed the deal already memorialized in the consensus memorandum. As the council had no power to deliberate and vote on the budget at a meeting not convened in accordance with the Act, it could not later ratify the void act at a properly convened meeting. The attempted ratification was ineffective, and the council's defunding of plaintiffs is void. To hold otherwise would permit a governmental body convened in accordance with the Act to 'rubber stamp' deliberations and decisions already made in violation of the Act. It would also allow evisceration of the Act's worthy goals of ensuring the public's right to know what decisions government officials make and to have those officials articulate fully the basis on which they act."); *Willmann v. City of San Antonio*, 123 S.W.3d 469, 481 (Tex. App. — San Antonio 2003) (reversing grant of summary judgment in favor of city where "[a]t the open meeting, the committee's recommendations were approved without meaningful discussion by the City Council.").

⁶⁴ See, e.g., *Republic Ins. Co.*, 289 S.W. at 1066 ("The general rule at equity is that before injunctive relief can be obtained, it must appear that there does not exist an adequate remedy at law. This limitation, however, has no application where the right to relief is predicated on a statutory ground other than on the general principles of equity."); *Furr*, 553 S.W.2d at 672; *Mortgagebank & Trust Inc.*, 718 S.W.2d at 869 (holding that applicant not required to show that it would suffer immediate or irreparable injury where injunctive relief was authorized by statute).

⁶⁵ See *Matagorda County Hosp. Dist. v. City of Palacios*, 47 S.W.3d 96, 102 (Tex. App. — Corpus Christi 2001, no pet.) (finding inadequate remedy at law where in deciding to close a hospital county violated TOMA, because no other means exists to redress TOMA violations); *Finlan v. City of Dallas*, 888 F. Supp. 779, 784 (N.D. Tex. 1995) ("The Court determines that Plaintiffs and the other taxpayers of Dallas would be irreparably harmed by their elected officials continuing to violate the TOMA, a harm that monetary damages cannot address.").

harm and irreparable injury, and that it has no adequate legal remedy.⁶⁶ An injury is irreparable if it cannot be adequately compensated in damages or if it cannot be measured by any certain pecuniary standard.⁶⁷ Further, where the facts conclusively show that a party is violating the applicable law, there is no discretion to be exercised and the violation must be enjoined.⁶⁸

As set forth above, Defendants violated TOMA in drafting, debating, and approving the Ordinance “behind closed doors” and out of public view. As a consequence, citizens of Farmers Branch, including Plaintiff, have been deprived of their right to know how and why their City Council reached the decision to approve the controversial Ordinance.⁶⁹ The citizens of Farmers Branch continue to be harmed because Defendants continue to violate TOMA with regard to the Ordinance, agreeing outside of the public eye to refuse to repeal the Ordinance and instead place the Ordinance on the May 2007 ballot and enforce the Ordinance until then.⁷⁰ Therefore, in the absence of a temporary restraining order and a temporary injunction, the citizens of Farmers Branch, including Plaintiff, will be irreparably harmed, as the Ordinance which was negotiated, deliberated upon, and ratified in violation of TOMA, will become a *fait accompli*.

⁶⁶ See *T-N-T Motorsports v. Hennessey Motorsports*, 965 S.W.2d 18, 24 (Tex. App. — Houston [1st Dist.] 1998, no pet.) (“Probable injury includes elements of imminent harm, irreparable injury, and no adequate remedy at law for damages.”); *Irving Bank & Trust*, 544 S.W.2d at 687-88.

⁶⁷ See *Butnaru v. Ford Motor Co.*, 84 S.W.3d at 204.

⁶⁸ See *Green v. Unauthorized Practice of Law Committee*, 883 S.W.2d 293, 298 (Tex. App. — Dallas 1994) (“Where the facts conclusively show that a party is violating the law, the trial court should enjoin the violation, and in such case, there is no discretion to be exercised.”); *Priest v. Texas Animal Health Commission*, 780 S.W.2d 874 (Tex. App. — Dallas 1989).

⁶⁹ See Ramos Affidavit at p. 7, par. 15.

⁷⁰ See Ramos Affidavit at pp. 6-7, par. 12-14; Exhibit “1” to Ramos Affidavit (Ordinance No. 2892 becomes effective January 12, 2006); see also Exhibits “10” and “11” to Ramos Affidavit (interviews of Defendant Phelps and City Attorney Boyle stating the council will call an election regarding Ordinance 2892).

