

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

AMERICAN ISLAMIC  
COMMUNITY CENTER, INC.,  
a Michigan Corporation,

Plaintiff,

v.

Hon.  
Case No.

CITY OF STERLING HEIGHTS,  
a Michigan Municipal  
Corporation,

Defendant.

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**VERIFIED COMPLAINT**

NOW COMES the Plaintiff, American Islamic Community Center, Inc., by and through its attorneys, Elder Brinkman PLC, by Azzam Elder; Law Offices of M. Abdrabboh, by Mohammed Abdrabboh; Dalton & Tomich PLC, by Daniel Dalton; and Clark Hill PLC by Kenneth Lane, and for its Complaint against Defendant City of Sterling Heights, states as follows:

**Introduction**

The American Islamic Community Center is an established religious organization whose members have resided in the City of Sterling Heights for over 50 years and include veterans of the United States of America whose service dates back to World War I. The Center entered into an agreement with a property

owner to build a Mosque on land within a zoning district that allows Houses of Worship through means of a Special Land Use Approval as the City has no zones that permit Houses of Worship as of right. The site plan submitted by the Center met all of the requirements to build a Mosque in the City of Sterling Heights. Accordingly, the City Planning Staff recommended approval.

The proposal went to a public hearing before a hostile Planning Commission and public. With a vociferous and racist member of the Planning Commission leading the charge, the Planning Commission voted to reject the site plan.

With no other choice, the American Islamic Community Center has filed this suit seeking equitable relief to build the Mosque and seeks damages as the City of Sterling Heights' conduct violates, among other things, the Religious Land Use and Institutionalized Persons Act found at 42 U.S.C. § 2000cc *et seq.*, and the First and Fourteenth Amendments to the United States Constitution.

### **Parties**

1. Plaintiff American Islamic Community Center, Inc. is a Michigan Corporation organized in 2004 for charitable and religious purposes, which has an interest in land located in the City of Sterling Heights, Macomb County, State of Michigan.

2. Defendant City of Sterling Heights is a Michigan Municipal Corporation located in Macomb County, State of Michigan.

### **Jurisdiction and Venue**

3. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 as this action arises under the First and

Fourteenth Amendments to the United States Constitution and 42 U.S.C. 2000cc *et seq.*, the Religious Land Use and Institutionalized Persons Act (hereinafter “RLUIPA”); under 28 U.S.C. § 1343(a)(3) in that it is brought to redress constitutional violations and deprivations of law under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4) in that it seeks to recover equitable relief under acts of Congress; under 42 U.S.C. § 1983 and 42 U.S.C. § 2000cc *et seq.*, which provides causes of actions for the protection of civil and constitutional rights, injunctive remedies and damages; under 28 U.S.C. § 2201(a) to secure declaratory injunctive relief under 28 U.S.C. § 2202; and under 42 U.S.C. § 1988 to secure cost and reasonable attorney fees as part of the case.

4. This Court has supplemental jurisdiction over Plaintiff’s Michigan constitutional claims asserted herein as those claims form part of the same case or controversy as the federal questions asserted herein, pursuant to 28 U.S.C. § 1367(a).

5. The venue in this action is proper within the Eastern District, Southern Division of Michigan pursuant to 28 U.S.C. § 1391(b), in that:

- (i) Plaintiff has a leasehold interest with an option to purchase property located within this judicial district,

- (ii) Defendant is situated within this judicial district, and
- (iii) All of the claims asserted by Plaintiff arose within this judicial district.

### **Factual Allegations**

#### ***American Islamic Community Center***

6. The American Islamic Community Center, Inc. (“AICC”) is a Michigan Non-Profit Corporation that has not-for-profit tax status through the IRS and is a religious organization that services the Muslim community in the Oakland and Macomb County area of Metro Detroit.

7. The AICC Community, of which 80% of AICC’s members live in the City of Sterling Heights, Michigan (the “City”) with a majority of AICC’s Board Members who live in the City, and have lived in the City since 1961, is comprised of approximately 100 members representing approximately 300 family members.

8. AICC currently meets at property located at 27205 Dequindre Road, Madison Heights, Michigan 48071.

9. AICC provides a variety of services to the local Muslim community including weekly Thursday programs (Du’aa Kumayl), a Friday afternoon group prayer service, Sunday breakfast and youth programs, a program for young children that teaches Arabic and the fundamentals of

Islam, community retreats, and other activities. The Friday afternoon group prayer service, which is referred to as *Jumma*, is the most important service of the week.

10. A mosque is the principal religious building of Islam, and paramount among its many functions is communal prayer.

11. The architectural design is based on liturgical elements leading the participant to orient towards group prayer.

12. Within the rectangular prayer room space, oriented toward Mecca, the congregants line up in rows and follow the liturgical presence of the worship leader, the Imam.

13. The main *dome*, the largest continued covered space in the building, covers the rectangular prayer room and signifies connected world of worship and prayer.

14. Likewise, the architectural elements called the *minrah*, the *maqsura*, the *minbar* and the *minaret* play a significant role in worship.

### ***The Subject Property***

15. In approximately February of 2012, AICC began searching for vacant property in the City on which AICC could construct a mosque that satisfied all of its religious needs because most of the members of the AICC Community live within the City.

16. On or about May, 2015, after several years of searching for a suitable location, AICC learned of certain real property located along Fifteen Mile Road in the City that was for sale and that AICC believes will serve as an ideal site for AICC's new location (the "Property").

17. The Property consists of five (5) separate contiguous parcels<sup>1</sup> under single ownership that together comprise approximately 4.3 acres. *Exhibit 1*, 8/13/15 PC Staff Report.

