

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MOUNT ZION CHURCH OF GOD)	
IN CHRIST, a Kansas church)	
individually and in its capacity as)	
representative of certain individual)	
members,)	
Plaintiff,)	CASE NO.
)	
v.)	
)	
CITY OF GARDEN CITY, KANSAS,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiff MOUNT ZION CHURCH (“**Mount Zion**” or “**the Church**”), individually and in its capacity as representative of certain individual members, complains against the CITY OF GARDEN CITY, KS (“**Garden City**” or “**the City**”) as follows:

INTRODUCTION/EXECUTIVE SUMMARY

1. When government forbids where people may worship it must have a strong and overriding reason for doing so. *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531-532 (1993); *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 2012 U.S. LEXIS 578, *31 (Decided Jan. 11, 2012); *see also* Religious Land Use and Institutionalized Persons Act, 42 USC §2000cc, et seq. (“RLUIPA”).

2. And “when a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest.” *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68 (1981).

3. Here, Garden City has demanded that the Church cease and desist from operating at 606 N. Main St., where it has operated without incident for over ten years. The City has labeled the Church and its members' worship services "illegal."

4. The zoning laws and actions of Garden City are infringing upon the protected liberties of the members of Mount Zion Church to worship at 606 N. Main Street in *inter alia*, the following unlawful ways:

a. Garden City's Zoning Code singles out churches and religious assemblies for unequal treatment compared to a large number of non-religious assembly uses which are permitted as of right in the C-3 zoning district.

b. Garden City is infringing upon the Church's freedom to assemble for worship in a way that is not narrowly drawn to further any sufficiently substantial government interest.

5. Because Garden City's unlawful zoning laws and actions are infringing upon the Church's exercise of *First Amendment* freedoms, the Church is entitled to immediate injunctive and declaratory relief from the same. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Murphy v. Zoning Comm'n of the Town of New Milford*, 148 F.Supp.2d 173, 180-81 (D.Conn. 2001) ("Since [RLUIPA] was enacted for the express purpose of protecting First Amendment rights of individuals, the allegation that [the Town] has violated this statute also triggers

the same concerns that led the court to hold that these violations result in a presumption of irreparable harm.”) (citations omitted).

JURISDICTION AND VENUE

6. This action arises under the First Amendment to the Constitution of the United States; the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, et seq; Section 7 of the Bill of Rights of the Kansas Constitution; and the Kansas Preservation of Religious Freedom Act (KPRFA), 2013 Kan. HB 2203, 2013 Kan. ALS 47, 2013 Ka. Sess. Laws 47.

7. This Court has jurisdiction over the subject matter of this action by virtue of U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §2201 (authorizing declaratory relief); and 28 U.S.C. § 2202 (authorizing injunctive relief).

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(e) and 1402(a) and 5 U.S.C. §703.

IDENTIFICATION OF THE PARTIES

9. Plaintiff Mount Zion Church of Garden City, is a Kansas church with a congregation of about thirty members and is an unincorporated association entitled to sue under Federal Rule 17(b)(3)(A).

10. Roger Bradshaw is the founder and senior pastor of Mount Zion Church and has the authority to speak and act on behalf of the Church and its members. His declaration is attached hereto as Exhibit A and supports the facts alleged herein.

11. Defendant, the City of Garden City, Kansas is a Kansas municipal corporation with a business address of 301 N. 8th Street, Garden City, Kansas 67846. The City is a resident of the State of Kansas and of this District.

12. Garden City, through its President and Trustees, is responsible for the enactment and enforcement of the ordinance challenged herein.

GARDEN CITY'S ZONING CODE

13. The "City of Garden City Zoning Regulations" governs zoning within Garden City's jurisdiction. Relevant portions are attached as Group Exhibit B.

14. According to § 3.010 of the zoning regulations, Garden City is divided into the following, twenty zoning districts: Agricultural District (A), Single Family Residential District (R-1 and R-2), Limited Multiple Family Residential District (R-3), Multiple Family Residential District (R-4), Condominium-Townhouse District (R-C), Zero Lot Line Residential Overlay District (ZL), Mobile Home Park and Mobile Subdivision District (MHP-MHS), Public Facilities District (P-F), Office and Service Business District (CO), Neighborhood Shopping District (C-1), General Commercial District (C-2), Central Business District (C-3), Light Industrial District (I-1), Medium Industrial District (I-2), Heavy Industrial District (I-3), Planned Unit Development Overlay District (PUD), Airport Industrial District (AI), Airport Influence Area Agricultural District (AA), Flight Safety Zone District (FS).

