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VIA EMAIL

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July 9, 2024

Skip Randolph, Esq.
505 South Flagler Drive, Suite 1100
West Palm Beach, FL 33401

RE: Town of Palm Beach Noise Ordinance

Dear Skip:

As you know from our prior conversations, I represent a group named the Palm Beach Gardeners' and Landscapers' Association (hereinafter "GALA") as it relates to ordinance restrictions on gardeners working in the Town of Palm Beach. Unfortunately, no progress in addressing this issue has been made, and the summer pre-hurricane tree trimming season is well under way.

In one last attempt prior to seeking court intervention, I attach a DRAFT Complaint without exhibits for your review. As of this transmittal, I have carefully considered the issues, and I am confident that we will prevail on the constitutional challenge raised in the draft Complaint. I would hope you would convince your client of the futility of fighting this in court, which is something both my clients and myself are trying very hard to avoid.

My hope is that you would be successful in convincing your client to allow a redraft of the ordinance. As we discussed in the past and as part of the historic problem from my understanding, garden maintenance companies over the last 5+ years have been blocked from sitting down with Town staff to provide wording input as to discriminatory and confusing errors in the current iterations of the Ordinance. Prior Councils allowed the former Town manager to conduct such meetings, and issues were amicably resolved. The Council had allowed one such meeting but stopped any further meetings.

We now have two alternatives:

1. Allow Town staff to privately sit down with professionals and create new wording which equally protects all workers and residents.



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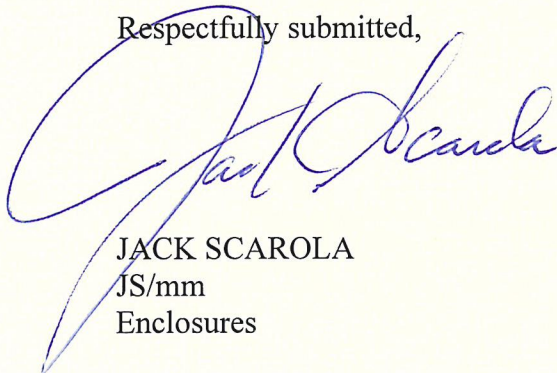
- a. Publish the changes pursuant to local laws
 - b. Proceed back to Council for two hearings where these issues would be publicly vetted, then codified into a lawful & equitable ordinance; or
2. Litigate the issues subjecting the Town to liability for significant attorneys' fees and costs.

If interested in option 1, because this process will take many more months, I would request on GALA's behalf that the Town Council direct its staff to loosen enforcement of the noise ordinance for Saturdays' tree and hedge trimming only for this summer until November 1st and allow landscapers to start their machinery at 8:30 AM every weekday. The late starting time every weekday as currently is the law causes significant losses for my clients with heat index issues and thunderstorms offset against another Town Ordinance requiring gardeners to complete palm tree trimming by August 1 every year due to hurricanes. These two temporary allowances will hurt no one but will allow my clients to more fairly compete, and as the draft Complaint reveals, the Town has no problems with noise from its own workforce before 9 AM and on Saturdays.

I would look for an initial response from you to me selecting either option by Friday PM, July 19, 2024. As a practical matter, if the Town states it cannot relax enforcement during this redraft time, the Complaint needs to be filed to let a judge hold an emergency injunctive hearing - which will seek to set aside much larger segments of the current ordinance. With such an injunctive order, the restrictive language would be enjoined, and then the Town can try another re-write which will take many months - while gardeners are allowed far wider latitude than would currently satisfy them.

Please let me know which choice works.

Respectfully submitted,



JACK SCAROLA
JS/mm
Enclosures

cc: GALA



CASE NO.:
DIVISION:

**PALM BEACH GARDENERS' &
LANDSCAPERS' ASSOCIATION**

Plaintiffs,

vs.

**THE TOWN OF PALM BEACH, PALM BEACH, FLORIDA,
a Political Subdivision of the State of Florida,**

Defendant.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs, Palm Beach Gardeners' & Landscapers' Association ("GALA") (Hereinafter, the "Plaintiffs"), by and through the undersigned, sues the Defendant, The Town of Palm Beach, a Political Subdivision of the State of Florida ("The Town"), and state:

**CONSTITUTION OF THE STATE OF FLORIDA
PREAMBLE**

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

***Article 1, SECTION 2. Basic rights.** All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property.*

***Article 1, SECTION 6. Right to work.** The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.*

1. This is an action seeking Equal Protection under Florida's Constitution, for Declaratory Judgment, and for legal and equitable relief pursuant to Chapter 86, Florida Statutes to address the fact that in Palm Beach, gardeners, as part of the service industry, have been unfairly discriminated against under the guise of curbing noise complaints from Town residents.

