CAUSE NO. D-1-GN-14-005185

AUSTIN APARTMENT ASSOCIATION	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
CITY OF AUSTIN	§	
	§	
Defendant	§	345TH **JUDICIAL DISTRICT**

PLAINTIFF'S VERIFIED ORIGINAL PETITION
FOR DECLARATORY AND INJUNCTIVE RELIEF
AND REQUEST FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

Plaintiff Austin Apartment Association ("Association") files this Original Petition for Declaratory and Injunctive Relief against the City of Austin ("City"), and as grounds for this lawsuit will show that the City's Ordinance amending City Code 5-1[1] contravenes both state and federal law and should be declared invalid and unenforceable and its enforcement enjoined. The challenged ordinance is set to go into effect on January 12, 2015, and property owners will be required to take substantial steps before that date. The Association therefore seeks a temporary injunction and, if necessary, a temporary restraining order to enjoin enforcement of the ordinance.

I.
DISCOVERY CONTROL PLAN

1. The Association intends that discovery be conducted under Level 2 and affirmatively pleads that it seeks injunctive relief. *See* TEX. R. CIV. P. 190.3.

[1] The ordinance was Agenda Item No. 50 on the City's December 11, 2014 agenda.

II.
PARTIES AND SERVICE OF PROCESS

2. Plaintiff Austin Apartment Association is a trade association composed of diverse groups that represent the rental housing industry and serve the rental housing needs across the full spectrum of economic levels. The Association represents rental units serving over 192,000 households within Travis County and the 10 surrounding counties. It files this suit on behalf of its Austin property owner members who will be harmed by the ordinance.

3. Defendant City of Austin is sued. The City may be served by serving the City's mayor, clerk, secretary, or treasurer at the City's offices at 301 West 2nd Street, Austin, Texas 78701.

4. Because a constitutional challenge to the ordinance is made, the Honorable Greg Abbott, the Attorney General of Texas, is served with process at 300 W. 15th Street, Austin, Texas 78701, as required by Texas Civil Practice and Remedies Code, Section 37.006(b).

III.
JURISDICTION AND VENUE

5. This suit is brought under Texas Civil Practice and Remedies Code, Chapters 37 and 65. The lawsuit is brought in Travis County, the county of the City's principal office, as permitted by Texas Civil Practice and Remedies Code, Section 15.002(3).

IV.
STANDING

6. The ordinance (**Exhibit A**) will govern most Austin rental property owners, including (1) any property owner who owns more than three rental units and (2) any property owner who owns a single unit (including a rental house or duplex) that is managed by a third party. *See* City Code 5-1-14. The Association brings this lawsuit on behalf of its more than 1,000

members, most of whom will be harmed by the ordinance. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 447-48 (Tex. 1993). These members each have standing to sue on their own behalf to challenge the ordinance that imposes invasive contractual and regulatory obligations that violate both state and federal law. The interests the Association seeks to protect are germane to the organization's purpose, which includes fighting for the rights and interests of its members on a local, state, and national level. The declaratory and injunctive relief requested in this lawsuit will affect the vast majority of the Association's membership and pursuing these claims does not require the participation of any individual member. *See id.*

V.
BACKGROUND

7. In 1991, the legislature enacted a statute authorizing Texas cities to adopt fair housing ordinances "substantially equivalent to those granted under federal law," but restricting cities from adopting more intrusive ordinances. Texas Local Government Code, Section 214.903 (**Exhibit B**) states:

> (a) The governing body of a municipality may adopt fair housing ordinances that provide fair housing rights, compliance duties, and remedies that are substantially equivalent to those granted under federal law. Enforcement procedures and remedies in fair housing ordinances may vary from state or federal fair housing law.
>
> (b) Fair housing ordinances that were in existence on January 1, 1991, and are more restrictive than federal fair housing law shall remain in effect.