18. The Property is located along the north side of Fifteen Mile Road between Ryan Road and Mound Road. *Id.* at 1.

19. The parcel to the east of the Property is zoned residential and developed with a rental home. *Id.* at 1.

20. The parcel further east is zoned office and developed with a dental office. *Id.*

21. The parcel to the north of the Property is zoned residential and includes the now closed Warren Consolidated School Hatherly Education Center. *Id.*

22. The parcel to the west of the Property is zoned residential and contains homes. *Id.*

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<sup>1</sup> The five addresses are: 4939 Fifteen Mile Road; 4977 Fifteen Mile Road; 5015 Fifteen Mile Road; 5025 Fifteen Mile Road; and 5085 Fifteen Mile Road. *Ex. 1.*

23. On May 24, 2014, after determining the Property was the ideal location for AICC to build a Mosque and that it met the zoning requirements of the City, AICC, through its Chairman and representative Jaafar Chehab, executed a purchase agreement for the Property with the legal owner, Carol Zenow.

24. AICC currently is leasing the premises, and has an option to acquire the property as soon as it obtains a permit to construct a Mosque on the premises. *Exhibit 2*, Lease. As a condition of purchase, AICC is required to obtain all necessary land use and zoning approvals from the City. *Id.*

### *The Sterling Heights Zoning Ordinance*

25. Churches, synagogues, mosques and places of group worship are not permitted as of right in any of the City's zoning districts under the Sterling Heights Zoning Ordinance ("SHZO").<sup>2</sup> *Exhibit 3*, SHZO.

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<sup>2</sup> The SHZO provides for the following 23 zoning districts: **R-60**, **R-70**, **R-80**, **R-90** and **R-100** (all of which are one family residential), *Ex. 3* Art. 3; **R-2** (two family residential), *Ex. 3* Art. 4; **MHP** Mobile Home Park District, *Ex. 3* Art. 5; **RM-1** and **RM-2** (both of which are multiple family low rise), *Ex. 3* Art. 6; **RM-3** (multiple family mid and high rise), *Ex. 3* Art. 7; **O-1** Business and Professional Office District, *Ex. 3* Art. 8; **O-2** Planned Office District, *Ex. 3* Art. 9; **O-3** High Rise Office Commercial Service District, *Ex. 3* Art. 10; **C-1** Local Convenience Business District, *Ex. 3* Art. 11; **C-2** Planned Comparison District, *Ex. 3* Art. 12; **C-3** General Business District, *Ex. 3* Art. 13; **C-4** Multi Use District, *Ex. 3* Art. 14; **P-1** Vehicular Parking District, *Ex. 3* Art. 15; **Floodplain Area**, *Ex. 3* Art. 16; **O-R** Office Research District, *Ex. 3* Art. 17; **TRO** Technical Research Office District, *Ex. 3* Art. 18; **M-1** Light Industrial District, *Ex. 3* Art. 19; and **M-2** Heavy Industrial District, *Ex. 3* Art. 20.

26. Churches, synagogues, mosques and places of group worship are permitted through special land use approval in only 10 of the City's 23 zones. *Id.*<sup>3</sup>

27. The Property at issue is zoned "R-60 One Family Residential District" under the SHZO. *See Ex. 1.* A mosque is permitted in the R-60 zoning district as a Special Approval Land Use ("SALU") and subject to certain conditions delineated in SHZO Section 3.02. *Id.; Ex. 3* § 3.02.

28. The SHZO allows secular assemblies and institutions *as of right* in the same R-60 zoning district. *Ex. 3* § 3.01.C.

29. The City has allowed secular assemblies and institutions (Schools, Parks, City Offices, and other places of public assembly) to be built in the R-60 zoning district. *Exhibit 4*, Zoning Map.

30. The City Planner determines whether the applicant meets the Site Plan Review standards and issues a report to the Planning Commission as to whether the standards have been met. *Ex. 3* § 3.02.A.

31. In this case, the City Planner issued a report prior to the Planning Commission meeting in August 2015 and concluded the AICC site plan met and exceeded all site plan requirements. *Ex. 1.*

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<sup>3</sup> *See Exhibit 3:* Places of group worship are permitted with SALU approval in SHZO § 3.02 (in 5 one family residential zones); § 4.02 (in the two family resident zone); § 5.04 (in the mobile home park district); § 6.02 (in 2 multiple family low rise zones); and § 7.02 (in the multiple family mid and high rise zone).



32. The Planning Commission determines whether the applicant meets the specific and general discretionary SALU standards and is the final decision maker with respect to the same. *Ex. 3* § 3.02.A.

*AICC Applies to the City for Special Approval Land Use*

33. On or about June 16, 2015, AICC Board Member Jaafar Chehab submitted an SALU application on AICC's behalf to the City's Planning Commission seeking to construct a mosque on the Property. *Exhibit 5*, Floor Plans.

34. AICC's SALU application sought permission from the City to construct a 20,500 square foot mosque structure including the main *dome*, the *minrah*, the *maqsura*, the *minbar* and the *minaret* on the Property. *Id.*

35. The proposed mosque contains a 3,204 square foot worship area that can accommodate 325 worshippers. *Id.*

36. The proposed mosque also contains two, 66-foot spires and a 58-foot tall dome over the main worship space. *Id.*

37. In addition to the main worship space, the proposed mosque also contains office space conference/meeting rooms, a 4,043 square foot prayer room, a 4,201 square foot recreation/multi-purpose room, and a 729 square foot kitchen and coffee area off the main lobby. *Id.*

38. In its site plan application, AICC voluntarily agreed:

- a. To have no outdoor activities on the Property except for a small children's play area that would be located in an area the City approved;
- b. To use no space, including the recreation/multi-purpose room, for parties; and
- c. To have no outdoor noise or call to prayer. *Ex. 1.*

39. AICC intends for the proposed mosque facility to be open for individual daily prayer, which typically occur in the afternoons. *Id.* at 1. Other than on Fridays and during Ramadan, attendance is generally light during daily prayer, with anywhere from zero to 5 people attending on average.