2. “**NOISE IS NOISE:**” Plaintiffs have attended numerous public hearings by the Town as the Ordinance in question has imposed increasing restrictions on gardeners serving their maintenance clients. Originally, the discussions focused just on gas blowers which were outlawed. With that victory, certain Council members were emboldened, and gardeners became a target for more and more restrictions. After protesting at a number of meetings, the Town, acknowledging a request by Plaintiffs to have a meeting with Town staff where politics might be left behind to correct the unfair restrictions (This was not a confidential meeting.), allowed its staff to meet with some GALA members. The senior Police Officer in attendance, who is in charge of Code Enforcement (which is under the police in Palm Beach), listened to GALA’s positions. He repeatedly agreed that “Noise is Noise” – no matter what the source may be – including if it is from governmental workers. He was focusing on enforcement and the fairness of what the group was requesting – with the focus of the meeting being Equal Protection. The meeting went well, and progress was made but when the report went to the Town Council, the Council refused to consider the items, were irritated by GALA members submitting suggested detailed edits of the Ordinance, and in apparent retaliation, the Town began increasing restrictions even more.

3. For this service industry alone, the Town of Palm Beach denied just gardeners these basic, equal rights. Just as all other private service industries, these private “gardening” service workers are “members” of the private sector, who clearly should have the same basic rights under the Florida Constitution as “public,” government workers, for all normal, daily garden maintenance operations. Such is not the case within the Town of Palm Beach where only gardeners performing maintenance for their clients within the Town are ordered by agents of the Police Department to stop working. Alternatively, they are fined for working at the same time Town employees are allowed to perform comparable and equally “noisy” work within the Town. In other words, private workers are barred from performing normal work functions with gardening equipment which makes any noise (or are

financed for operating under unfair restrictions) while public workers are allowed to use the same equipment - across the street. Equal Protection is guaranteed by the Constitution, and this current situation definitely is not equal.

4. This is an action for injunctive relief, first temporary and/or then permanent.

THE PARTIES, JURISDICTION, AND VENUE

5. Plaintiffs are an association of local gardening businesses which all operate in Palm Beach County, Florida.

6. Defendant, Town of Palm Beach, is a political subdivision of the State of Florida.

7. This County Court has jurisdiction pursuant to Fla. Stat. §34.01 and including §34.01(1)(b) ("Of all violations of municipal and county ordinances"), as well as the Preamble and Article 1, Sections 2 and 6 of the Florida Constitution.

8. Per Rule 1.071, the Plaintiffs have filed a Notice of the constitutional question as well as has had it served on the State Attorney of the 15th Judicial Circuit by certified mail. The Plaintiffs also have filed verification with the court of compliance with section 86.091, Florida Statutes (Form 1.975).

9. Venue is appropriate in Palm Beach County as the Plaintiffs and the Defendant reside and/or operate in Palm Beach County, Florida.

FACTUAL ALLEGATIONS AS TO PLAINTIFFS¹

10. Plaintiffs have standing, as an association of corporate entities, which are adversely affected by Defendant's ordinances.

11. Plaintiffs have appeared numerous times in front of the Town in regards to the Town's many redrafts over the years of its Code of Ordinances, Ordinance No. 004-2022, Article V, Section

¹ Plaintiffs, including each and every member, are concerned about being unfairly targeted and/or black balled for either speaking publicly against this unfairness or for standing up for their constitutional rights. Evidence already supports such a fear is justified. The GALA group sees no other alternative than to seek court intervention to stop this abuse.

42-199, “Hours for Construction Work,” and Section 42-230, “Lawn Maintenance,” governing private citizens and gardening business operations within the Town (Exh. 2 – the Ordinance).

FACTUAL ALLEGATIONS AS TO DEFENDANTS

12. The Town of Palm Beach is located in Palm Beach County, Florida.
13. The Town employees and its contractors perform gardening plus ancillary related work throughout the Town using the same “noisy” equipment as the private service providers.
14. The Mayor and Town Council serve as the governing body of the Town. They set the policies and rules by which the Town is operated. The Town’s Charter in part states:

Sec. 1.01. - Historical; Effective Date.