V.

REQUEST FOR RELIEF

WHEREFORE Plaintiff respectfully requests that the Court enter a temporary restraining order barring enforcement of the Ordinance pending the Court's ruling on Plaintiff's request for temporary injunction, which is set for hearing before this Court on January 22, 2007, and grant Plaintiff all other appropriate relief.

Respectfully submitted,

BICKEL & BREWER STOREFRONT, P.L.L.C.

By: 

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**ATTORNEYS FOR PLAINTIFF
GUILLERMO RAMOS**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via facsimile and hand delivery upon the following on this 9th day of January 2007.

Matthew Boyle
ASSISTANT CITY ATTORNEY
BOYLE & LOWRY, L.L.P.
4201 Wingren, Ste. 108
Irving, Texas 75062
Attorney for Defendants


James S. Renard

CAUSE NO. 06-12227-C

2007 JUN -9 PM 2:08
IN THE DISTRICT COURT OF

GUILLERMO RAMOS,

Plaintiff,

v.

THE CITY OF FARMERS BRANCH,
TEXAS; BOB PHELPS, in his official
capacity; TIM O'HARE, in his official
capacity; BILL MOSES, in his official
capacity; CHARLIE BIRD, in his official
capacity; JAMES SMITH, in his official
capacity; and BEN ROBINSON, in his
official capacity,

Defendants.

DALLAS COUNTY, TEXAS

68TH JUDICIAL DISTRICT

AFFIDAVIT OF TONY SALERNO

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned authority, personally appeared Tony Salerno who, being duly sworn upon his oath, deposed and stated as follows:

1. My name is Tony Salerno. I am over the age of eighteen (18) years, and I am fully competent in all respects to make this Affidavit. The statements herein are true and correct and, unless otherwise qualified, are within my personal knowledge.

2. I am a resident of Farmers Branch, Texas.

3. I have read and am familiar with Ordinance No. 2892 of the City of Farmers Branch (the "Ordinance"), adopted November 13, 2006, entitled "An Ordinance Amending Chapter 26, Businesses, Article IV Apartment Complex Rental, Mandating a Citizenship Certificate Requirement Pursuant to 24 C.F.R. 5 *et seq.*; Providing for Enforcement; Providing a

Penalty; Providing a Severability Clause; Providing an Effective Date; and Declaring an Emergency.”

4. On Tuesday, November 14, 2006, the day after the Farmers Branch City Council adopted the Ordinance, I spoke with Farmers Branch Mayor Bob Phelps (whom I have known, and from whom I have purchased various insurance coverages, over the past 14 years). During that conversation, Mayor Phelps relayed to me the content of conversations he had with Council members before the “public” vote on the Ordinance, which occurred on November 13, 2006. Mayor Phelps said that he had tried to talk to Council Members “til he was blue in the face” to get them to vote against the Ordinance. He specifically mentioned discussions in which he asked Council members how they were likely to vote and in which he attempted to persuade them to vote against the Ordinance. Mayor Phelps told me that, based on those discussions with Council members, he thought the vote would be 3 to 2 against the Ordinance. However, he said that Councilmen Moses and Byrd were ultimately pressured by fellow Councilman Tim O’Hare to vote in favor of the Ordinance. To my knowledge, none of the Mayor’s above-described discussions with City Council members took place in open or public meetings.

5. Also, on November 14, 2006, Mayor Phelps assured me that he did not have a vote with respect to the Ordinance and, therefore, that I should not hold the passage of the Ordinance against him or take my insurance business elsewhere.

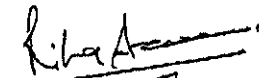
6. On Saturday, January 6, 2007, I had a discussion with City Councilman Jim Smith to inquire what he thought would occur with respect to the Ordinance at the upcoming City Council meeting scheduled for Monday, January 8, 2007. During the course of that discussion, Councilman Smith told me that the reason he voted in favor of the Ordinance on November 13, 2006, was a concession made by some of the other City Council members with respect to the resolution declaring English as the official language of the City of Farmers Branch. Specifically, Councilman Smith told me that he voted in favor of the Ordinance in consideration of the

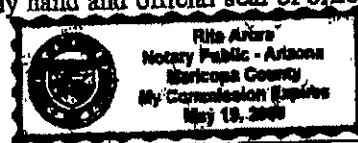
agreement by some of the other Council members not to make the English-as-official-language resolution (which was also adopted on November 13, 2006) applicable to public libraries and recreation centers. To my knowledge, the discussions, deliberations, and informal votes among the members of the City Council described to me by Councilman Smith did not occur in open and public deliberations.