40. AICC also intends to host a group worship service at the mosque on Friday afternoons. *Id.*

41. Additional services will be held during special religious occasions such as the month of Ramadan. *Id.*

***The Planning Office Recommends Approval of the SALU Application***

42. On August 13, 2015, the City's Planning Office issued a Staff Report pertaining to AICC's SALU application. *See Ex. 1.*

43. In its Report, the Planning Office concluded that AICC's "site plan meets all zoning ordinance conditions including setbacks, parking, and landscaping," and met all engineering and traffic requirements for the project. *Id.* at 2.

44. The Planning Office Staff Report also includes a brief mention of RLUIPA and its requirements. *Id.*

45. The Planning Office also determined “that all of the specific conditions contained under Section 3.02 A. and other applicable design standards identified under Zoning Ordinance No. 278 have been met[.]” *Id.*

46. The Planning Office also indicated there were only two potential issues posed by the SALU application:

- a. First, the Planning Office noted the potential impact AICC would have on liquor establishments in close proximity to a worship facility. *Id.*
- b. Second, the Planning Office raised the possibility of imposing a condition requiring AICC to conduct all activities indoors to avoid excessive noise. *Id.*

47. Ultimately, the Planning Office recommended the Planning Commission approve AICC’s SALU application subject to the following eight (8) delineated conditions:

- a. “That the development and operation of the facility shall remain consistent with the scale and nature of the use as described in the proposal, at Public Hearing and reflected on the site plan received date June 16, 2015;
- b. That all of the mosque’s activities be conducted inside the mosque building with the exception of a small children’s play area not exceeding the size shown on the site plan in an approved location, as represented by the petitioner to the Planning Commission;

- c. That there shall not be any external/outdoor audio speakers or other sound amplification devices installed or used at the facility that would project sounds of any type outside the mosque building, including music, voices, or other sounds which could constitute a nuisance to the surrounding residential neighborhood;
- d. That the petitioner will not object to any requests to City Council or to the Liquor Control Commission by a neighboring property owner/potential establishment for a liquor license approval based upon the proximity of the mosque to the proposed licensed establishment;
- e. That the petitioner shall develop, maintain and operate the facility in compliance with all pertinent codes, ordinances and standards of the City of Sterling Heights, County of Macomb and the State of Michigan;
- f. That the petitioner complete the site plan review process and comply with all standards of the Offices of Planning, Engineering and Building Services;
- g. That the petitioner file a Notice of Approval with the Macomb County Register of Deeds within sixty (60) days following the approval of minutes of this meeting. Failure to file this notice will serve as grounds to revoke the Special Approval Land Use;
- h. The decision of the Planning Commission shall remain valid and in force only as long as the facts and information presented to the Commission in the public hearing are found to be correct and the conditions upon which this motion is based are forever maintained as presented to the Commission.”

*Id.* at 4.

***The August 13, 2015 Planning Commission Meeting***

48. On August 13, 2015, the Planning Commission conducted a public hearing regarding AICC’s SALU application. ***Exhibit 6***, 8/13/15 PC Minutes.

49. Prior to the public hearing, the City Planner provided the Planning Commission his recommendation for approval along with a memo outlining the answers to anticipated questions. *Ex. 1.*

50. At the public hearing, the Planning Commission was tasked with determining whether AICC's application met the discretionary General Standards in SHZO Section 25.02. *Ex. 6.*

51. City Planner Donald Mende provided extensive background information on AICC's SALU request. *Id.* at 2-3.

52. Planner Mende clarified AICC was not applying to rezone the Property. Since group worship facilities, including mosques, are permitted uses in the R-60 zoning district subject to SALU approval, there was no need to change the Property's zoning designation. *Id.* at 2.

53. Planner Mende also explained the SHZO provides for a maximum lot coverage of 30% in the R-60 zoning district and noted AICC's proposed mosque has a building lot coverage of approximately 11%, which is well under the 30% maximum. *Id.*

54. Planner Mende also clarified that AICC's proposed mosque complies with the SHZO's front, side and rear building setback requirements for worship facilities. *Id.*

55. Planner Mende further clarified that while the SHZO provides a 30-foot height requirement for structures in the R-60 zoning district, the height may be increased in conjunction with increased building setbacks. *Id.*

56. Thus while AICC's proposed mosque has two spires "that trigger that setback requirement[,] the structure does comply with those increased setback requirements." *Id.*

57. Planner Mende also explained that since AICC's main worship space can accommodate 325 persons, the SHZO requires 109 parking spaces. *Id.* AICC complies with the parking requirement as its site plan provides for 130 parking spaces. *Id.*

58. Planner Mende further explained that AICC's proposal complies with the Master Road Plan because traffic will access the Property via two drives out to Fifteen Mile Road, which is classified as a "major thoroughfare." Group worship facilities are only required to be located on "secondary roads" or greater. *Id.*

59. As to the two concerns raised in the Planning Office's Staff Report, Planner Mende noted AICC was agreeable to resolving both of them. *Id.* at 3.

