

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

CITY OF DALLAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

STATE OF TEXAS' ORIGINAL PETITION FOR CIVIL PENALTIES

TO THE HONORABLE COURT:

COMES NOW the State of Texas, by and through Ken Paxton, Attorney General of Texas, and files this Original Petition seeking civil penalties, attorney fees, and costs against the City of Dallas for the wrongful exclusion of license holders carrying handguns into the Music Hall at Fair Park building, in violation of Tex. Gov't Code § 411.209. In support thereof, Plaintiff would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1.1 In accordance with Tex. R. Civ. P. 190.1, discovery in this case is intended to be conducted under Level 3 of the discovery control plan provided by Tex. R. Civ. P. 190.4. Plaintiff seeks civil penalties aggregating over \$6,300,000, excluding attorney fees and costs.

II. JURISDICTION AND VENUE

2.1 Plaintiff, the State of Texas, seeks relief under Tex. Gov't Code § 411.209. Plaintiff seeks monetary relief over \$1,000,000. *See*, Tex. R. Civ. P. 47(c). The relief sought is within the jurisdiction of this court. Tex. Const. art. V, § 8, Tex. Gov't Code §§ 24.007, 24.008, and Tex. R. Civ. P. 47(b).

2.2 Venue is proper in Travis County. Tex. Gov't Code § 411.209(g), Tex. Civ. Prac. & Rem. Code § 15.016. *See also*, Tex. Civ. Prac. & Rem. Code § 15.001(b)(1).

III. PARTIES

3.1 Plaintiff, the State of Texas, by and through Ken Paxton, the Attorney General of Texas, is authorized to enforce Tex. Gov't Code § 411.209. Tex. Gov't Code § 411.209(g). The Attorney General is also authorized to prosecute all actions the state is interested in before the courts of appeals and the Supreme Court. Tex. Gov't Code § 402.021.

3.2 Defendant City of Dallas is a political subdivision of the State of Texas and owns the Music Hall building located within the 277-acre Fair Park in Dallas, Texas. Defendant may be served with process by serving its City Manager, Kimberly Bizer Tolbert, c/o Dallas City Hall, 1500 Marilla Street, Room 4EN, Dallas, Texas 75201.

IV. GENERAL FACTUAL BACKGROUND

4.1 The Music Hall at Fair Park, located at 909 1st Ave, Dallas, TX 75210, is a historic performing arts center owned by the City of Dallas.

4.2 On May 13, 2009, the Dallas City Council, through resolution no. 09-1226, in resolving to lease the Music Hall at Fair Park to the nonprofit DSM Management Group, Inc. (DSM), stated that it could do so without complying with notice and bidding requirements, “subject to the nonprofit organization using the property in a manner that primarily promotes a public purpose of the municipality.”

4.3 Thereafter, effective July 1, 2009, the City of Dallas entered into a twenty-year (primary term, with renewal options) Lease Agreement whereby it leased the multi-story Music Hall at Fair Park to DSM for the rental rate of \$1 per year. The Agreement acknowledged that DSM had operated the premises for years for the cultural benefit of the City and the public with Broadway musicals and theatrical productions and that DSM “shall work with the Director of the Office of Cultural Affairs, or her designee (“Director”) and appropriate City officials to fulfill the purposes of (this) Lease.” Section 4 of the Agreement was entitled “Performance and Description of Use.” It stated that DSM was to manage and maintain all areas of the leased premises and that the “CITY through its Director may request from time to time changes in scope or focus of the activities described in this Section” and that “lessee shall not use or occupy the leased premises, or permit the leased premises to be used or occupied contrary to any statute . . . applicable thereto, . . . All business operations conducted on the Leased Premises shall comply with all applicable laws, statutes, and ordinances.” Section 5 of the Agreement was entitled “Improvements.” It stated that DSM would have the right to remodel, renovate, and refurbish the Leased Premises upon prior written approval by the Director of Equipment and

Building Services.” Section 23 of the Agreement was entitled “Signs.” It stated that DSM “shall have the right to erect signs on the Leased Premises, provided that: . . .(c) any and all new signs must be reviewed and approved by the Director and comply with all applicable ordinances and regulations.” The Agreement also provided that any notices intended to the City under the Agreement were to be sent to the Director, Office of Cultural Affairs, City of Dallas, 1925 Elm Street, Dallas, Texas 75201 (which is the address of The Majestic Theatre – also owned by the City of Dallas).