This concludes my testimony.


Tony Salerno

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, on this _____ day of January, 2007, to certify which witness my hand and official seal of office.

— 
1. 9. 07



Notary Public in and for the State of Texas

4/1/2009

GUILLERMO RAMOS,

Plaintiff,

v.

THE CITY OF FARMERS BRANCH,
TEXAS; BOB PHELPS, in his official
capacity; TIM O'HARE, in his official
capacity; BILL MOSES, in his official
capacity; CHARLIE BIRD, in his official
capacity; JAMES SMITH, in his official
capacity; and BEN ROBINSON, in his
official capacity,

Defendants.

IN THE DISTRICT COURT OF

2007 JUN -9 PM 2:08

DALLAS COUNTY, TEXAS

68TH JUDICIAL DISTRICT

AFFIDAVIT OF GUILLERMO RAMOS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me the undersigned authority, personally appeared Guillermo Ramos, who being duly sworn upon his oath, deposed and stated as follows:

1. My name is Guillermo Ramos. I am over the age of eighteen (18) years, and I am fully competent in all respects to make this Affidavit. The statements herein are true and correct and, unless otherwise qualified, are within my personal knowledge.

2. I am a resident of Farmers Branch, Texas.

A. Farmers Branch Ordinance No. 2892

3. I have read and am familiar with Ordinance No. 2892 of the City of Farmers Branch (the "Ordinance"), adopted as a so-called "emergency measure" on November 13, 2006, entitled "An Ordinance Amending Chapter 26, Businesses, Article IV Apartment Complex Rental, Mandating a Citizenship Certificate Requirement Pursuant to 24 C.F.R. 5 *et seq.*; Providing for Enforcement; Providing a Penalty; Providing a Severability Clause; Providing an

Effective Date; and Declaring an Emergency.” A true and correct copy of the Ordinance is attached hereto as Exhibit “1.”

4. The Ordinance provides, as a condition to entering into any “apartment complex” lease or rental agreement, including any renewals or extensions thereof, that “the owner and/or property manager” shall require the submission of satisfactory “evidence of citizenship or eligible immigration status for each tenant family,” and that such evidence is required of “[e]ach family member, regardless of age.”¹ The Ordinance recites that its “sole intention” is “for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws.”²

5. The Ordinance has generated an extraordinary amount of controversy nationwide and, regrettably, has divided the City and residents of Farmers Branch like no other municipal ordinance of which I am aware.

B. The Farmers Branch City Council Adopted The Resolution In The Apparent Absence Of Any Open And Public Deliberations.

6. CNN, citing the Associated Press, reported that the Farmers Branch City Council passed the Ordinance by a unanimous vote “without discussion,” and only “took comment from the public afterward.”³ The minutes of the City Council’s regular meeting on November 13, 2006, confirm that account. Specifically, the minutes demonstrate that, after the Council’s adoption of the “Resolution Declaring English as the Official Language of Farmers Branch” (Resolution No. 2006-130), “Mayor Phelps read into the record Ordinance No. 2892 in its

¹ See Exhibit “1” attached hereto.

² *Id.*

³ See Exhibit “2” attached hereto, CNN.com article entitled, “Dallas suburb cracks down on illegal immigrants,” dated November 14, 2006.

entirety,”⁴ which was followed immediately by “[a] motion by Deputy Mayor Pro Tem O’Hare seconded by Mayor Pro Tem Robinson, all voting ‘aye,’ adopt[ing] Ordinance No. 2892 with effective date beginning January 12, 2007.”⁵ Only after adoption of the Ordinance do the minutes reflect that the Council permitted “public comments from Farmers Branch residents,”⁶ as well as from “non-Farmers Branch residents.”⁷

7. Another news source, MSNBC, also reported that the City Council’s action was undertaken “without discussion,” albeit after “an all-day closed meeting” with, among other persons, attorneys with the Mexican American Legal Defense and Education Fund, who apparently told Council members that the Ordinance and other proposed measures would “violate federal law.”⁸

8. Although agenda items for City Council “study sessions” on August 7 and 21, 2006, show that the Council was to discuss “immigration issues”⁹ and “issues related to illegal immigration”¹⁰ on those occasions, that was several *months prior* to the drafting and public disclosure of the Ordinance (and, therefore, did not directly relate to the Ordinance). Indeed, at no time prior to November 13, 2006, does it appear that the members of the City Council openly and publicly debated, deliberated on, or otherwise discussed, expressed, or exchanged comments

⁴ Exhibit “3” attached hereto, City of Farmers Branch City Council Regular Meeting, Monday, November 13, 2006, 6:30 p.m., at Vol. 98, page 31.