60. As for the outdoor sound issue, AICC had no objection to a condition that would prohibit external/outdoor devices to amplify sound outside of the mosque. *Id.*

61. As for the liquor license issue, AICC agreed it would not object if an establishment in the vicinity were to apply for a liquor license. *Id.*

62. Planner Mende also cited apparent concerns over “rumors” that the proposed multipurpose room would be used as a banquet hall for the general public. *Id.*

63. Finally, Planner Mende noted AICC was not seeking to operate a school at the Property, which would require a separate application. *Id.*

64. After Planner Mende spoke, AICC Board Member and representative Jaafar Chehab addressed the Planning Commission regarding AICC’s application. *Id.*

65. Mr. Chehab explained the mosque would be open for individual daily prayer in the afternoon, as well as group worship on Friday afternoons. *Id.* The mosque would also host additional religious services during special occasions like Ramadan. *Id.*

66. Thereafter, the hearing was opened for public participation. *Id.*

67. Planner Mende then responded to 23 separate concerns raised during the public participation portion of the hearing. *Id.* at 6-7.

68. Planning Commission Chairman Gerald Rowe expressed concern about the scale of the building on the Property, the spires, and traffic. *Id.* at 8.

69. Planning Commission Member Jeffrey Norgrove expressed concern the proposed structure was 20,500 square feet and the worship area only around 3,000 square feet, and in particular whether the structure would later be used as a school or day care. *Id.*

70. Mr. Chehab clarified AICC has no intentions of opening a day care and only plans to use the banquet hall for its own members, such as for a funeral. *Id.*

71. Mr. Chehab also indicated AICC had been looking for a suitable location in the City for several years and the Property was the first to meet its requirements. *Id.*

72. AICC's architect, Abraham Chehab, further clarified that no reflective material would be used on the mosque's dome. *Id.*

73. Mr. Jaafar Chehab also explained AICC was willing to negotiate the size of the dome. *Id.*

74. Mr. Jaafar Chehab further clarified AICC has the financial resources to move forward and fund the project. *Id.* at 9.



75. Planning Commission Member Norgrove expressed additional concerns over removing 5 taxable properties and how it would affect the surrounding neighborhood, concluding that he was not comfortable making a decision. *Id.*

76. During the SALU application process and particularly at both Planning Commission hearings, AICC faced harsh resistance from a large group of City residents. *See id.* A significant amount of comments were racially charged and alarmingly discriminatory. *Id.*

77. At the August 13 public hearing, one resident stated “I wish they’d go to Dearborn or somewhere else, just not this area....I don’t want to be near people like this. This is not humanity. My point is that it’s not right to live with people like this...this is not acceptable at all. These people...they are scaring the public.” *Exhibit 7*, 8/25/15 Arab American News Article at 2. This same individual held up an image of a woman in a burqa, called women wearing burqas “scary and disgusting,” and suggested City officials outlaw burqas in the City. *Id.*

78. Another individual questioned how AICC was able to raise money to build the mosque, stating “all Muslims who live in America are on food stamps. They are killers.” *Id.*

79. Chairman Rowe then requested Mr. Chehab use a postponement to “review the scale of the development.” *Ex. 6*. Chairman Rowe provided no further elaboration on what specifically the Planning Commission wanted AICC to review. *Id.*

80. Planning Commissioner Militello commented in response to the request for an adjournment that, “if this was a Church, we would have no problem here.” See, video of Plan Commission meeting, 08/13/15

81. Mr. Chehab agreed to the one-month postponement. *Id.*

82. The Planning Commission then voted 6-1 (with Commissioner Militello voting no) to postpone a decision and carry the matter to the September 10, 2015 meeting. *Id.*

#### *AICC Addresses the Planning Commission’s Concerns*

83. After the postponement, AICC’s architect began working on revising AICC’s plans to address the Planning Commission’s concerns regarding the “scale of the development.”

84. On August 28, 2015, AICC’s architect prepared and submitted revised plans to the Planning Commission. *Exhibit 8*, 9/10/15 Staff Report at 2.

85. The revisions included a 9-foot reduction in the height of the 2 spires (from 66 feet to 57 feet) and a 7-foot increase in the height of the dome (from 58 feet to 65 feet). *Id.*

86. The square footage of the building remained the same and there was no change to the number of off-street parking spaces. *Id.*

87. In its Staff Report dated September 10, 2015, the Planning Office summarized the issues raised by the Planning Commission at the August hearing as follows:

- a. The height of the building's two spires and dome exceed the 30-foot height limitation in the R-60 zoning district.
- b. The size of the 20,500 square foot structure on a relatively small, 4.3-acre parcel.
- c. Compatibility with adjoining land uses.
- d. The adequacy of off-street parking.

*Id.* at 2.

88. These stated issues are in fact contrary to the August 13, 2015 Planning Commission minutes:

- a. While the height of the building's two spires and dome exceed the 30-foot height limitation in the R-60 zoning district, Planner Mende previously testified the height may be increased in conjunction with increased building setbacks and while AICC's two spires "trigger that setback requirement[,] the structure does comply with those increased setback requirements." *Ex. 6* at 2.
- b. With respect to the size of the mosque building on the 4.35-acre parcel, Planner Mende previously testified that the SHZO

provides for a maximum lot coverage of 30% in the R-60 zoning district and AICC's proposed mosque was well within the 30% maximum with a building lot coverage of approximately 11%. *Id.*

- c. With respect to the mosque's "compatibility with adjoining land uses," no specific purported incompatibilities were discussed at the August 13, 2015 Planning Commission meeting. *See id.*
- d. Finally, the only discussion regarding off-street parking at the August 13 meeting occurred when Planner Mende testified that AICC's main worship space has a capacity of 325 persons, which requires 109 parking spaces under the SHZO. *Id.* at 2. Since AICC's plan provides 130 off-street spaces, it is clearly within the SHZO's requirements and neither Planner Mende nor any Planning Commission Member suggested otherwise at that hearing. *See id.*

89. The Planning Office ultimately concluded that AICC's "minimal amendments to the architectural plans are not responsive to these issues and do not support a finding that the proposed special approval land use comports with the General Standards." *Ex. 8* at 4.

