

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

COMPLAINT

City of St. Anthony Village, Minnesota,

Defendant.

Plaintiff, the United States of America (“United States”), files this Complaint and alleges:

1. This is a civil action brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc–2000cc-5, against the City of St. Anthony Village, Minnesota (“St. Anthony” or “the City”) for its unlawful conduct in violation of RLUIPA.

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000cc-2(f) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper under 28 U.S.C. § 1391(b) because the claims alleged herein arose in the District of Minnesota.

4. Defendant St. Anthony is a municipal corporation and political subdivision of the State of Minnesota.

5. For purposes of RLUIPA, the City constitutes a “government.” 42 U.S.C. § 2000cc-5(4)(A)(i), (ii).

6. The City has the authority to regulate and restrict the use of land and structures within its borders. See St. Anthony's Code of Ordinances.

7. The City is governed by five City Council members, one of whom also serves as the Mayor. Among its powers, the City Council has authority to amend the Zoning Code (Chapter 152 of St. Anthony's Code of Ordinances), amend the City's Zoning Map (See Section 152.021 of St. Anthony's Code of Ordinances), and grant Conditional Use Permits ("CUPs").

8. The City's Planning Commission consists of seven members appointed by the City Council. The Planning Commission advises the City Council on planning and zoning issues. The Planning Commission also reviews plats and other land subdivisions, site plans for commercial and industrial buildings, rezoning requests, variances, CUPs, and proposed amendments to the Zoning Code, among other things. The Commission's recommendations are presented to the City Council for final approval. The Planning Commission holds monthly meetings that are open to the public.

9. The Abu-Huraira Islamic Center ("Islamic Center") is a Muslim religious organization that has been in existence since 2009. The Islamic Center's board of directors is made up of religious leaders from two Minneapolis mosques with over 900 members total. It is also part of an umbrella group with seven additional local mosques with over 5000 members. At all times relevant to this Complaint, its members have regularly attended religious services in several separate locations, predominately in south Minneapolis and the south metro area.

10. Within northeast Minneapolis and the north metro area, members of the Islamic Center gather to worship in small buildings or homes that have been converted into small mosques.

11. For purposes of RLUIPA, the Islamic Center is a “religious assembly or institution.” 42 U.S.C. § 2000cc(a)(1).

12. Members of the Islamic Center are limited by their current worship sites in their ability to exercise their religion in a number of ways, including, but not limited to, the following:

- a. As a tenet of their religion, the Islamic Center members believe they should pray as a community, which members in the northern metro area are burdened from doing due to the long time it takes to travel to the worship centers in south Minneapolis or the southern metro area;
- b. The current facilities north of downtown lack sufficient space, and members often have to pray in hallways or entryways and hold multiple prayer sessions in shifts to accommodate the crowds;
- c. Because the current facilities lack sufficient parking spaces, many members of the Islamic Center have difficulty attending and often cannot attend prayer services, particularly the Friday (Jummah) congregational prayer;
- d. Features of the current worship sites, including the design of the buildings and lack of space, prevent proper concentration during prayer;
- e. The space and design constraints of the current sites prevent members from being able to host weddings, educational programs, and other fellowship

activities that are important to the members' exercise of their faith, including, breaking fast together during the Islamic holy month of Ramadan;

13. In 2009, the Islamic Center sought to remedy these deficiencies and started looking at properties around the Twin Cities to add a large and accessible space for community gathering that would alleviate the burdens on their current worship facilities. As part of this search, the Islamic Center looked at many locations including in New Hope, Brooklyn Center, Bloomington, Hopkins, Eagan, Burnsville, south Minneapolis, northeast Minneapolis, north Minneapolis, Roseville, St. Louis Park, and St. Anthony.

14. For approximately three years, the Islamic Center was unable to find a location that met its needs. The locations it considered often lacked sufficient parking spaces, were too small for worship, were in poor physical condition, or were unaffordable. In late 2011, the Islamic Center discovered the St. Anthony Business Center, 3055 Old Highway 8, St. Anthony, Minnesota 55418, ("the Property"). The Property appealed to the Islamic Center in large part due to the size of its usable space as well as its large parking lot. In or around January 2012, the Islamic Center began raising money from its members to fund the purchase price of the Property.