The municipality continued to operate and function under the special and general laws of Florida until a Charter was granted by Chapter 7683, Special Acts, Laws of Florida, 1917, whereby a new municipality was created. Said original Charter has been amended by numerous Special Acts of the Laws of the State of Florida. ...The powers of the Town under this Charter shall be construed liberally in favor of the Town and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general powers granted in this Article. Such powers may be exercised to the full extent **permitted by law** (*emphasis added*).

FACTS IN COMMON & A BRIEF HISTORY OF THE DISPUTE

15. The Plaintiffs **and** Defendant all service residents of the Town. Plaintiffs **and** Defendant all make noise in excess of the Town’s noise ordinance’s restrictions with a wide variety of similar equipment. Plaintiffs **and** Defendant all perform lawn and garden maintenance throughout the Town’s limits. Plaintiffs **and** Defendant all install new landscape materials throughout the Town. Plaintiffs **and** Defendant perform ancillary services to landscape maintenance like fertilization, tree trimming, pest control, and maintaining irrigation systems. The Plaintiffs **and** Defendant all use employees and subcontractors for various garden maintenance duties as well.

16. The latest version of the Ordinance (Exh. 2) was yet another iteration of previous amendments as the Town, in spite of continuous lobbying and public comments, including with specific

arguments and evidence, during sometimes contentious hearings as the Town Council changed its membership over the years and continued to tighten down and unfairly restrict the operations of the Plaintiffs. The version at issue was passed on October 13, 2022 (Exh. 2), and the vote modified earlier language which the Plaintiffs had objected to in earlier iterations over the years. The Plaintiffs attended Town meetings, continuously objecting and trying to point out inequalities to the Town in its Ordinances. Speakers at meetings warned the Town that the Ordinances were in violation of the Equal Protection Clause of both the Florida and United States' Constitutions.

17. Eventually, at a June 22, 2022 Town public meeting (Exh. 3 – Memo) the Town Public Works Director presented a memo explaining how the Town could **not** perform its own garden maintenance and trimming duties within the Town's restricted hours – the same argument private gardeners had tried to use at numerous meetings with no success. On this occasion, it took the Council only a couple of minutes to pass an exemption for its own workers plus its own contractors with no opposition. This unlawful action clearly violated the Plaintiff's rights to Equal Protection and Plaintiff vehemently argued this point at Town meetings (Exh. 1). Instead of heeding the entreaties over many meetings, the Town revised the Ordinances again, in an effort which had the practical effect of further punishing the gardening firms which were present trying to talk reason to the Town Council.

18. One notable, additional quirk in this history is that the Town staff emails and hands out its summary interpretations of the Ordinances to affected industries on a regular basis (Exh. 5 – Town Notice). Those versions change regularly and have a history of being discriminatory both as written and as applied and constitutionally violative of the rights of both the Plaintiffs and all other private gardeners. In June 2024, The Town sent out an email Notice about its latest holiday schedule to all landscapers - ordering them to NOT work on the island on "Juneteenth" (Exh. 5). What is especially violative of GALA's constitutional rights is that the Order specifically stated that ALL Town public employees would continue to have the right to work on the holiday servicing the same clients as

the private gardeners. On Juneteenth, Town field workers (the bulk of whom are African Americans) were all working in Town, on a holiday – a holiday in honor of black citizens. Private gardeners were unlawfully prohibited from working by the Town – noting ALL other service workers serving Palm Beach were allowed to work as well as all Town employees. Worse still, at 8 AM (recalling private gardeners are restricted from starting any machines until 9 AM), the Town had one of its privately contracted landscape firms mowing, weed eating, blowing and cleaning the acres of grass on Royal Poinciana Way in Palm Beach. One GALA member went to a job in Palm Beach about 10 AM on Royal Poinciana Way specifically to test the Ordinance. Once a call-in complaint was made, noting he was using NO power or battery equipment, a Town Code Officer arrived. After ordering the member to stop doing the hand landscaping he was doing, he pointed out how the Town's contracted workforce was across the street working – right then. The officer said he would stop them because of the request. The GALA member also told the officer that he was only trying to exercise his constitutional rights to be able to work and make a living – just like the private company across the street plus just like all the Public Works employees working that day for the Town doing all their normal duties – while only all private gardening workers were forced to NOT work. The scenario of a government exempting itself and all of its own workers doing all of their normal, noise making, maintenance work while prohibiting tax paying, citizens who want to be equally protected as written in both the US and Florida constitutions, is unconscionable. Photos document this member of the Town's police department ordering the worker to stop doing his work and be able to make a living like all the public workers in Palm Beach. A more recent incident on June 25, 2024, highlighted the issue even more. On that day, a GALA member went to a tree trimming jobsite. He witnessed Town contractors with heavy equipment working out in the road right of way starting about 8:15 AM with noisy equipment. He told his trimmers to start with electric chain saws. The Town's Code officer appeared and ordered the workers to stop. The GALA member pointed to the Town workers down the street, and the Town official stated he did not care about Town workers. He then gave a choice to take a ticket or stop working. The GALA member raised the Equal Protection issue. A \$150

fine was issued because that member refused to instruct his workers to stop working.