⁵ *Id.* at page 36

⁶ *Id.* at pages 36-38.

⁷ *Id.* at pages 41-42.

⁸ See Exhibit “4” attached hereto, MSNBC.com article entitled, “Texas town OKs anti-immigrant measures,” dated November 14, 2006.

⁹ See Exhibit “5” attached hereto, City of Farmers Branch City Council Study Session Agenda for meeting scheduled for August 7, 2006.

¹⁰ See Exhibit “6” attached hereto, City of Farmers Branch City Council Study Session Agenda for meeting scheduled for August 21, 2006.

or opinions regarding the terms, provisions, substance, purpose, or effect of the Ordinance. Clearly, the Ordinance represented a “secret deal” among the Council’s members. It is no wonder, then, why CNN quoted City Councilman Tim O’Hare as having said: “We passed this expecting to be sued.”¹¹

9. Furthermore, I am aware of no evidence that the terms and provisions of the Ordinance were published or otherwise made known to the citizens of Farmers Branch prior to the regular meeting of the City Council on the evening of November 13, 2006, when, apparently for the first time, the Ordinance was disclosed (by reading it aloud) and then, immediately thereafter, voted upon and approved by the Council members without any public discussion or debate. The agenda for the meeting, which was purportedly posted on the bulletin board at City Hall on Friday, November 10, 2006, at 1:30 p.m.¹² did not mention, let alone describe, the Ordinance – although there are numerous other proposed ordinances and resolutions identified therein.¹³ In fact, *The Dallas Morning News* reported in late October that the City Council was merely “expected to discuss *potential* ordinances regarding illegal immigration at its November 13 meeting,” and that it was “unclear” just “what will be presented by the city attorney next month.”¹⁴ Thus, not only was the ordinance passed without open discussion, it was apparently not even made known to the public (and then only orally) until minutes before passage.

¹¹ See Exhibit “2.”

¹² See Exhibit “7” attached hereto, City of Farmers Branch City Council Regular Meeting Agenda for meeting scheduled November 13, 2006, at 5.

¹³ *Id.* at 1-5.

¹⁴ See Exhibit “8” attached hereto, DallasNews.com article entitled, “Illegal immigration rules still on table,” dated October 25, 2006 (emphasis added).

C. The City Council's Deliberations With Respect To The Ordinance Took Place "Behind Closed Doors."

10. In their answer to my original petition in this lawsuit, Defendants admit that the City Council had "discussions and deliberations" relating to the Ordinance "behind closed doors" and in "closed session," but assert that such communications were for the purpose of soliciting and receiving attorney-client advice and discussing contemplated litigation.¹⁵ Given the fact that there was no open and public discussion or debate by the City Council about the substance and language of the Ordinance itself, all such discussion must have been conducted in private meetings closed off from any public scrutiny or citizen participation. For example, in an interview with Sam Baker of KERA Channel 13 television and 90.1 radio in Dallas, Farmers Branch Mayor Bob Phelps, commenting upon the City Council's passage of the Ordinance, stated: "I thought there would be a split vote, but there was not."¹⁶ Of course, it is clear from the comment by Mayor Phelps that he had spoken with Council members regarding the outcome of the vote prior to the official vote and not in an open meeting.

11. Thus, I believe that it is *impossible* for the Ordinance to have been conceived, drafted, reviewed, revised, edited, shared with City Council members, and thereafter voted upon without at least *some* discussion or comment between and among those members regarding its content, operation, and effect (going beyond the solicitation or receipt of legal advice or contemplation of litigation). Indeed, I believe that it is shameful that the City of Farmers Branch and its elected officials have resorted to those excuses to shield the *entirety* of their private discussions about the Ordinance from the voters and residents of Farmers Branch.