15. The Property is an office building containing several small businesses, including a daycare facility. Although, the Islamic Center sought to hold its religious gatherings in the unoccupied basement level and create a greeting area in the north portion of the building, it intended to maintain office space for the remaining tenants in the other portions of the Property.

16. In December 2011, one or more representatives of the Islamic Center contacted Assistant City Manager Kim Moore-Sykes regarding the Center's planned use of the Property. Moore-Sykes identified that the Property fell within the City's Light Industrial district and directed the organization to the City's permitted uses and permitted conditional uses.

17. St. Anthony is made up of five zoning districts:

- a. Residential (consisting of five sub-districts: R-1, R-1A, R-2 R-3, R-4);
- b. General Commercial ("C");
- c. Light Industrial ("LI");
- d. Recreational/Open Space; and
- e. Planned Unit Development.

18. Each district contains permitted uses as well as permitted conditional uses. Section 152.008 of St. Anthony's Code of Ordinances defines a "permitted use" as "[a] use expressly authorized by the zoning code for a particular district or districts." It defines a "conditional use" as "[a] use which is not classified as a permitted use but which may be permitted subject to conditions imposed by the City Council."

19. Applications for a CUP are obtained from the city planner. Once received, the city planner and St. Anthony staff review the application, determine the type of land use associated with the application, develop necessary conditions for the permit and present the application to the Planning Commission for further review. The Planning Commission reviews the CUP application as well as the City's Code of Ordinances to determine whether to keep or modify the conditions recommended by the city planner.

The Planning Commission then makes a recommendation to the City Council to approve or deny the CUP.

20. Section 152.243 of St. Anthony's Zoning Code lists the criteria the City Council must consider in determining whether to grant or deny a CUP. The applicable criteria include: (1) The use is one of the conditional uses specifically listed for the district in which the property is located; (2) The City Council has specified all conditions which the City Council deems necessary to make the use compatible with other uses in the area; (3) The use will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or to the values of property in the vicinity; and (4) The use will provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare.

21. Pursuant to Minnesota Statutes Section 15.99, Subdivision 2(a), CUP applications must be decided by the City Council within 60 days of the date of application. The City may extend the time limit for an amount of time not exceeding 60 days by providing written notice of the extension to the applicant before the end of the initial 60-day period. Minn. Stat. § 15.99 Subd. 3(f). The City Council may take any of the following actions: (1) adopt the application as presented; (2) adopt the application as supplemented by conditions of approval; or (3) deny the application in whole or in part.

22. At the time of the Islamic Center's inquiry, St. Anthony's Zoning Code listed "Assembly, meeting lodge, or convention halls" as permitted conditional uses within the LI district. It also listed "Assembly, lodge, or convention halls" as permitted conditional uses in the C district. "Churches, temples, or synagogues and their supporting

homes, convents, or rectories” are listed as permitted conditional uses in the R-1, R-2, R-3, and R-4 districts. None of these terms was defined in the Zoning Code.

23. On or about February 8, 2012, Moore-Sykes and City Manager Mark Casey met with representatives of the Islamic Center regarding the project. The representatives indicated that the Islamic Center would seek a CUP for “assembly” use in the LI district for the Property and also considered including a school.

24. On February 9, 2012, Moore-Sykes emailed counsel for the Islamic Center, informing her that she spoke with St. Anthony’s City Attorney about whether the assembly CUP application could include the school. The City Attorney concluded that the CUP for assembly had to be applied for and that the school use was not a permitted conditional use in the LI zoning district. The City Attorney noted that the owner could petition to amend the zoning ordinance to include school as a use in the LI district.

25. On February 9, 2012, Moore-Sykes also emailed Casey to update him on the Islamic Center project. She informed him that the site for the Property was zoned LI and currently had a CUP for a daycare. She informed him that the Islamic Center proposed to have a school, an area for worship, and a community center in the building. She notified Casey that the Islamic Center was applying for a CUP for assembly and that it would need to petition for an amendment to the ordinance to include a school as a permitted conditional use.