15. The Church has been operating at 606 N. Main St. (which lies in a C-3 zone) for over ten years.

16. In addition to other churches operating in the C-3 zone, Garden City freely permits the following nonreligious assembly uses as of right:

- Amusement places
- Auditoriums
- Business or commercial schools, including dancing and music academies
- Hotels and motels
- Libraries and museums
- Meeting halls and auditoriums
- Court buildings
- Private clubs, fraternities, sororities, and lodges
- Theaters

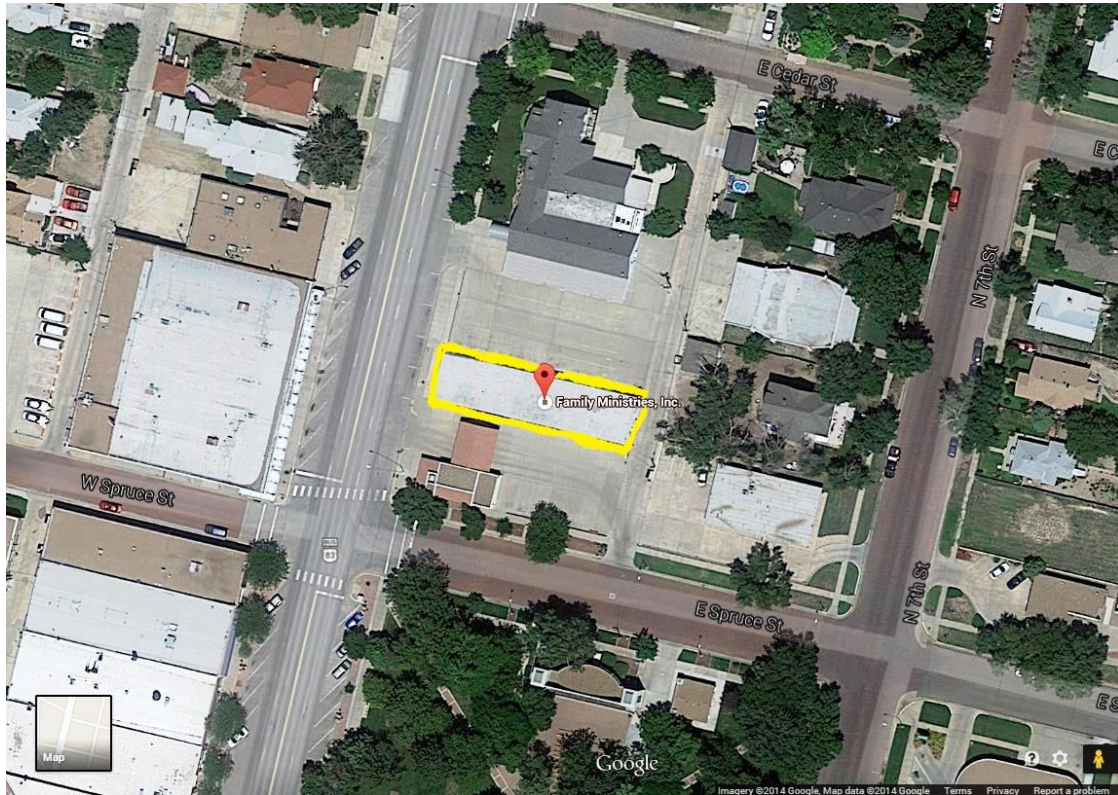
Exh. B.

BACKGROUND OF THE CHURCH & THE PROPERTY AT ISSUE

17. The Church is an active member in the national Church of God in Christ. Exh. A at ¶ 5.

18. Since January 2003, the Church has rented worship space from Family Ministries, Inc., located at 606 N. Main Street, Garden City, KS 67846, ("Property"), *id.* at ¶ 6, which is pictured below in Google® Images:





19. Mt. Zion has partnered with Family Ministries, Inc. for 10 years sharing space, utility cost, and in the provision of community services to the economically, mentally, and physically challenged in the community. *Id.* at ¶ 11.