8. The federal Fair Housing Act (**Exhibit C**) provides that "it shall be unlawful" to (a) refuse to sell or rent or refuse to negotiate for the sale or rental of any dwelling, (b) discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, (c) advertise with respect to the sale or rental of a dwelling indicating any preference, limitation, or discrimination, and (d) represent that a dwelling is not available for inspection, sale, or rental

when such dwelling is in fact so available, based on an applicant's status in a number of constitutionally protected classes—***race, color, religion, sex, handicap, familial status,*** and ***national origin***. *See* 42 U.S.C. ¶ 3604. The Texas Fair Housing Act (**Exhibit D**) includes the same protected classes (race, color, religion, sex, familial status, or national origin). TEX. PROP. CODE § 301.021.

9. On December 11, 2014, the City passed an ordinance amending City Code Chapter 5-1 that is more restrictive than federal and state law. The ordinance recognizes that "even though federal law protects individuals against discrimination in housing based on race, color, sex, religion, disability, familiar status or national origin, it is the policy of the City" to also prohibit discrimination based on a number of additional classifications—now including "***source of income***." *See* **Exhibit A**, at Part 1: § 5-1-2(B). The federal Fair Housing Act does not include source of income as a protected class. *See* 42 U.S.C. §§ 3604-3606 & 3617. Neither does the Texas Fair Housing Act. *See* TEX. PROP. CODE § 301.021.

10. The ordinance does not just preclude Austin property owners from refusing to rent to anyone on the basis of their "source of income." It requires the property owners to favor certain renters over the public at-large. The problem arises because the term "source of income" is defined as "lawful and verifiable income including, but not limited to, ***housing vouchers and other subsidies provided by government*** or non-governmental entities, child support, or spousal maintenance, but does not include future gifts." **Exhibit A**, at Part 2 (emphasis added). The ordinance therefore necessarily forces property owners to contract with the federal government

under the Section 8 Housing Voucher Program.[2] Under federal law, the Section 8 program has always been intended as a voluntary program for property owners, and those property owners who volunteer to participate in the program have to accept substantially one-sided lease terms for participating renters. *See* 42 U.S.C. § 1437f.

11. Forcing Austin property owners to participate in the voluntary Section 8 program will have several significant impacts. First, to participate in the program, property owners are required to enter into a Housing Assistance Payment (HAP) Contract with HUD (**Exhibit F**). Thus, all Austin property owners subject to the ordinance will be required to contract with the federal government, whether they want to or not. Notably, Section 8 is a historically troubled and controversial program. Many property owners rightfully choose not to participate in the program.

12. Second, by forcing participation in the Section 8 program, the City is also requiring involuntary subjection to a complicated administrative labyrinth. The Housing Choice Voucher Program Administrative Plan covers nearly 400 pages.[3] Owners and managers of market properties are not now, but will in short order (during the winter holidays) have to become equipped, trained, and prepared to operate their properties under the housing voucher program. The ordinance will impose substantial legal and administrative compliance costs.

13. Third, nearly 90 percent of Austin rentals operate under standard and generally accepted contract terms based on the Texas Apartment Association Lease (**Exhibit G**). But for those participating in Section 8, their lease must instead comply with significantly different and

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[2] The City has previously added other protected classes that exceed federal and state law. Those classes—creed, student status, marital status, sexual orientation, and gender identity—differ significantly from the "source of income class." Like the protected classes under federal and state law, none of these classes require a property owner to contract with the government or accept government-mandated lease terms in lieu of market lease terms.

[3] The Housing Choice Voucher Program Guidebook is available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook.

one-sided government-mandated HAP contract terms. *See* **Exhibit H**: Section 8 Lease Addendum; *see also* **Exhibit F**. Thus, contrary to the purpose of an anti-discrimination requirement—ensuring equal treatment—the government-mandated terms create a special class of residents with more rights and fewer responsibilities than other residents.