26. On February 10, 2012, the Islamic Center entered into a purchase agreement to acquire the property. The purchase agreement was conditioned on the Islamic Center obtaining a CUP for assembly.

27. On February 14, 2012, the Islamic Center submitted a CUP application to the City. Pursuant to Section 152.142(G) of the City's Zoning Code, the application sought approval for "assembly" use in the lower level (basement) portion of the south building on the Property. The application specified that there would be no addition or expansion to the existing structure and that the business center would not change its character or occupancy use and would continue to run as office tenant space. The application stated that "[t]he location is ideal and convenient to the Muslim community it serves."

28. The Islamic Center's intended use of the Property constitutes "religious exercise" under RLUIPA. 42 U.S.C. §§ 2000cc-5(7)(A)–(B).

29. The Planning Commission met on February 21, 2012, and conducted a concept review of the CUP application. City Attorney Jay Lindgren noted that the Islamic Center would have to petition to amend the zoning code to include schools as a permitted conditional use or to have the property re-zoned to an R-4 designation. Lindgren advised that re-zoning should not be an option. The Planning Commission noted that the City should weigh the effect on property tax exclusion should it grant the CUP. The Islamic Center representatives again noted that the assembly would only take place in the basement level of the building and that the high attendance periods would occur during the Friday afternoon prayer and at sunset during the month of Ramadan.

30. On February 24, 2012, Moore-Sykes wrote Abu-Huraira a letter confirming that St. Anthony received the completed CUP application. She stated that the City was required to make a decision on the application within 60 days (i.e. April 16, 2012) and

that the next step would be to have a public hearing before the Planning Commission on March 20, 2012 so that the Commission could make a recommendation to the City Council.

31. On February 29, 2012, St. Anthony issued a notice of public hearing for the March 20, 2012 meeting. Six days later, on March 6, 2012, Lindgren sent a memorandum to the mayor, city manager, and city councilmembers, recommending that the City impose a moratorium on the issuance of CUPs for “assemblies, meeting lodges, or convention halls” in the LI and C districts.

32. On March 13, 2012, the City Council passed an interim ordinance imposing the moratorium. As a result, the Islamic Center’s application was pulled from the March 20th meeting. On the same day, the City Council also passed a resolution authorizing city staff to conduct a study regarding the regulation of assemblies, meeting lodges, and convention halls in the commercial and light industrial zoning districts. The stated purpose of the study was to understand and to clarify what was meant in the current city code in terms of those uses

33. On March 14, 2012, Moore-Sykes informed the Islamic Center that its CUP application had been pulled from the Planning Commission’s agenda for its March 20, 2012 meeting.

34. On March 27, 2012, the City Council held a community forum as part of its meeting, and received comments from the public regarding the Islamic Center’s application.

35. The City Council's regular meeting minutes for the March 27, 2012 meeting reflect that at the close of the meeting, the City's Mayor "advised there are two parallel actions going on at the same time, the first is the application for a conditional use permit by Abu Huraira Islamic Center, and the law provides 60 days for the City to act on the CUP request and also provides an additional 60 day extension. He stated that the City happened to put a moratorium in place on any applications that might come after the Abu Huraira Islamic Center's application[.]"

36. By letter dated April 3, 2014, Moore-Sykes informed the Islamic Center that St. Anthony was extending the 60-day decision period for an additional 60 days in accordance with Minnesota Statute Section 15.99, Subdivision 3(f). Moore assured the group that the application for a CUP would be heard by the City Council no later than June 12, 2012.

37. In May 2012, staff for the City published "A Study for the Purpose of Considering Amendments to the City Zoning Code Regarding the Regulation of Assemblies, Meeting Lodges, and Convention Halls" ("the Study").

38. Moore-Sykes, who handled CUP applications for the City since 2004, was not involved in researching or drafting of the Study. She was also never consulted by staff who prepared the study. St. Anthony terminated Moore-Sykes' employment on or shortly after April 3, 2014.