20. The building is approximately 10,000 square feet in downtown Garden City. *Id.* at ¶ 12.

21. The Church has been operating for 10 years without incidents or complaints from neighbors. *Id.* at ¶ 9.

22. Over the last ten years, the Church has provided the following services and ministries to the Garden City community from its location at 606 N. Main St., all of which are threatened by the City's order to cease and desist the Church's use of the property, Exh. A at ¶ 7:

- a. Weekend services for those in Garden City area seeking a place of worship;

- b. Assistance with medical needs as numerous church members are registered nurses;
- c. Support for those with financial, housing, and economic problems;
- d. Numerous outreach activities for disadvantaged children and young people in the city;
- e. Educational assistance to single mothers and mentoring for at-risk families and young people;
- f. Church-supported mentoring program single moms and activities/care for their children.
- g. Ministries conducted in cooperation with Family Ministries, Inc. which serve veterans, the mentally and physically disabled, and the elderly;
- h. Community outreach to local junior college (Garden City Community College), where the choir has performed for numerous Martin Luther King, Jr. celebrations as shown below:

23. The Church has received a letter from Garden City Attorney Jacob M. Cunningham dated September 29, 2014, instructing the Church to cease its use of the property as a church or other area of worship. The letter goes on to threaten the Church with prosecution if it does not cease the “prohibited use.” Exh. A at ¶13 and Exh. A-1.

24. The Church was told by the City that the City had to enforce its zoning laws because it is complaint driven. One individual filed a complaint against a church at 702 North Main, which was expanded to include Mount Zion COGIC. Exh. A at ¶ 14.

25. On October 16, 2014, Pastor Bradshaw wrote the Garden City Commission requesting a waiver to keep the church operating at the property but the Church's request was denied. Exh. A at ¶ 15.

26. The City of Garden City, through its Zoning Code and the actions of the city commission, is interfering with the Church's religious mission and growth and threatens the existence of the church.

27. The Church members have been humiliated and have endured mental anguish and suffering as a result of these events.

28. The Garden City Zoning Code illegally discriminates against religious assemblies by prohibiting churches where other non-religious assemblies are allowed as a matter of right and or as conditional uses.

29. Such differential treatment of similarly situated non-religious comparators is impermissible. *See Chabad of Nova v. City of Cooper City*, 533 F.Supp.2d 1220 (S.D.Fla. 2008), which held that a city's ordinance violated RLUIPA's equal terms provision by prohibiting religious assemblies in business districts while permitting nonreligious assemblies such as "indoor recreational facilities" and "theaters" within the same districts. 533 F.Supp.2d at 1222-23 (citation omitted).

30. Garden City's actions and Zoning Code violate Plaintiff's rights under the United States Constitution; the Religious Land Use and Institutionalized Person's Act (RLUIPA), 42 U.S.C. § 2000cc-1, *et seq*; Section 7 of the Bill of Rights of the Kansas Constitution; and the Kansas Preservation of Religious Freedom Act (KPRFA), 2013 Kan. HB 2203, 2013 Kan. ALS 47, 2013 Ka. Sess. Laws 47.

31. Through its zoning restrictions, Garden City expressly discriminates against churches generally and specifically discriminated against the Church in a way that has caused and threatens further irreparable harm to their constitutional and statutory rights.

32. To vindicate the Church's rights, compensate for the damage that has been done, and avoid further irreparable harm, the Church seeks declaratory and injunctive relief for violation of their constitutional and statutory rights.

33. Garden City's Zoning Code threatens the continued existence of the Church, interferes with the Church's religious mission and growth and continues to put a major financial strain on the Church. Garden City has demanded the Church close its doors.

34. Mount Zion accordingly challenges, both facially and as-applied to its religious speech and activities, Garden City's zoning provisions.

DESCRIPTION OF THE LOCATION

35. The property located at 606 N. Main Street in Garden City was used as a church for over ten years and sits on land located in the City's Central Business District zone (C-3).

36. The building occupies 10,000 square feet and currently houses a healthcare facility. The Church rents a part of that facility for Sunday worship.

37. The Church has been meeting in the same location, without incident, for the last ten years.

38. In spite of the Church's many years of faithful service to the community, Garden City officials have instructed the Church to cease and desist its activity as a church. Exh. A at ¶ 13.