V. CAUSE OF ACTION VIOLATION OF TEXAS GOVERNMENT CODE § 411.209

5.1 Tex. Penal Code § 46.03(a) specifies places where weapons are prohibited, and the Music Hall does not fall within the description of places where weapons are prohibited. No other laws prohibit a license holder (LTC holder) carrying a handgun under the authority of subchapter H (License to Carry a Handgun) from entering or remaining in the Music Hall.

5.2 Texas Government Code, Title 4, Subtitle B Law Enforcement and Public Protection, Chapter 411, Subchapter H License to Carry a Handgun at Tex. Gov’t Code § 411.209(a) prohibits state agencies or political subdivisions of the state (such as the City of Dallas) from taking any action, including the act of providing notice by a communication described by Tex. Penal Code §§ 30.06 or 30.07, that states or implies that a license holder who is carrying a handgun under the authority of subchapter H (License to Carry a Handgun) is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless

license holders are prohibited from carrying a handgun on the premises or other place by Tex. Penal Code § 46.03 or other law.

5.3 On or about August 6, 2023, Mr. Heath Garner, a Texas resident and license holder under subchapter H, chapter 411, Texas Government Code, went to enter the Music Hall building in Fair Park, Dallas, Texas, and observed signage affixed to the exterior wall of the Music Hall building. Such signage included notices under Tex. Penal Code §§ 30.06 and 30.07, that those licensed to carry (like Mr. Garner) were prohibited from entering or remaining in the building owned by the City of Dallas. Mr. Garner spoke to a uniformed Dallas Police Officer at the Music Hall building and was told that handguns would not be allowed inside the building owned by the City of Dallas.

5.4 On Thursday, November 2, 2023, Mr. Garner sent a letter by certified first class U.S. mail to provide the City of Dallas with written notice that described the signage affixed to the Music Hall and the general facts of the Tex. Gov't Code § 411.209 violation. Garner's notice gave the City of Dallas three days to comply. The City of Dallas received Garner's written notice on Monday, November 6, 2023, as was evidenced by a USPS Electronic Delivery Confirmation. The City of Dallas did not cure the violation before the end of the third business day after the City of Dallas received Garner's written notice. The City of Dallas never responded to Mr. Garner's written notice.

5.5 On or about March 2, 2024, Mr. Garner again went to enter the Music Hall building in Fair Park, Dallas, Texas, and once again observed the same signage

affixed to the exterior wall of the building. Such signage included notices under Tex. Penal Code §§ 30.06 and 30.07 that those licensed to carry were prohibited from entering or remaining in the building. Mr. Garner spoke to a security officer at the Music Hall building and was again told that handguns would not be allowed inside the building.

5.6 On March 4, 2024, Garner filed a written complaint with the Office of the Attorney General of Texas (“OAG”), asserting that the City of Dallas violated Tex. Gov’t Code § 411.209. Garner provided the Attorney General’s Office with a copy of the written November 2, 2023, notice he had provided to the City of Dallas. As evidence of the violation, Garner provided the OAG with a photo he took on August 6, 2023, of the Tex. Penal Code §§ 30.06 and 30.07 signage affixed to the Music Hall building, situated on either side of a City of Dallas Parks and Recreation sign, with the § 30.06 sign on the left and the § 30.07 sign on the right. The following is the signage as it appeared on August 6, 2023.