14. As well, the Section 8 program requirements and administrative procedures impose costs, vacancies, and delays, which add risk and uncertainty for property owners and will have a material negative economic impact. Some of the significant contractually-required distinctions between operating a property that participates in the Section 8 program and one that does not are:

In a Section 8 property:	In a market transaction:
No modifications can be made to the HAP contract terms. The initial lease period must generally be for one year. The HAP contract cannot be assigned to a new property owner without permission from the housing authority.	The owner and the resident are free to negotiate and agree upon whatever lease terms meet their needs. The initial lease period may vary in length depending on market conditions and what is desirable to the resident and owner. There is no restriction on the owner's assignment of the lease.
The resident cannot move in until the housing authority independently inspects and approves the unit. This could cause a delay of 2 or 3 weeks while rent is not paid and the unit remains vacant. Detailed quality standards beyond those imposed by local and state law (including specifications about appliances, toilet, number and separation of rooms, window style and accessibility, electrical outlets, HVAC, structural materials, paint, and a myriad of other detailed items) must be met to pass the inspection.	Under local and state laws, landlords must comply with basic owner obligations (keeping common areas clean, maintaining fixtures and HVAC, complying with safety and sanitation laws, and making reasonable repairs). There is no inspection delay. The resident has the right to inspect the unit when first visiting the property.
The rent amount is decided by HUD and the voucher is for the amount of approved rent. The owner may have to wait 30 days or more to get the first payment. HUD is not required to pay late fees for late payments if HUD determines the lateness is due to factors outside of its control.	The owner and the resident agree on the rental amount. Rent for the first month is typically paid in advance. The resident's failure to timely make rental payments is a lease violation and late fees may be assessed.

In a Section 8 property:	In a market transaction:
During a lease period, if there is a change in the resident's income or family makeup, the housing authority may make adjustments to the rental amount. Change in occupancy also affects the resident's unit size and the resident may be required to transfer to another unit if occupancy changes. The owner then has to allow the tenant to leave the unit, even if the lease has not expired.	The resident is typically required to meet the owner's rental criteria, which may include an occupancy policy. A change in the resident's income is immaterial to the resident's rent or unit. A change in the occupancy will typically not require the resident to transfer to another unit, unless the lease is up and the resident exceeds an owner's occupancy limit.
If the HAP contract terminates for any reason, even due to the resident's material noncompliance or loss of housing assistance, the lease will automatically terminate.	A resident's default does not relieve the resident of liability for future rent.
For lease renewals, rent increases when income is recertified 60 days before renewal and approved by the housing authority. This can delay the start date of a new lease and the new rent. The housing authority can also deny the increase or lower the rent if it feels the fair market rent is lower. Inspections occur every year during renewal.	The owner and resident are free to negotiate new rental rates for a new term.
A unit must be repaired to pass inspection, whether or not the damage is caused by the resident. While the resident can be charged for damages, the owner must pay for the cost to repair to pass inspection. And until the repair is made, rent will not be paid.	A resident may not typically withhold rent pending a repair request. If a resident damages the property, under most leases, the resident would be required to pay or reimburse the owner for damages.

By forcing property owners to participate in the Section 8 program, the City is not only requiring the owners to involuntarily contract with the federal government, but also to accept significant and substantially different one-sided government-mandated lease terms that participants in the general rental market do not contract for.

15. The Association supports the Section 8 program as a voluntary federal program—but participation should remain voluntary, as intended under federal law. The City's ordinance effectively transforms a voluntary federal program into a mandatory one for thousands of Austin property owners, many of whom have business reasons for deciding not to participate

in the program. The ordinance contravenes state and federal law. It should be declared invalid and unenforceable and its enforcement enjoined.

VI.
CAUSES OF ACTION
COUNT I
Request for Declaratory Relief

16. The preceding paragraphs are incorporated here by reference.

17. The Association seeks a declaratory judgment under Texas Civil Practice and Remedies Code, Chapter 37.

18. The Association seeks a declaration that the ordinance, which adds "source of income" as a protected class in the City's fair housing ordinance, contravenes both state and federal law and is invalid and unenforceable.