39. Interim City Planner Jacqueline Corkle drafted a memorandum summarizing the findings of the Study and the following six purposes for conducting it:

- a. Determine the meaning of “assembly” as used within the existing Zoning Code.
- b. Determine whether the city intended religious assemblies to exist as conditional uses in commercial (C) and light industrial (LI) zoning districts.
- c. Ensure that any amendment to the Zoning Code does not conflict with the city’s intent in planning for property in the C and LI districts.
- d. Ensure that, if amended, the Zoning Code is improved in regard to consistency and clarity with respect to the use of “assemblies”.
- e. Ensure that the Zoning Code is consistent with federal law.
- f. Respect any applicants currently having a pending application.

40. The Study finds that the Zoning Code distinguished between religious and secular assemblies and that only secular assembly was permitted in the LI and C districts. In summarizing the Study’s findings, Corkle stated that “[t]he Zoning Code arguably prohibits places of worship within non-residential districts because the use of a religious assembly does not fit the type of assembly use allowed within the Zoning Code.”

41. City staff reached this conclusion by evaluating only the text of the Zoning Code. The Study does not analyze the history of all approved “assembly” use in the C and LI districts.

42. On July 22, 2008, the City Council approved a CUP application for “assembly, meeting lodge, and convention hall” to the Twin Cities Christian Assembly (“TCCA”) to use space in the C district as a church. In unanimously granting the

application, the City Council passed a resolution that stated: “The requested conditional use is one of the Permitted Conditional Uses specifically listed for the zoning district.”

43. The Study makes no mention of the TCCA application.

44. The Study also does not discuss why “assembly, meeting lodge, or convention halls” were initially included as permitted conditional uses in the C and LI districts.

45. The City Council added these conditional uses after the Local 49 Union built a banquet hall in the LI district in the late 1990s, and the City has known that the banquet hall has held multiple assembly-like events including the City’s awards ceremony in the early 2000s.

46. In 2005, the Union added a catering kitchen to the hall and sought permission from the City Council to rent the banquet hall to the general public. The council approved the request and amended the Zoning Code to add “catering operations, cafeterias and delicatessens” to the list of permitted conditional uses in the LI district. The Union has rented the banquet hall to the public for meetings, weddings, banquets, and training seminars.

47. The Study makes no mention of the Local 49 Union’s assembly use in the LI District.

48. After discussing the Zoning Code’s different treatment of religious and secular assembly in the LI and C districts, the Study briefly mentions RLUIPA’s Equal Terms provision, acknowledging that a municipality may not treat “a religious assembly

or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1).

49. The Study recommends that the City Council amend the Zoning Code to allow all assembly use (religious and secular) within the C district but eliminate all assembly use from the LI district. Under this option, secular assembly that was operating in the LI district would be allowed to remain as a non-conforming use.

50. On May 29, 2012, Corkle submitted a memorandum to the Planning Commission, which set forth the Staff’s recommendation that the Islamic Center’s CUP application be granted, subject to conditions. Corkle noted that there was authority under the ordinance because “an interpretation of ‘assembly’ could include a religious ‘assembly’.”

51. On June 4, 2012, the Planning Commission held a public meeting with Corkle and Lindgren to discuss the Study’s findings. At the meeting, the Planning Commission unanimously accepted the results of the Study and its recommended amendments to the Zoning Code.

52. Commissioner Jensen asked to clarify whether the changes presented in the study would apply to future CUP applications only, and how the moratorium in place affected the Commission’s ability to make a recommendation on the Islamic Center’s pending CUP application. Corkle responded that the Islamic Center’s application was still subject to the City’s current Zoning Code and that the proposed amendments to the Code pertained to additional applicants in the future.

53. Next, the Commission turned to the Islamic Center's CUP application of which staff recommended approval subject to conditions set forth in a draft resolution. Commissioner Crone asked what the CUP would be called if it was passed. Corkle responded under the current rules, it would be a valid use. She elaborated that if Option #3 were passed by the City Council, it would become a legally non-conforming use. Lindgren clarified that a non-conforming use is a valid use that would run with the land. He stated that non-conforming use is an approved use that is inconsistent with what could otherwise be built there on a going-forward basis.

54. The Planning Commission voted 5-1 to recommend approval of the draft resolution to grant the Islamic Center a CUP for assembly.