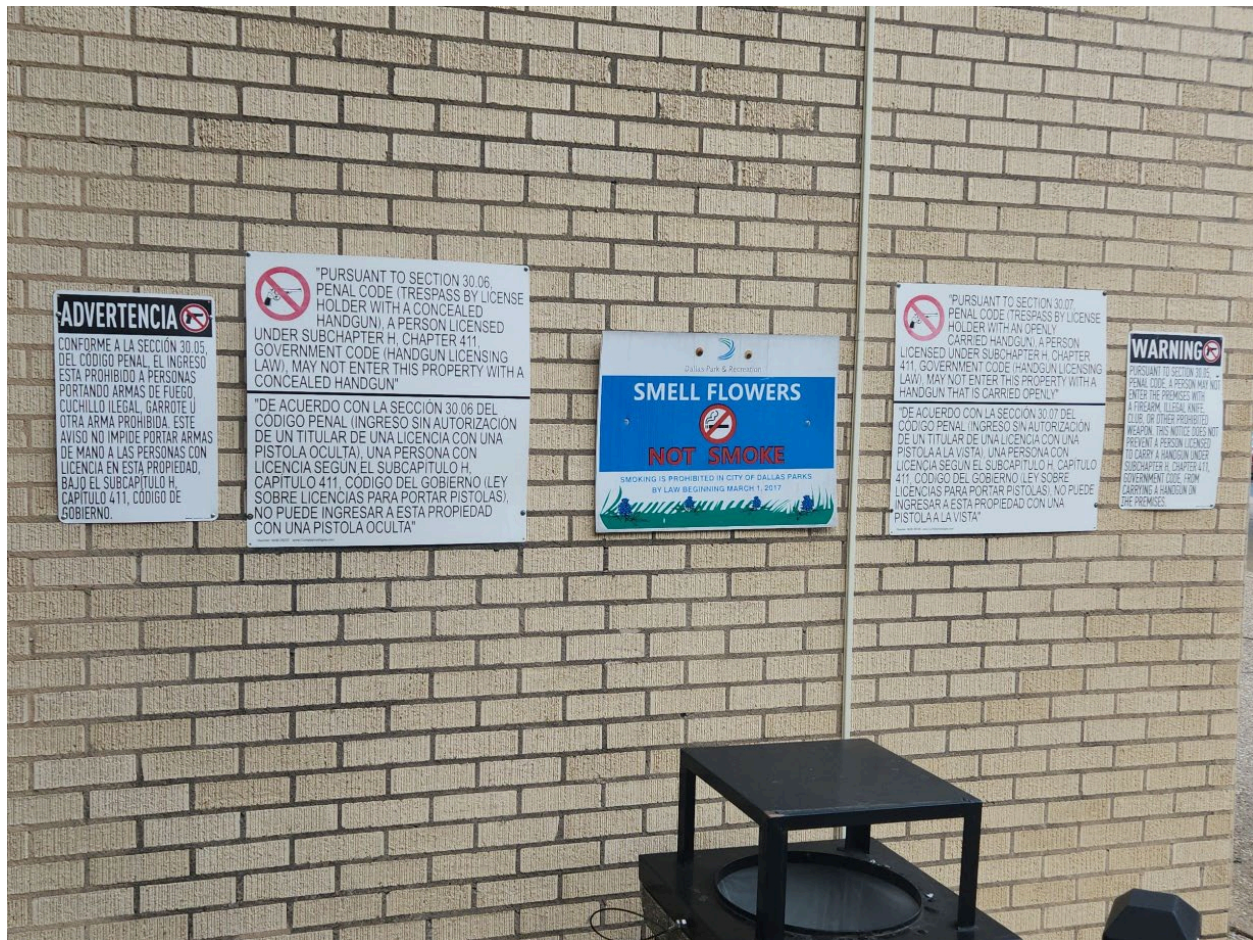
As further evidence of the violation, Garner provided the OAG with a photo he took on March 2, 2024, of the Tex. Penal Code §§ 30.06 and 30.07 signage affixed to the Music Hall building. The following is the signage as it appeared on March 2, 2024.



5.7 On or about August 13, 2024, Mr. Grant Walsh, a Texas resident and license holder under subchapter H, chapter 411, Texas Government Code, went to enter the Music Hall building in Fair Park, Dallas, Texas, and observed signage affixed to the exterior wall of the Music Hall building. Such signage included notices under Tex. Penal Code §§ 30.06 and 30.07, that those licensed to carry (like Mr. Walsh) were prohibited from entering or remaining in the building owned by the City of Dallas. Mr. Walsh took a photo of the signage. Mr. Walsh spoke to a uniformed Dallas Police Officer at the Music Hall building. He was told that handguns would not be allowed inside the building owned by the City of Dallas and that if he sought to enter, he would immediately be arrested.

5.8 On September 10, 2024, Attorney General Investigator Alex Dubeau went to the Music Hall to investigate and took a photo of the Tex. Penal Code §§ 30.06 and 30.07 signage attached to the exterior of the Music Hall building.

5.9 On September 21, 2024, Mr. Walsh emailed the Dallas Interim City Manager and Dallas City Attorney, notifying them under Tex. Gov't Code § 411.209(d) that the City of Dallas was violating Tex. Gov't Code § 411.209, by having Tex. Penal Code §§ 30.06 and 30.07 signage affixed to the Music Hall building owned by the City of Dallas. He also provided them a copy of the following photo he took on August 13, 2024.



Walsh's notice gave the City of Dallas three business days (until September 26, 2024) to cure its violation, after which he stated that he would submit a complaint with evidence of the City's violation to the Office of the Attorney General of Texas ("OAG")

for it to investigate. The City of Dallas did not cure the violation before the end of the third business day after receiving Walsh's written notice.