19. While home-rule cities possess broad powers of self-government, there are limits to that power. A city ordinance that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's and Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993). Likewise, an ordinance that attempts to regulate a subject matter preempted by federal law is unenforceable to the extent it conflicts with the federal statute. *Cardinal Towing & Auto Repair, Inc. v. City of Bedford, Tex.*, 180 F.3d 686, 690 (5th Cir. 1999). And an ordinance is unenforceable if it violates the Texas or U.S. constitution. *Dallas Merchant's and Concessionaire's Ass'n*, 852 S.W.2d at 491-92; *Cardinal Towing & Auto Repair,* 180 F.3d at 690.

20. The ordinance is invalid and thus unenforceable because it (1) is preempted by state law, (2) is preempted by federal law, and (3) violates the Texas and U.S. constitutions.

21. *First*, the ordinance is preempted by Texas Local Government Code, Section 214.903. That statute grants Texas cities the authority to adopt fair housing ordinances that are "substantially equivalent to those granted under federal law," but restricts cities from adopting a substantively different ordinance. Specifically:

- The first sentence of Subsection (a) allows municipalities to adopt fair housing ordinances that provide fair housing rights (i.e. protected classes), compliance duties, and remedies "that are substantially equivalent to those granted under federal law."
- But the second sentence of Subsection (a) expressly limits variation from federal fair housing laws to "enforcement procedures and remedies."
- Further, Subsection (b) only permits a city's "more restrictive" ordinance if it was in effect before January 1, 1991.

Thus, after January 1, 1991, municipalities may deviate from the federal fair housing laws only as to procedure and remedies, but may not establish a different protected class.

22. Because the City's ordinance is not "substantially equivalent to federal law," but instead attempts to add a new protected class, it is preempted by Section 214.903. The federal Fair Housing Act prohibits discrimination based on one's identity—an applicant's "race, color, religion, sex, handicap, familial status, and national origin." It does not prohibit discrimination based on income. *See* 42 U.S.C. § 3604. Instead, at the federal level, participation in the Section 8 program was intended to be and always has been voluntary. *See Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998); *Franklin Tower One, L.L.C. v. N.M.*, 725 A.2d 1104, 1113 (N.J. 1999).

23. The new "source of income" protected class is significantly different, and imposes a different burden, than the protected classes under federal and state law. Race, color, religion, sex, handicap, familiar status, and national origin are all constitutionally protected classes pertaining to one's identity. But preventing discrimination on those bases does not require

property owners to contract with the government, participate in a complicated government bureaucracy, accept government-imposed lease terms, or take on economic burdens.

24. In contrast, the City's ordinance forces involuntary participation in the Section 8 program and requires acceptance of government-mandated lease terms. In the guise of preventing discrimination based on "source of income," the ordinance conversely creates a special class of residents with more rights and fewer responsibilities than other residents. And the significant administrative burdens imposed on property owners who participate in the Section 8 program drive up costs and increase vacancies, through additional complicated legal guidelines. regulatory inspections, payment delays, different thresholds for evicting residents, and the government's ability to terminate a Section 8 lease with no penalty, all of which cause economic risk for property owners.

25. *Second*, because the City's ordinance makes participation in the federal Section 8 program mandatory, it is also preempted by federal law. The federal low-income housing assistance statute, 42 U.S.C. § 1437f (**Exhibit E**), sets out the comprehensive regulatory scheme governing the Section 8 program. And the statute provides that a property owner's participation in the program is voluntary. A property owner does not have to accept government rental vouchers and, as a consequence, need not accept federal government regulatory control. *See, e.g.*, 42 U.S.C. § 1437f(d)(1)(A) ("the selection of tenants shall be the function of the owner"); *see also* 24 C.F.R. § 982.452(b)(1). The City's ordinance conflicts with this statutory scheme by requiring Austin property owners to accept government vouchers and, as a result, accept federal government regulatory control.