39. Garden City alleges that pursuant to its zoning regulations, the Church is prohibited from the C-3 zoning district.

40. The Church's right to freely assemble and gather for worship and service is hindered by both the Board's ordinances and hostile actions.

41. The Church seeks to conduct ministries at the Property, which is in furtherance of the sincerely religious beliefs of the Church and of its members:

- a. Weekly assembly of the congregation to worship (Hebrews 10:25);
- b. Weekly preaching, including speech relating to personal morality, God, social, and cultural (2 Timothy 4:2);
- c. Pastoral counseling for the sick, disturbed, lonely, and bereaved;
- d. Prayer meetings (Acts 1:13-14);
- e. Singing and musical performances (Psalms 81:1-2)
- f. Baptisms, confirmations, weddings, funerals, and communion (Matthew 28:19; Luke 22:19);
- g. Bible studies;
- i. Youth activities, including religious instruction, games, and sports;
- k. Service projects for members of the congregation, the poor, and the general community, such as gatherings for college students (Jacob 1:27);
- m. Evangelism-sharing the Christian message and encouraging others to believe in Jesus the Messiah, particularly those who visit their church meetings;

n. Financial giving and special offerings to support the poor, and ministries for members of the congregation.

42. Garden City, through its Zoning Code and the actions of the Zoning Board, is interfering with the Church's religious mission and growth and threatens the continued existence of the church.

ALLEGATIONS OF LAW

44. The zoning code, all ordinances, and all acts of Garden City, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law.

45. Unless and until enforcement of the provisions of the Zoning Code discriminating against churches – such as totally excluding churches from the C-3 zone while other non-religious assembly uses are permitted there– are enjoined, Mount Zion will suffer and continue to suffer irreparable injury to their federal and state rights.

46. The Church's religious worship, religious expression, and religious assembly are fully protected by the First and Fourteenth Amendments to the United States Constitution.

47. Concomitantly, the use of an illegal zoning ordinance to deny the Church access to its property to engage in protected religious worship, religious expression, and religious assembly is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution, and RLUIPA.

48. Additionally, the Church's rights are further protected by Section 7 of the Bill of Rights of the Kansas Constitution, as well as the Kansas Preservation

of Religious Freedom Act (KPRFA), 2013 Kan. HB 2203, 2013 Kan. ALS 47, 2013 Ka. Sess. Laws 47.

49. The Church has no adequate or speedy remedy at law to correct or redress the deprivations of their constitutional and civil rights.

50. Garden City will suffer no harm if the injunctive relief is granted to the Church because it has no interest in enforcing an ordinance which violates federal law.

51. The harm to the Church far outweighs any harm to the Garden City. The public interest is benefited when constitutional and civil rights are protected.

CLAIMS FOR RELIEF

FACIAL VIOLATION OF RLUIPA EQUAL TERMS PROVISION

52. Section 2(b)(1) of RLUIPA prohibits Garden City from treating a religious assembly use less favorably than a non-religious assembly use:

(1) Equal Terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

53. According to § 3.010, Garden City is divided into twenty zoning districts, including the Central Business District (C-3).

54. The Church has been operating in a C-3 zone for over ten years. Churches, however, are not zoned as permitted or approved uses in the C-3 zone.

55. The City's actions violate the equal terms provision because churches are treated on less than equal terms with the following nonreligious assemblies which Garden City permits in C-3 zones as of right:

- Amusement places
- Auditoriums
- Business or commercial schools, including dancing and music academies
- Hotels and motels
- Libraries and museums
- Meeting halls and auditoriums
- Court buildings
- Private clubs, fraternities, sororities, and lodges
- Theaters

56. Some of the aforementioned uses are the same RLUIPA's legislative history identifies as comparable to religious assemblies for purposes of an "equal terms" analysis: "banquet halls, *clubs, community centers, funeral parlors, fraternal organizations, health clubs, gyms, places of amusement, recreation centers, lodges, libraries, museums, municipal buildings, meeting halls, and theaters.*" (italics added) H. REP. 106-219 at 19 (July 1, 1999).

57. As such, Garden City's Code treats churches on less than equal terms with many other kinds of non-religious assembly.