19. As a result of the Town's unlawful votes in direct violation of the Florida Constitution, the regular daily situation which arises has all of the Town's own workers and all of the Town's private subcontractors (Direct competitors of all the other private gardening businesses) contracted to work with Town employees in the garden maintenance and tree trimming business, start their noisy work at 8 AM on weekdays. Private companies not working for the Town are forced, by these unlawful Ordinances, to standby until one hour later (9 AM) to be able to begin their service work. All of those Town employees and contractors are "rewarded for industry" – just as the Constitution allows. Literally yards away, private workers are denied that right to be "rewarded for industry" by the Town to use the same equipment and perform the same duties as all of the "public" workers (Exh. 1). Town officials regularly defend their actions saying the private firms all can do any "quiet" work during that first hour of the day and on Saturdays – while their own work force plows ahead being allowed to use whatever noisy machinery they feel is fit (except gas blowers).

20. This situation presents a crystal-clear violation of the Equal Protection clause of Florida's Constitution.

COUNT I

ACTION FOR DECLARATORY RELIEF

21. Paragraphs 1-20 are re-alleged and reincorporated herein by reference.

22. This is an action for Declaratory Relief.

23. The Plaintiffs are interested parties whose legal rights and privileges are affected by the Code of Ordinances of the Town. Plaintiffs are in doubt as to whether the referenced sections of the Code of Ordinances of the Town are legally enforceable or are "null and void" as they violate the Florida Constitution, are discriminatory, and support unfair business practices giving the Town's employees and the privately contracted work force an unfair advantage over all the other small businesses and their

employees in the gardening business.

24. The adverse legal interests of the parties, along with the alleged, financial hardship and with the feeling of discriminatory labeling of the one business sector employing arguably the highest percentage of minorities in the Town (Another part of the arguments made to the Town which were brushed aside), are of sufficient immediacy and materiality to warrant a Declaratory Judgment.

25. The requested relief is not advisory in nature, and there is no adequate remedy at law to redress the injury to Plaintiffs' constitutionally protected rights.

26. By perpetuating the Code of Ordinances, the Town has frustrated and deterred the Plaintiffs in their exercise of their members' constitutional and statutory rights and privileges.

27. Plaintiffs seek a declaration on the validity and enforceability of the Town's Ordinances governing private gardeners trying to work within the Town's limits. Therefore, a repeal of the offending Ordinance(s) or unfair portions thereof by the Town is the only remedy that will bring the Town into compliance with both state law and the Town's charter - while "equally" protecting the citizenry and Plaintiffs' members.

28. The Ordinance and Notices (Exh. 2 & 5) in large part focus on the building construction trades, which have historically been the subject of countless complaints by numerous, upset, Town residents. Plaintiffs are NOT in the construction business and have relayed this fact a number of times to the Town, to no avail. In public hearings, Plaintiffs told Town officials that construction is designated as an entirely different industry by the U.S. Securities & Exchange Commission (SEC) under its Standard Industrial Classification (SIC) Code List. Plaintiffs tried to keep gardeners from the confusing joinder in the Ordinances by the Town officials lumping gardeners in the same category as general contractors and construction sites, which receive the lion's share of code violations complaints by residents. Obviously, construction contractors build buildings and are **not** in the daily, long term, maintenance business of residents' homes – sometimes for decades. Gardeners are in the service

industry, just like numerous small businesses doing pest control, painting, pool cleaning, pressure cleaning, electrical work, plumbing, etc. Yet, every other service industry except gardeners are allowed to be exempt from most of this unlawful Ordinance.

29. Plaintiffs ask this Court to declare that the Town's Ordinance governing these issues are invalid as the Ordinances(s) violate the Equal Protection clause of the Florida Constitution.