26. Numerous courts have refused to force property owners to involuntarily participate in the voluntary Section 8 program, recognizing that property owners have legitimate business reasons for refusing to participate in the program. For example:

- In *Salute*, the Second Circuit held: "We think that the voluntariness provision of Section 8 reflects a ***congressional intent*** that the ***burdens of Section 8 participation are substantial enough that participation should not be forced on landlords***." 136 F.3d at 300 (emphasis added). The "burden of participating in the Section 8 program cannot be viewed as imposing only reasonable costs or insubstantial burdens[.]" *Id.* at 301. To the contrary, "it is easy to conclude that, for landlords who reject voluntary Section 8 participation, the contract with the federal government, the retention of counsel to make the Section 8 arrangements, the requirements for compliance, and the limitations on use (actual and potential), are 'unreasonable costs,' an 'undue hardship,' and a 'substantial burden.'" *Id.*

- In *Knapp v. Eagle Property Management Corp.*, the Seventh Circuit noted that "[i]t ***seems questionable*** ... to allow a state to ***make a voluntary federal program mandatory***." 54 F.3d 1272, 1282 (7th Cir. 1995) (emphasis added). The court considered whether a state statute that prohibits property owners from discriminating on the basis of "lawful source of income" required owners to accept Section 8 vouchers. The court held that it does not. A statute requiring acceptance of Section 8 vouchers would only be enforceable if either: (1) the state "could accept non-participation in the program as a legitimate reason for the owner's action [declining to rent], thereby relieving him of liability" or (2) the requirement to rent to a tenant with a voucher could apply only to "an owner participating in the program, because only such owners could receive housing subsidies without being forced to enter a voluntary program." *Id.* at 1282-83.

- In *Dussault v. RRE Coach Lantern Holdings, LLC*, Maine's high court considered a statute that prohibited property owners from "refus[ing] to rent or impos[ing] different terms of tenancy to any individual who is a recipient of federal, state or local public assistance." 86 A.3d 52, 58 (Me. 2014). The court held that "a landlord does not violate the [statute] by offering apartments to recipients of public assistance on the same terms as it offers apartments to other potential tenants." *Id.* at 59-60. Thus, the court held that the statute did not force property owners to participate in the Section 8 program or to "accept terms of tenancy that are otherwise required only if the landlord chooses to participate in a voluntary federal program." *Id.* at 60.

- In *Edwards v. Hopkins Plaza Ltd. Partnership,* the Minnesota court of appeals held that "[b]ecause federal law does not require property owners to participate in Section 8 housing programs ... and because Minnesota law does not require such participation, ... continued participation in the program by a property owner is also voluntary. To conclude otherwise would be to force property owners to continue to participate indefinitely in a voluntary program against their will." 783

> N.W.2d 171, 179 (Minn. Ct. App. 2010). The court further held that "refusal to participate in a voluntary program for a legitimate business reason does not constitute discrimination under the [Minnesota Human Rights Act]." *Id.* at 177.

Because the City's ordinance attempts to make participation in the Section 8 program mandatory, it contravenes 42 U.S.C. § 1437f and should be declared invalid and thus unenforceable.

27. *Third*, the ordinance is contrary to Article I, Section 16 of the Texas Constitution, as well as Article I, Sections 17(a) and (19) of the Texas Constitution and Amendments V and XIV of the U.S. Constitution.