58. Garden City's code provides more favorable terms for many assembly uses which do not generate tax revenue and may be operated for tax-exempt charitable purposes such as community centers, libraries, theaters, cultural and governmental uses/centers.

59. Even though those uses do not differ from a church use from the standpoint of the City's or any other asserted, let alone accepted, zoning criteria, the City forbids churches in all of C-3.

**AS APPLIED VIOLATION OF
RLUIPA EQUAL TERMS PROVISION**

60. The allegations contained in all preceding paragraphs are incorporated here by reference.

61. Garden City, in enforcing its Zoning Code against the Church, has violated the Equal Terms provision of RLUIPA.

WHEREFORE, the Church respectfully prays that the Court grant the relief set forth in the prayer for relief.

**FACIAL VIOLATION OF THE EQUAL
PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT**

62. The allegations contained in all preceding paragraphs are incorporated here by reference.

63. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that the government treat similarly situated assembly uses equally as set for in *Cleburne. Cleburne v. Cleburne Living ctr.*, 473 U.S. 432, 439 (1985).

64. Garden City's Ordinance therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, The Church respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES
CONSTITUTION**

65. The allegations contained in all preceding paragraphs are incorporated here by reference.

66. While general laws of neutral applicability are typically subject to rational basis review, “where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990); see also *Lukumi*, 508 U.S. 520 at 537.

55. Garden City’s Code allows the Village to an individual assessment of the Church’s use of the Property.

67. The Church and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.

68. Garden City lacks a compelling or even rational basis that would justify their denial of the Church’s use of 606 N. Main Street as a church.

69. Garden City’s Ordinance therefore violates the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, The Church respectfully prays that the Court grant the relief set forth in the prayer for relief.

VIOLATIONS UNDER KANSAS LAW

70. The allegations contained in all preceding paragraphs are incorporated

here by reference.

71. Garden City, in enforcing its Zoning Code against the Church, has violated Section 7 of the Bill of Rights of the Kansas Constitution, as well as the Kansas Preservation of Religious Freedom Act (KPRFA), 2013 Kan. HB 2203, 2013 Kan. ALS 47, 2013 Ka. Sess. Laws 47.

WHEREFORE, the Church respectfully prays that the Court grant the relief set forth in the prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, the Church respectfully request relief as follows:

- A. That this Court issue a preliminary and permanent injunction, enjoining Garden City, its officers, agents, employees, attorneys and all other persons acting in active concert with it, from enforcing its Ordinance, both facially and as applied to the Church, and from preventing or attempting to prevent the Church from using the property at 606 N. Main Street, Garden City, Kansas, as a church;
- B. That this Court enter a Declaratory Judgment declaring that Garden City's zoning code that prohibits churches from the C-3 district, while allowing other similar nonreligious assembly uses, is void and unconstitutional both on its face and as applied to the Church;
- C. That this Court award the Church its costs and expenses of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. 1988, and other applicable law;

- D. That this Court award the Church all the damages to which it is entitled;
- E. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders; and
- F. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 31st day of October, 2014.

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Wichita, Kansas, as the place of trial of this cause of action.

/S/ CRAIG SHULTZ

CRAIG SHULTZ, KS #09731
SHULTZ LAW OFFICE, P.A.
445 N. WACO
Wichita, KS 67202
TELEPHONE: (316) 269-2284
FACSIMILE: (316) 269-2011
craig@shultzlaw.net
ATTORNEYS FOR PLAINTIFF

/S/ NOEL W. STERETT

NOEL STERETT*, IL #6292008
MAUCK & BAKER, LLC
ONE NORTH LASALLE STREET
SUITE 600
CHICAGO, IL 60602
TELEPHONE: (312) 726-1243
FACSIMILE: (312) 726-1039
nsterett@mauckbaker.com
ATTORNEY FOR PLAINTIFF

/S/ JOHN W. MAUCK

JOHN W. MAUCK*, IL #1797328
MAUCK & BAKER, LLC
ONE NORTH LASALLE STREET
SUITE 600
CHICAGO, IL 60602
TELEPHONE: (312) 726-1243
FACSIMILE: (312) 726-1039
jmauck@mauckbaker.com
ATTORNEY FOR PLAINTIFF

*Pending Admission *pro hac vice*