55. In advance of the City Council's June 12, 2012 meeting, the City received several e-mails and letters from members of the public in opposition to the Islamic Center's CUP application. Some of the objections contained discriminatory statements and expressed hostility towards the group on the basis of its religion.

56. On June 12, 2012, the City Council held a public meeting with Corkle and Lindgren present.

57. The City Council unanimously voted to accept the Study's findings and to direct staff to pursue the recommended amendments. The Zoning Code was not, however, amended at this time.

58. When the Islamic Center's application came up for public comment, several members of the public approached the Council in opposition to the application, often

referencing the proposed tax-exempt use and making disparaging or discriminatory statements against the Islamic faith.

59. In response, the mayor stated that taxes were not a legal issue upon which the City Council could base its decision and encouraged respect for all persons.

60. After the public comments, Lindgren advised the City Council that a decision to either approve or deny the application would have to take place that evening. He said the Council could choose to accept or modify any of the conditional uses presented by the Planning Commission or deny the application outright. He presented draft resolutions for conditional approval or denial for the Council to review.

61. At the close of the hearing, the City Council voted 4-1 to deny the Islamic Center's application in its entirety. All councilmembers who voted against the CUP application stated that their decision was a land use issue. The only vote in favor of the application noted that the vote would open the City up to a lawsuit under RLUIPA.

62. On November 13, 2012, the City Council amended the Zoning Code such that it allows "Religious Institution/Place of Worship" as a permitted conditional use in the R-1, R-2, R-3, and R-4 districts. The C district lists "assembly, club, or lodge," as a permitted conditional use, and defines assembly as "[a] company of persons gathered for deliberation and legislation, worship or entertainment. An assembly may be either religious or secular, but specifically includes a Religious Institution/Place of Worship." There is no mention of assembly, club, lodge, or religious institution/place of worship in the LI district. Lindgren reviewed the proposed changes and concluded that the Amended Code complies with RLUIPA.

63. Notwithstanding the amendments, the C district presently lists “art galleries;” “coffee houses without drive-through facilities;” “funeral homes and mortuaries” as permitted uses that do not require CUPs from the City Council.

64. The LI district still lists “catering operations and in-house cafeterias not intended for retail or public use” as a permitted conditional use.

65. After amending the purchase agreement on May 15, 2012, July 12, 2012, and August 23, 2012, the Islamic Center closed on its purchase agreement and purchased the Property on August 23, 2012 under a contract for deed.

66. The Islamic Center has continued to rent space in the Property and has not used the property for any religious purpose.

67. For purposes of RLUIPA, the City’s denial of the Islamic Center’s application constitutes the “application” of a “land use regulation” that “limits or restricts a claimant’s use or development of land (including a structure affixed to land).” 42 U.S.C. § 2000cc-5(5).

COUNT I

68. The City’s treatment and denial of the Islamic Center’s application constitutes the imposition or implementation of a land use regulation that imposes a substantial burden on the religious exercise of the Islamic Center and its members, which burden is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering such interest, in violation of RLUIPA. 42 U.S.C. § 2000cc(a).

COUNT II

69. The City's treatment and denial of the Islamic Center's application constitutes the imposition or implementation of a land use regulation that treated, and continues to treat, the Islamic Center on less than equal terms with a nonreligious assembly or institution, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

RELIEF

WHEREFORE, the United States prays that this Court enter an order that:

1. Declares that the City's policies and practices, as alleged herein, violate RLUIPA;
2. Enjoins the City, its officers, employees, agents, successors and all other persons in concert or participation with it, from imposing a substantial burden on the religious exercise of the Islamic Center and its members that is not narrowly tailored to further a compelling governmental interest;
3. Requires the City, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:
 - a. Take such actions as may be necessary to restore, as nearly as practicable, the Islamic Center and its members to the position they would have been in but for the City's unlawful conduct; and
 - b. Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA training to City personnel, establishing procedures to address complaints of RLUIPA violations, and

maintaining records and submitting reports relating to RLUIPA compliance; and

4. Grants any additional relief as the interests of justice may require.

Dated: August 27, 2014

Respectfully submitted,

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