28. Texas courts have held that the right to freedom of contract is a fundamental right. "The right to enter into lawful contracts is one of the guaranties of the Texas Constitution. This guaranty is one of the essential liberties of the citizen, and cannot be nullified by legislative enactment[s]." *Travelers' Ins. Co. v. Marshall*, 124 Tex. 45, 76 S.W.2d 1007, 1025 (1934). Article I, Section 16 of the Texas Constitution mandates that "No bill of attainder, ex post facto law, retroactive law, ***or any law impairing the obligation of contracts***, shall be made." TEX. CONST. art. I, § 16 (emphasis added). Citing this provision, the Texas Supreme Court has repeatedly recognized "Texas' strong public policy in favor of preserving the freedom of contract":

> [I]f there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.

Fairfield Ins. Co. v. Stephens Martin Paving, LP, 246 S.W.3d 653 (Tex. 2008). Two related principles are equally important. The right to contract "necessarily implies the right to refuse to contract." *Hotel & Restaurant Employees' Int'l Alliance v. Longley*, 160 S.W.2d 124, 127 (Tex. Civ. App.—Eastland 1942, no writ) ("Any contract which one may make under constitutional

protection of his right of contract, he may refuse to make under the same constitutional protection."). And "[c]ontracts require mutual assent to be enforceable." *Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 635 (Tex. 2007).

29. The City's ordinance strips property owners of their freedom to contract (or not contract) in connection with the property they own. The ordinance requires property owners to participate in the Section 8 program and owners cannot participate in that program without signing a HAP Contract with HUD. Thus, owners are forced to contract with the federal government, whether they want to or not. The ordinance therefore violates Texas Constitution, Article I, Section 16.

30. Further, the ordinance burdens property rights in such a substantial manner so as to constitute a taking of property and violation of due process rights. The Texas Constitution declares that a person's property may not be taken for or applied to public use without adequate compensation, and protects persons from deprivation of property without due course of law. TEX. CONST. art. I, §§ 17(a), 19. The U.S. Constitution similarly prohibits a government action (including a statute or ordinance) that has the effect of depriving a person of property without due process of law, and further mandates that private property may not be taken without just compensation. U.S. CONST., amends. V, XIV; *see also, e.g., Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415-16 (1922). A government action that unreasonably interferes with a property owner's right to use and enjoy his property may constitute a regulatory taking. *See, e.g., Westgate, Ltd. v. State*, 843 S.W.2d 448, 452 (Tex. 1992); *Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 139 (Tex. App.—San Antonio 2013, pet. filed). Further, a government action (including an ordinance) curtailing property rights may constitute a procedural or substantive due process

violation. *Noell v. City of Carrollton*, 431 S.W.3d 682, 695 (Tex. App.—Dallas 2014, pet. denied).

31. The City's ordinance unreasonably interferes with private property rights, and deprives property owners of use of their property, in violation of the Texas and U.S. constitutions. It requires an owner to contract with the federal government, become subject to federal laws and regulations to which the owner would not otherwise be subject, accept government-mandated lease terms, and participate in burdensome regulatory compliance obligations. Several courts have held that it is likely for this reason that Congress refused to make property owner participation in the program mandatory—because to do so would impose a substantial burden on property owners. *See, e.g.*, *Salute*, 136 F.3d at 300-01. The ordinance violates Texas Constitution, Article I, Sections 17(a) and 19, and U.S. Constitution, Amendments V and XIV.

32. *In sum*, Texas Local Government Code, Section 214.903 precludes municipalities from adopting fair housing ordinances that are substantively more intrusive than the federal fair housing laws and 42 U.S.C. § 1437f mandates that participation in the Section 8 housing program is voluntary. Yet the City of Austin has enacted a fair housing provision that is vastly and substantively more intrusive and burdensome to property owners than federal and state fair housing requirements and that mandates participation in the Section 8 program. The ordinance further interferes with property owners' freedom of contract and private property rights. Accordingly, the ordinance should be declared invalid and unenforceable.

COUNT II

Request for Temporary Restraining Order

33. The preceding paragraphs are incorporated here by reference.

34. The Association seeks an emergency temporary restraining order under Texas Civil Practice and Remedies Code, Chapter 65.