90. The Planning Office specifically referenced the following information to support its finding:

- a. The height of the twin spires, even though reduced, is still 27 feet higher than the maximum 30 feet allowed in the R-60 zoning district;
- b. The height (and mass) of the dome increased; and
- c. AICC made no changes "to improve the compatibility of the proposed development with the established, long-term land uses in the vicinity in terms of the height, scale, and potential impact on the neighboring areas arising from overflow parking on to local neighborhood streets."

*Id.* at 4.

91. The Planning Office also determined AICC's revised SALU application failed to satisfy the General Standards in Section 25.02 in the following ways:

- e. The location and height of the proposed building's twin spires and dome interfere with and discourage the appropriate development and use of adjacent land and buildings, as they both far exceed the height of other structures in the immediate area which are less than 30' feet in height (General Standards 25.02 A & D);
- f. The square footage of the proposed building in comparison the size of the parcel is excessive and not compatible with the established development patterns in this R-60 zoning district (General Standards 25.02 A & D);
- g. Given the approximately 20,500 square foot size of the proposed building and the allocation of floor space to ancillary uses, there is a likely shortage of off-street parking when the principal and ancillary uses of the building are combined, especially on busy prayer hall days. Section 23.02 B.1 of the Ordinance requires additional parking spaces for ancillary uses, which are not addressed in the architectural plans (General Standard 25.02 B); and,
- h. The scale and height of the proposed building on the site are not harmonious with the character of the existing buildings situated in the vicinity of this R-60 zoning district (General Standards 25.02 A, E, F & G)."

*Id.* at 4.

92. Based on this analysis, the Planning Office recommended the Planning Commission deny AICC's SALU request at its September 10, 2015 meeting. *Id.* at 5.

***City Officials Conspire to Deny AICC's Application***

93. On August 19, 2015, two residents emailed various City officials asking if “this imam and mosque [have] been completely vetted,” and requested the City “provide to the local FBI office...the names of all participants in this proposed development to find out if any of these names are on the terrorist watch list?” ***Exhibit 9***, 8/19/15 Email.

94. In response, Planner Mende forwarded AICC's name, current location, the name of AICC's imam, and Jaafar Chehab's name and home address to the now retired Chief of Police. ***Id.***

95. The Mayor responded to the resident email indicating that the City would not use the FBI to investigate the proponent of the Mosque as the request is offensive, not permissible and violative of the United States Constitution.

96. However, the now retired Police Chief without any probable cause what so ever, directed the current Chief of Police to ask his contact within the FBI to “see if this mosk (sic) or Sayed Najah Al-Hussaini and Jaafar Chehab is on their radar.” ***Id.***

97. Upon information and belief, there has been no other SALU application considered by the City where applicants were subject to FBI background checks. Such conduct by the Chief of Police has created fear and

anxiety among the city's Muslim residents. Here you have a Chief of Police with the power to open investigations, instead resorting to McCarthyism like tactics without proper regard for evidence which only hurts law abiding citizens, and their hard earned reputations.

98. Planning Commission Member Jeffrey Norgrove, who posted highly offensive anti-Muslim memes on social media demonstrating both his bias and ignorance toward Plaintiff, requested the Planner to give him the opportunity to move the resolution to deny the site plan for the Mosque prior to the September 2015 Planning Commission meeting.

99. In an attempt to flout the Open Meetings Act, and to pre-determine the outcome of the next Planning Commission meeting, Planner Mende engaged in "round robin" conversation seeking the decision of the Planning Commissioners regarding AICC's SALU application prior to the September 2015 meeting. *Exhibit 10*, 9/1/15 Emails.

100. Through this process, Planner Mende informed the City Manager that he had already "spoke[n] to 2 more Commissioners', Ancona and Norgrove, who are both no votes. Norgrove wants to make the motion. The only two I haven't spoken to are Miller and Reinowski." *Id.*

101. Minutes later, Planner Mende sent a follow-up email to City Manager Mark Vanderpool stating “Miller just stopped in and I spoke with him, who is also a no.” *Id.*

102. These emails were exchanged 9 days prior to the second hearing on AICC’s SALU application.

103. On September 2, Jaafar Chehab contacted Planner Mende to see if the City received the architect’s updated drawing and if anything was missing. *Exhibit 11*, 9/2/15 Email.

104. Planner Mende informed City Manager Vanderpool of this contact via email and further stated “As we discussed, I do not intend on calling him.” *Id.*

***The September 10, 2015 Planning Commission Meeting***

105. The Planning Commission reconvened to continue hearing AICC’s SALU application on September 10, 2015. *Exhibit 12*, 9/10/15 PC Minutes.

106. At the outset, Chairman Rowe announced the public hearing would “be reopened for the limited purpose of taking public comment on the changes in the height of the proposed building only.” *Id.* at 1.



107. At the September 10 public hearing, the City hall was filled to its 240-person capacity and hundreds of additional people were outside chanting “no more mosque.”

108. Planner Mende then essentially summarized the findings in the September 10 Staff Report, which culminated in his recommending the Planning Commission deny AICC’s SALU application for the reasons stated in the Staff Report. *Id.* at 2-3.