30. Plaintiffs ask this Court to enter an order, in negative form, stating that Ordinance No. 26-2021 and 4-22 are invalid as the Florida Constitution prohibits governments from passing laws that conflict with State laws, especially one so discriminatory as this one.

31. Plaintiffs ask this Court to reserve jurisdiction to provide further relief as the Court deems necessary and proper.

32. Given the Town's continuing violations of the Constitution, Plaintiffs are entitled to reasonable attorney's fees and costs pursuant to Florida Statutes 57.112(3).

WHEREFORE, the Plaintiffs ask this Honorable Court for a declaration that Ordinance No. 04-2022 is invalid, null and void, and otherwise unenforceable, along with reasonable attorney fees and court costs and such other relief this Court deems appropriate and necessary.

COUNT II
PETITION FOR INJUNCTIVE RELIEF

33. Paragraphs 1-20 are re-alleged and reincorporated herein by reference.

34. This is an action for a permanent injunction, against the Town to enjoin the Town, its Mayor, its Town Council, and its enforcement agents, prohibiting them from discriminating via enforcing, promulgating, and requiring the repeal/rewrite of Ordinances No. 04-2022 specifically targeting the gardening industry and its workers.

35. Plaintiffs' members have suffered irreparable harm and will continue to suffer if the Town is permitted to enforce and continue to promulgate Ordinance 04-2022. Plaintiffs have suffered

thousands of dollars in lost income due to these unlawful Ordinances. All of the gardening businesses and their employees, except for the Town subcontractors which have been exempted from the Ordinance by the Town, have lost income and suffered increasing discrimination.

36. As yet another example, just such a scenario (one of many examples) unfolded on May 2, 2024, when the Town decided to trim about 100 palm trees on Royal Poinciana Way. Starting at 7:45 AM, about 6 very large trucks, including tall bucket trucks, hauling trucks, dump trucks, and heavy loader equipment showed up to begin tree trimming. Town contracted, private workers then started up chain saws and other heavy equipment to start their workday. At about 8:15 AM, a Town Code Enforcement officer, presenting his ID as part of the Palm Beach Police Department, approached a GALA member, who was running a weed eater trying to test his constitutional rights. The officer instructed the GALA member to turn off the machine. He politely refused, pointing at all of the Town's heavy and noisy equipment operations going on literally 15' away with the Town's private sector workers. After further discussion with the officer and explaining that Plaintiffs were trying to test and exercise their equal rights under the Florida Constitution, the member reluctantly shut down the weed eater and stopped working. He made sure to have the officer repeat his official position on behalf of the Town to stop performing the same "noisy" work which Town workers were making just steps away. Ironically, during the subsequent discussions on site, the member could not hear some of the officer's explanations – due to the noise of the Town's contractor's heavy equipment and chain saws operating feet away - which fact the officer acknowledged (Exh. 1).

37. To further validate GALA members' fears of being targeted, minutes after leaving the site where one of the Plaintiffs were trying to work that day, the same Town police/code official saw the same GALA member's crew working shortly after 9 AM blocks away. He talked with the foreman of that truck. He warned him about making any noise before 9AM and handed him the handout referenced above (Exh 6).

38. Plaintiffs have a substantial likelihood of success on the merits and require the equitable relief sought herein as there is no adequate remedy at law to redress the ongoing violation of their constitutionally protected rights.

39. A temporary and/or a permanent injunction serves the public interest.

40. Plaintiffs are entitled to a clear legal right to the relief sought. Plaintiffs deserve to be equally protected by this Court under the laws of the State of Florida and its Constitution.

41. If an injunction is granted, Defendant will suffer no hardships. Its public and privately contracted work force will be forced to be provided the same and equal protections as private workers – all of whom should enjoy equally the protections afforded by the Florida Constitution.

WHEREFORE, the Plaintiffs ask this Honorable Court for a temporary and/or permanent Injunction of Ordinance 04-2022, along with an award of reasonable attorney fees, and court costs per Florida Statutes 57.112(3), along with such other relief this Court deems appropriate and necessary.

Dated this _____ day of July, 2024.

JACK SCAROLA

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*Attorneys for Palm Beach Gardeners' & Landscapers'
Assoc.*

VERIFICATION

I, the undersigned, make the following unsworn declaration. The contents of the foregoing

Complaint are true to my own knowledge or have been supplied by my agents in this litigation and/or compiled from documents and electronic communications, except as to matters stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

PALM BEACH GARDENERS' & LANDSCAPERS' ASSOC.

BY: _____

Date: _____

DRAFT