35. Under Section 65.011, a temporary restraining order should be granted because:

(1) For the reasons set forth above, the City's ordinance adding "source of income" to the City's fair housing ordinance contravenes state and federal law and is unenforceable. The Association is entitled to the declaratory relief demanded and that relief will be ineffective without restraint of enforcement of the City's ordinance.

(2) The ordinance (passed on December 11, 2014) is scheduled to become effective on January 12, 2015, before this litigation can be resolved on the merits, and allowing the ordinance to go into effect would render the judgment in this litigation ineffectual. If enforcement of the ordinance is not enjoined, beginning in January 2015, property owners will be required to involuntarily enter into Housing Assistance Payment (HAP) Contracts with the government, be subject to federal government regulatory control, and accept government-mandated lease terms.

(3) The Association is entitled to a writ of injunction under the principles of equity and the statutes of this state relating to injunctions.

36. It is probable that the Association will recover against the City after a trial on the merits because the ordinance adding "source of income" to the City's fair housing ordinance contravenes both state and federal law, forces property owners to involuntarily participate in the voluntary Section 8 program, and contravenes their freedom of contract and private property rights by forcing them to contract with the government, subject themselves to federal regulatory control, and accept government-mandated lease terms.

37. If a temporary restraining order is not granted, harm is imminent because the challenged ordinance is set to go into effect on January 12, 2015. A property owner, in order to not violate the ordinance on that date, will be required to take substantial steps before that date—

and during the winter holidays—to come into compliance with the extensive HUD program requirements. Preparing for the Section 8 program requires material commitments of time and costs, for example, for legal advice, training, and coordination with HUD officials. Further, in January 2015, the property owners will be required to begin contracting with the government and begin leasing to residents on government-mandated lease terms. Those long-term contracts will cause harm during this litigation and cannot readily be undone after the conclusion of the litigation.

38. The harm that will result if the temporary restraining order is not issued is irreparable because damages are not readily ascertainable or easily calculated. The Association does not seek damages but instead seeks to enforce property owners' rights to decline, for business reasons, to participate in the federal Section 8 program.

39. The Association has no adequate remedy at law because the City passed the challenged ordinance just weeks before it is set to go into effect, leaving inadequate time for the Association to litigate its legal challenge to have the ordinance declared unenforceable. Without injunctive relief, thousands of the Association's members will be required to comply with the ordinance that contravenes both state and federal law.

COUNT III

Request for Temporary and Permanent Injunctive Relief

40. The preceding paragraphs are incorporated here by reference.

41. The Association seeks temporary and permanent injunctive relief under Texas Civil Practice and Remedies Code, Chapter 65 and Section 37.011.

42. For the reasons set forth above, the City's ordinance adding "source of income" to the City's fair housing ordinance contravenes state and federal law and is unenforceable. The

Association asks that enforcement of the ordinance be temporarily enjoined during this litigation and permanently enjoined upon the conclusion of this litigation.

COUNT IV

Request for Attorney's Fees and Costs of Court

43. The preceding paragraphs are incorporated here by reference.

44. The Association seeks the award of any attorneys' fees and costs of court to which it may be entitled that are incurred in connection with the prosecution of its claims.

VII.

REQUEST FOR DISCLOSURE

45. Under Texas Rule of Civil Procedure 194, the Association requests that the City disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

Plaintiff Austin Apartment Association prays that the Court grant the following relief:

(1) A declaratory judgment under Texas Civil Practice and Remedies Code, Chapter 37 declaring that the challenged ordinance adding "source of income" to the City's fair housing ordinance is invalid and unenforceable;

(2) A temporary restraining order enjoining enforcement of the ordinance before it is scheduled to go into effect on January 12, 2015;

(3) Temporary and permanent injunctive relief;

(4) Attorney's fees and costs of court; and

(5) Any further relief to which the Association may be justly entitled, at law or in equity.

Respectfully submitted,

By: */s/ Craig T. Enoch*

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