109. In response, Jaafar Chehab noted AICC had been working with City officials for more than one year on its proposal and the issues raised in the Staff Report and at the September 10 meeting had never been brought up with AICC prior to that meeting. *Id.* at 3.

110. Thereafter, approximately 8 members of the public spoke in opposition to AICC’s application, and another 8 members spoke in support of AICC’s application. *Id.* at 4.

111. After the public comment, the Planning Commission members asked no questions and made no further comments. *Id.*

112. As noted in Planner Mende’s email nine days prior, the Planning Commission unanimously voted to deny AICC’s SALU application. *Id.* at 5.

113. In the four years AICC members had been searching for a suitable property in the City, the Property was the only site AICC found that meets AICC's physical and spiritual needs.

114. Based on discussions between AICC representatives and City Planning officials over the course of more than one year and the Planning Commission's treatment of SALU applications from other group worship facilities, AICC had a reasonable expectation that it would be permitted to use the Property as a group worship facility.

115. Several other religious organizations have received SALU approval to use real property within the City for group worship facilities in the same zoning designation as the Plaintiff applied for in this case. The approved site plans include, but are not limited to, the following religious organizations:

- a. Faith Church (17 Mile & Dequindre);
- b. St John Greek Orthodox (Metro Parkway & Dodge Park);
- c. Bethesda Christian (Metro Parkway & Schoenherr); and
- d. Sikh Indian Temple (14 Mile & Dequindre).

## COUNT I

***Violation of the Religious Land Use and Institutionalized Persons Act  
42 U.S.C. § 2000cc(b)(1)  
Equal Terms Claim - Facial Challenge***

116. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 115 as fully rewritten herein.

117. RLUIPA's Equal Terms clause provides that "[n]o 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." 42 U.S.C. § 2000cc(b)(1).

118. Thus, to state a facial claim under RLUIPA's Equal Terms provision, a religious institution show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution.

119. Congress directed that RLUIPA should be "construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution." 42 U.S.C. § 2000cc-3(g).

120. Plaintiff AICC is a religious assembly or institution.

121. Plaintiff AICC is likewise subject to a land use regulation—the SHZO.

122. On its face, the SHZO treats religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions since group worship facilities are must obtain special dispensation from the City in the form of a SALU before they may operate.

123. By contrast, nonreligious assemblies such as libraries, museums, administrative offices, parks and recreational facilities are allowed as of right in various zoning districts in the City.

124. The permitted nonreligious assemblies and institutions do not cause less harm to the interests of the SHZO than religious assemblies or institutions.

125. More specifically, AICC seeks to construct a mosque on the Property it has a leasehold interest and option to purchase that is located within the City's R-60 zoning district.

126. The SHZO permits several nonreligious assemblies and institutions as of right in the R-60 zoning district, including "City-owned and/or operated libraries, museums, administrative offices... and recreational facilities[.]" *Ex. 3* § 3.01.C.

127. The SHZO treats religious assemblies such as AICC on less than equal terms with nonreligious assemblies by requiring religious

assemblies to apply for and obtain SALU approval from the Planning Commission in order to operate in the R-60 zoning district. *Id.*

128. By ordinance and application, the City has allowed nonreligious places of assembly as of right in the same R-60 Zoning District in which AICC sought to use in the City. See *Exhibit 4*. The uses include, but are not limited to, the following:

- a. City Hall
- b. The City Library
- c. The City Justice Building
- d. The City District Court
- e. The City Parks & Recreation Building
- f. Henry Ford High School
- g. Stevenson High School
- h. Dodge Park
- i. Flynn Middle School
- j. Jefferson Elementary School

129. Nonreligious assemblies and institutions such as City-owned and/or -operated libraries, museums, administrative offices and recreational facilities do not cause less harm to the interests the SHZO seeks to advance in the R-60 district than religious assemblies or institutions.

130. Therefore, the SHZO violates RLUIPA's Equal Terms provision in the zoning districts that permit nonreligious assemblies but ban religious assemblies or require religious assemblies to obtain special dispensation from the Sterling Heights Planning Commission.

131. Plaintiff AICC is suffering irreparable harm for which there is no adequate remedy at law and as a direct result of the Defendant's violations of Plaintiff's rights under RLUIPA's Equal Terms Clause, 42 U.S.C. § 2000cc(b)(1), as alleged above.

132. Furthermore, as a direct result of the City's violations of AICC's rights under RLUIPA's Equal Terms provision as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

## **COUNT II**

### ***Violation of the Religious Land Use and Institutionalized Persons Act 42 U.S.C. § 2000cc(b)(1) Equal Terms Claim – As-Applied Challenge***

133. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 132 as fully rewritten herein.

134. RLUIPA's Equal Terms clause provides that “[n]o 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.” 42 U.S.C. § 2000cc(b)(1).

135. Thus, to state an as-applied claim under RLUIPA's Equal Terms provision, a religious institution must show (1) it is a religious assembly or institution, (2) subject to a land use regulation, which regulation (3) treats the religious assembly on less than equal terms with (4) a nonreligious assembly or institution that has been approved by the City.

136. Plaintiff AICC is a religious assembly or institution subject to a discretionary land use regulation—the special land use provisions of the SHZO.

137. By ordinance and application, the City has allowed secular nonreligious places of assembly are allowed as of right in the same R-60 Zoning District as the one Plaintiff sought to use in the City. See *Exhibit 4*. The uses include, but are not limited to, the following:

- a. City Hall
- b. The City Library
- c. The City Justice Building
- d. The City District Court
- e. The City Parks & Recreation Building
- f. Henry Ford High School
- g. Stevenson High School
- h. Dodge Park

- i. Flynn Middle School
- j. Jefferson Elementary School

138. The permitted nonreligious assemblies and institutions are more intensive of a use and cause more harm to the interests of the SHZO than the proposed religious institution of the Plaintiff on the Property it owns that is located within the City's R-60 zoning district.

