

DISTRICT COURT, PITKIN COUNTY, STATE OF COLORADO

Court Address: 506 E. Main St., #E
Aspen, CO 81611

COLORADO UNION OF TAXPAYERS FOUNDATION,
Plaintiff,

vs.

**CITY OF ASPEN; MICK IRELAND, ADAM FRISH,
TORRE, STEVE SKADRON AND DEREK JOHNSON,
all in their official capacities as members of the Aspen City
Council,**

Defendants.

ATTORNEYS FOR DEFENDANTS CITY OF ASPEN:

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↑ COURT USE ONLY ↑

Case No.: 12 CV 224

Courtroom:

MUNICIPAL DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants, CITY OF ASPEN; MICK IRELAND, ADAM FRISH, TORRE,
STEVE SKADRON AND DEREK JOHNSON, all in their official capacities as members
of the Aspen City Council, (all hereinafter collectively referred to as the "Municipal

Defendants”) by and through their undersigned counsel, hereby Answer the Complaint in the above entitled action as follows¹:

INTRODUCTION

1. Paragraph 1 of the complaint contains introductory remarks to which a response is not required. To the extent there are allegations against the Municipal Defendants, such allegations are denied.

JURISDICTION AND VENUE

2. The Municipal Defendants admit that venue for this action is proper in Pitkin County, Colorado and otherwise deny the allegations of Paragraph 2 of the complaint.

PARTIES

3. The Municipal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Plaintiff’s complaint.

4. In response to Paragraphs 4 through 9 of Plaintiff’s complaint, Municipal Defendants affirmatively state that the City of Aspen is a home rule municipality and is governed by its Council, the Charter of the City of Aspen, the Aspen Municipal Code and relevant state statutes. Further, the Municipal Defendants admit that for all times pertinent hereto, Defendant Mick Ireland was and is the Mayor of Aspen and that the remaining individual defendants were and are members of the City Council. The Municipal Defendants affirmatively state the conduct of these individual in their official capacities as members of the Aspen City Council is governed by the documents set forth

¹ Headings contained herein of the introductory paragraphs are those of the Plaintiff.

herein. Otherwise, the Municipal Defendants deny the allegations of Paragraphs 4 through 9.

STATEMENT OF FACTS

5. Responding to paragraphs 10 and 11 of Plaintiff's complaint, the Municipal Defendants state that Colo. Const. art X, §20, speaks for itself. Otherwise, the Municipal Defendants deny the allegations of Paragraphs 10 through 11.

6. Responding to Paragraphs 12 through 14 of Plaintiff's complaint, the Municipal Defendants state that Aspen Municipal Code, Chapter 13.24, entitled Waste Reduction, speaks for itself. Otherwise, the Municipal Defendants deny that the Waste Reduction Fee is a tax and otherwise deny the allegations of Paragraphs 12 through 14.

7. Responding to Paragraphs 15 and 16 of Plaintiff's complaint, the Municipal Defendants state that the allegations therein are legal conclusions which the Municipal Defendants dispute, not statements of facts. To the extent they are considered as containing any statements of fact, the Municipal Defendants deny such allegations of Paragraphs 15 and 16.

8. Responding to Paragraph 17 of the Plaintiff's complaint, the Municipal Defendants state that allegations therein are legal conclusions which the Municipal Defendants dispute, not statements of fact. The Municipal Defendants admit that no public vote seeking approval of the Waste Reduction Fee adopted by the Aspen City Council took place as none was required. The Municipal Defendants otherwise deny the allegations of Paragraph 17.

9. Responding to Paragraphs 18 through 21 of the Plaintiff's complaint, the Municipal Defendants state that allegations therein are legal conclusions which the Municipal Defendants dispute, not statements of facts. To the extent that they are considered as containing any statements of fact, the Municipal Defendants deny such allegations of Paragraphs 18 through 21.

ANSWER TO PLAINTIFF'S CLAIM FOR RELIEF
(Alleged Unconstitutional Taxation)

10. Responding to Paragraph 22 of Plaintiff's complaint, the Municipal Defendants incorporate by reference all responses set forth above to the Plaintiff's allegations.

11. Responding to Paragraphs 23 through 29, the Municipal Defendants state that allegations therein are legal conclusions which the Municipal Defendants dispute; that Colo. Const. art X, §20, speaks for itself; and that the actions of the City of Aspen comply with all applicable laws of the State of Colorado. The Municipal Defendants otherwise deny the allegations of Paragraphs 23 through 29.

12. Responding to Paragraph 30, the Municipal Defendants deny that the Waste Reduction Fee adopted by the City of Aspen is a tax; deny that any unconstitutional tax has been levied by the City of Aspen for the four fiscal years preceding the date of the Plaintiff's complaint; deny that the Plaintiff is entitled to any relief whatsoever; and otherwise deny the allegations of Paragraph 30.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state any claim against the Municipal Defendants upon which relief can be granted and should be dismissed.
2. The Municipal Defendants, in doing any act complained of by the Plaintiff, were acting under and pursuant to the law.
3. This court lacks jurisdiction of the subject matter of the Complaint because Plaintiff lacks standing to assert any claim set forth in the complaint.
4. The claims set forth by the Plaintiff are barred, in whole or in part, by the failure of the Plaintiff to join parties needed for just adjudication pursuant to C.R.C.P. 19.
5. The Municipal Defendants reserve the right to add additional affirmative defenses as they become known.

WHEREFORE, the Municipal Defendants having fully answered Plaintiff's Complaint pray that said Complaint be dismissed, for their costs and attorney fees incurred in the defense of this matter, and for such other and further relief as the Court may deem just and proper in the premises.

DATED this 10th day of September 2012.

/s/ Deborah Quinn
Deborah Quinn, Assistant City Attorney
James R. True, City Attorney
City of Aspen
130 South Galena Street
Aspen, Colorado 81611
(970) 920-5055

COUNSEL FOR MUNICIPAL DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September 2012 a true and correct copy of the foregoing MUNICIPAL DEFENDANTS' ANSWER was electronically filed and served via LexisNexis upon the following persons:

_____/s/Tara Nelson_____
Tara Nelson