5.10 On September 27, 2024, Mr. Walsh filed a written complaint with the OAG, asserting that the City of Dallas violated Tex. Gov't Code § 411.209. Walsh provided the OAG with a copy of the September 21, 2024, email notice of violation he had provided to the City of Dallas. As evidence of the violation, Walsh provided the OAG with the photo he took on August 13, 2024, of the Tex. Penal Code §§ 30.06 and 30.07 signage affixed to the Music Hall building, situated on either side of a City of Dallas Parks and Recreation sign, with the § 30.06 sign on the left and the § 30.07 sign on the right.

5.11 On September 30, 2024, Walsh emailed the Interim City Manager and the City Attorney for the City of Dallas and notified them that they had not responded to his prior email (of September 21, 2024) to them.

5.12 The City of Dallas has never responded to either of the two emails from Mr. Walsh.

5.13 The OAG, having investigated the § 411.209 complaints regarding the Music Hall, determined that legal action was warranted. On September 30, 2024, the Attorney General gave written notice to the chief administrative officer of the City of Dallas under Tex. Gov't Code § 411.209(f) of the violation of Tex. Gov't Code § 411.209, stated the amount of the proposed penalty for the violations, and gave the City 15 days from receipt of the notice to cure the violation and to avoid penalties.

5.14 On October 1, 2024, resident Joshua Clark, sent an email to the City of Dallas, also notifying the City of the Tex. Gov't Code § 411.209 violation at the Music Hall.

5.15 On October 15, 2024, the City of Dallas, through its City Attorney Tammy Palomino, provided its written response to OAG, wherein the City of Dallas asserted that it had not violated Tex. Gov't Code § 411.209(a) at the Music Hall. The City of Dallas argued that it had not taken any "action" within the meaning of Tex. Gov't Code Ann. § 411.209 because "(1) DSM is a private nonprofit organization that operates the Music Hall, (2) under the Lease, DSM manages and maintains all areas of the Music Hall throughout the term of the Lease; and (3) DSM installed the signs at issue in the Music Hall without any input or involvement of the City."

5.15 On March 25, 2025, Attorney General Investigator Alex Dubeau went to the Music Hall to verify if the signage was still affixed to the wall. At that time, Investigator Dubeau took another photo of the 30.06 and 30.07 signage still attached to the exterior of the Music Hall building.

5.16 The State of Texas has standing under Texas Government Code § 411.209. All conditions and statutory precedents were performed or occurred before the filing of this lawsuit.

5.17 Any sovereign immunity the City of Dallas may have is waived and abolished for any liability created under Tex. Gov't Code § 411.209. Tex. Gov't Code § 411.209(h).

5.18 Tex. Gov't Code § 411.209(b) states that a political subdivision of the state that violates Tex. Gov't Code § 411.209(a) is liable for a civil penalty of not less than \$1,000 and not more than \$1,500 for the first violation and not less than \$10,000 and not more than \$10,500 for the second or a subsequent violation. Tex. Gov't Code § 411.209(c) states that each day of a continuing violation of Tex. Gov't Code § 411.209(a) constitutes a separate violation.

5.19 Plaintiff should be awarded \$1,500 in civil penalties for the first day of the City's violation of § 411.209, which commenced no later than August 6, 2023, the date Mr. Heath Garner first viewed the signage on Music Hall building. In addition, Plaintiff should be awarded civil penalties of \$10,500 per day for each of the 602 days between August 6, 2023, up through at least the end of March 31, 2025, totaling \$6,321,000. In addition, Plaintiff should be awarded civil penalties of \$10,500 per day for each day from April 1, 2025, until such date on which the City of Dallas can establish that it has caused the Tex. Penal Code §§ 30.06 and 30.07 signage to be removed from the Music Hall building.

5.20 Under Tex. Gov't Code § 411.209(g), the Attorney General is also entitled, and hereby requests, to recover reasonable attorney fees, investigative costs, and court costs. The Attorney General is also entitled and should be awarded fees under Tex. Gov't Code § 402.006.

VI. PRAYER

WHEREFORE, Plaintiff requests that the Court find that the City of Dallas has violated Texas Government Code § 411.209 and award the State of Texas

penalties, reasonable attorney fees, investigative costs, witness fees, deposition costs, court costs, and filing fees and for such other and further relief, at law or in equity, to which the Plaintiff may show itself justly entitled.

Respectfully submitted,

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