139. Therefore, the City of Sterling Heights has applied its SHZO in a manner in which is violates RLUIPA's as-applied Equal Terms provision in the zoning districts that permit nonreligious assemblies but ban religious assemblies or require religious assemblies to obtain special dispensation from the Sterling Heights Planning Commission.

140. Plaintiff AICC is suffering irreparable harm for which there is no adequate remedy at law and as a direct result of the Defendant's violations of Plaintiff's rights under RLUIPA's Equal Terms Clause, 42 U.S.C. § 2000cc(b)(1), as alleged above.

141. Furthermore, as a direct result of the City's violations of AICC's rights under RLUIPA's Equal Terms provision as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.



**COUNT III**  
***Violation of the Religious Land Use and Institutionalized Persons Act***  
***42 U.S.C. § 2000cc(a)***  
***Substantial Burden Claim***

142. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 141 as fully rewritten herein.

143. Congress provided in Section 2(a)(1) of RLUIPA certain statutory protections for “religious exercise” as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution \* \* \* is in furtherance of a compelling government interest [and] is the least restrictive means of furthering that compelling government interest. 42 U.S.C. § 2000cc(a)(1).

144. While Congress did not define the term “substantial burden” in RLUIPA, Congress defined “religious exercise” to broadly include:

any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” and specifies that the “use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.” 42 U.S.C. § 2000cc-5(7).

145. Congress further directed that RLUIPA should be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g).

146. RLUIPA’s “substantial burden” provision applies when (1) the burden is imposed in a program that receives federal financial assistance; (2) the imposition or removal of the burden affects interstate commerce; or (3) the burden is imposed in a system in which a government makes individualized assessments about how to apply a land use regulation. 42 U.S.C. § 2000cc(a)(2)(A)-(C).

147. A substantial burden exists where “the government action place[s] substantial pressure on a religious institution to violate its religious beliefs or effectively bar[s] a religious institution from using its property in the exercise of its religion[.]” *Living Water Church of God. v. Charter Twp. of Meridian*, 258 F. App’x 729, 737 (6th Cir. 2007).

148. The City of Sterling Heights has placed substantial pressure on AICC to violate its religious beliefs by:

- a. Banning AICC from using the Property for religious assembly purposes;
- b. Precluding the AICC family from worshipping together as one spiritual family at the Property;
- c. Banning mosques and other group worship facilities from all zoning districts except residential districts in the City; and
- d. Requiring mosques and other group worship facilities to obtain a Special Approval Land Use from the Planning Commission before locating anywhere within the City of Sterling Heights.

149. The City of Sterling Heights, through the decision of its Planning Commission, has also effectively barred AICC from exercising its religious beliefs on the Property.

150. The City of Sterling Heights has made it practically impossible for AICC to lawfully exercise its religious beliefs in the City.

151. The City's actions, as described herein, are not the least restrictive means of furthering any compelling government interest.

152. Therefore, the City of Sterling Heights has violated RLUIPA's Substantial Burden provision.

153. The City's actions have directly resulted in AICC suffering irreparable harm for which there is no adequate remedy at law.

154. Furthermore, as a direct result of the City's violations of AICC's rights under RLUIPA's Substantial Burden provision as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

#### **COUNT IV**

#### ***Violation of the Religious Land Use and Institutionalized Persons Act Unreasonable Limitations Claim - 42 U.S.C. § 2000cc(b)(3)(B)***

155. Plaintiff restates the allegations in paragraphs 1 through 154 as if fully restated herein.

156. Congress provided in Section (b)(3)(B) of RLUIPA statutory protections against “unreasonable limitations” as follows:

No government shall impose or implement a land use regulation that . . . Unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

157. Congress also directed that RLUIPA should be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g).

158. The “unreasonable limitations” provision of RLUIPA applies when a City has no zones that permit houses of worship as of right and the only way a house of worship may be built is by having an individual parcel rezoned, a process that is lengthy and expensive.

159. The City does not allow any religious assembly uses in any zoning district as of right, and only allows religious assembly uses in 10 of its 23 zoning districts through SALU approval.

160. AICC has been searching for adequate property in the City for several years and to date, the Property is the only one AICC has found that is suitable for constructing its proposed mosque.

161. Given the restriction in the SHZO of not allowing religious assembly uses as permitted uses in any zoning district, and allowing

religious assembly uses with SALU approval in only 10 of the City's 23 zoning districts, the City has facially violated RLUIPA's unreasonable limitations provision. *See* 42 U.S.C. § 2000cc(b)(3)(b).

162. Given the restriction in the SHZO of not allowing religious assembly uses as permitted uses in any zoning district, and allowing religious assembly uses with SALU approval in only 10 of the City's 23 zoning districts, and given that there is no other available property in the City on which AICC can construct its proposed house of worship, the City has violated RLUIPA's unreasonable limitations provision found at 42 U.S.C. § 2000cc(b)(3)(b) as applied to AICC.

163. Defendant's actions have directly resulted in AICC suffering irreparable harm for which there is no adequate remedy at law.

164. Furthermore, as a direct result of Defendant's violations of Plaintiff's rights under RLUIPA's Unreasonable Limitations provision as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

#### **COUNT V**

***Violation of the Religious Land Use and Institutionalized Persons Act  
Discrimination Based on Religion or Religious Denomination  
42 U.S.C. § 2000cc(b)(2)***

165. Plaintiff restates the allegations in paragraphs 1 through 164 as if fully restated herein.

166. Congress provided in 42 U.S.C. 2000cc(b)(2) of RLUIPA that “No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.”