¹⁵ See Defendants' Plea to the Jurisdiction, Special Exceptions, Motion to Dismiss, Motion for Protective Order, and Original Answer, filed December 22, 2006, at 2.

¹⁶ See Exhibit "9" attached hereto, transcript of Sam Baker interview of Farmers Branch Mayor Bob Phelps, conducted on December 7, 2006.

D. The City Council Compounded One Apparent Violation Of The Texas Open Meetings Act With Yet Another Such Violation.

12. Following the passage of the Ordinance, I and a number of other citizens of Farmers Branch organized to challenge the new law by means of a referendum petition. Pursuant to the City Charter, if five percent (5%) of the City's registered voters petition the City, the Ordinance must be either: (1) repealed by the City Council; or (2) submitted to the voters of the City for approval or disapproval. On December 13, 2006, I filed a referendum petition with the City protesting the "adoption, application and enforcement of the Ordinance in the absence of voter approval." The petition contained over 1,700 signatures, including those of over 1,200 Farmers Branch registered voters (well in excess of the threshold necessary to cause the City Council to either repeal the Ordinance or submit it to a vote).

13. On or about December 28, 2006, City Secretary Cindee Peters verified that at least 5% of the City's registered voters had signed the referendum petition and, as a result, she forwarded the petition to the City Council for consideration. It is my understanding that the City Council was then required to consider at its next regularly-scheduled meeting (on January 8, 2007) whether to repeal the Ordinance or submit the Ordinance to a vote in connection with the next scheduled City election (in May 2007).

14. However, prior to the meeting of the Farmers Branch City Council on January 8, 2007, City officials made statements indicating that the Council had already discussed, and perhaps had even decided, to forego repealing the Ordinance and, instead, to submit it to a vote in May 2007. Specifically, *The Dallas Morning News* reported on December 19, 2006, that City Attorney Matthew Boyle stated that "Farmers Branch plans to call an election on the issue."¹⁷ In addition, Mayor Phelps said in a television interview on December 27, 2006: "I really think it

¹⁷ See Exhibit "10" attached hereto, *The Dallas Morning News* article entitled, "Migrant rental rule deal may be sought," dated December 19, 2006.

will go to a vote of the citizens . . . at least from *past discussions* I think that's what will wind up" happening.¹⁸ To my knowledge, neither the "past discussions" to which Mayor Phelps referred nor any other discussions or deliberations among City Council members or other City officials regarding the repeal-vs.-vote issue were conducted in open or public meetings. Thus, it appears that the City compounded one Texas Open Meetings Act violation with another.

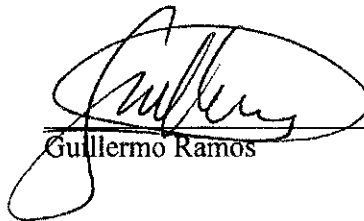
E. The Importance Of The Ordinance And The Preservation Of Open Government.

15. The Ordinance and other related laws and resolutions recently passed by the Farmers Branch City Council are of great concern and interest to me and to thousands of other Farmers Branch residents. As a citizen of Farmers Branch, I believe that I am entitled to know and understand how the City's elected officials reached their decision to approve and adopt the Ordinance as written – including the details of any discussions, negotiations, debates, compromises, concessions, revisions, or modifications that were made with respect thereto. Based upon the facts as I understand them, I believe that I and other citizens and residents of Farmers Branch were denied that right as a result of the manner in which the Ordinance was privately and secretly drafted and discussed.

16. Accordingly, I respectfully request that the Court enjoin the Ordinance from going into effect pending final resolution of my claims under the Texas Open Meetings Act. Furthermore, because the City Council refused to repeal the Ordinance at its meeting on January 8, 2007, and in light of the fact that the Ordinance will become effective by its terms on January 12, 2007, I respectfully request that the Court issue a temporary restraining order prohibiting the Ordinance from taking effect until the Court has ruled on my motion for temporary injunction, which is set for hearing on January 22, 2007.

¹⁸ See Exhibit "11" attached hereto, transcript of News 8 WFAA-TV interview with Mayor Bob Phelps on December 27, 2006 (emphasis added).

This concludes my Affidavit testimony.


Guillermo Ramos

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this 9th
day of January, 2007, to certify which witness my hand and official seal of office.



Notary Public in and for the State of Texas