167. Congress also directed that RLUIPA should be “construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.” 42 U.S.C. § 2000cc-3(g).

168. Plaintiff is a religious institution that was subject to a land use regulation, the SHZO, when it applied for SALU approval to build a Mosque on the Property.

169. The City of Sterling Heights, through its Planning Commission, implemented its SHZO (a land use regulation) in a manner that discriminates against Plaintiff on the basis of religion when it denied the site plan on the Property even though the site plan met all zoning, planning, engineering and traffic requirements.

170. On the other hand, the City of Sterling Heights, through its Planning Commission, implemented its SHZO (a land use regulation) in a manner that did not discriminate other religious entities and organizations when it approved similar religious uses for other religions and

denominations. The approved site plans include, but are not limited to, the following religious organizations:

- e. Faith Church (17 Mile & Dequindre);
- f. St John Greek Orthodox (Metro Parkway & Dodge Park);
- g. Bethesda Christian (Metro Parkway & Schoenherr); and
- h. Sikh Indian Temple (14 Mile & Dequindre).

171. Given the decision of the Planning Commission to deny the Plaintiff's site plan based on religion and religious denomination, and in light of the Planning Commission approving other religious entities' site plans who located in the same zoning district with the same site plan requirements, the City has violated 42 U.S.C. 2000cc(b)(2).

172. Defendant's actions have directly resulted in AICC suffering irreparable harm for which there is no adequate remedy at law.

173. Furthermore, as a direct result of Defendant's violations of Plaintiff's rights under RLUIPA's Unreasonable Limitations provision as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

**COUNT VI**

***Violation of the Right to Free Exercise Guaranteed by the First Amendment to the United States Constitution (42 U.S.C. § 1983)***

174. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 173 as fully rewritten herein.

175. At all times alleged herein, Defendant has been and will continue to be acting under the color of state law and engaging in state action.

176. The Free Exercise Clause, which has been applied to the states through the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” U.S. CONST. amend. I.

177. The Free Exercise clause prohibits “religious gerrymanders” that exclude certain uses from an area based upon their religious nature. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993).

178. The enactment and enforcement of the SHZO by the City and its Planning Commission constitutes governmental action.

179. The City Planning Commission’s decision to deny AICC’s SALU application effectively bars AICC from exercising its religious beliefs at the Property in the City.



180. The plain language of the SHZO, including Section 3.02 that applies to the R-60 zoning district, has imposed certain restrictions that only apply to mosques and other group worship facilities but not other similarly situated secular assembly uses.

181. The SHZO is not neutral or of general applicability since it requires SALU approval for particular land uses due to their religious nature.

182. The SHZO's requirement that mosques and other group worship facilities, but not secular assemblies, obtain SALU approval before operating in the R-60 zoning district is not narrowly tailored to any compelling government interest.

183. In the alternative, the SHZO's requirement that mosques and other group worship facilities, but not secular assemblies, obtain SALU approval before operating in the R-60 zoning district is not narrowly tailored to any important government interest, and does not leave sufficient alternatives for religious expression in the R-60 zoning district.

184. Thus the City, through its interpretation, imposition, and enforcement of the SHZO, has created a religious gerrymander in the R-60 zoning district where mosques and other group worship facilities must apply for and obtain SALU approval from the Planning Commission while other similarly situated nonreligious assembly uses are permitted as of right.

185. Therefore, the City has violated the Free Exercise Clause of the First Amendment.

186. The City of Sterling Heights has policy, practice and procure in unlawfully denying land use applications in an unconstitutional manner when it is faced with community or political opposition leading to many federal lawsuits, which resulted in adverse judgments against the City. See, *Hillside Prods. v. Duchane*, 249 F. Supp. 2d 880, 2003 U.S. Dist. LEXIS 3961 ( E.D. Mich. 2003); *Nasierowski Bros. Inv. Co. v. Sterling Heights*, 949 F.2d 890, 1991 U.S. App. LEXIS 27663 (6th Cir. Mich. 1991)

187. AICC is suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law as a direct result of Defendant's violation of AICC's rights under the First Amendment Free Exercise Clause.

188. Furthermore, as a direct result of Defendant's violation of Plaintiff's First Amendment free exercise rights, as alleged herein above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

**COUNT VII**

***Violation of the Right to Free Speech and Assembly Guaranteed by  
the First Amendment to the United States Constitution  
(42 U.S.C. § 1983)***

189. Plaintiff restates the allegations in paragraphs 1 through 188 as if fully restated herein.

190. In circumstances in which religious and non-religious assembly uses are operationally similar (from the perspective of the proper purposes and objectives of government zoning authority), Section 3.02 of the SHZO treats differently religious and non-religious assemblies on the basis of religious speech.

191. Section 3.02 of the SHZO, as implemented and applied by Defendant, differentiates religious assemblies and secular assemblies by means of analysis of the content of the speech of those who would use the property for assembling, and assigns discriminatory burdens to those users whose speech is religious.

192. Defendant's discriminatory treatment of religious land uses, including that of Plaintiff, constitutes a content-based and viewpoint-based restriction on speech.

193. The content- and viewpoint-based restrictions of Section 3.02 of the SHZO that are placed upon Plaintiff are not supported by a

compelling governmental interest and are not narrowly tailored to accomplish a compelling governmental interest.

194. The regulation of religious land uses in Section 3.02 of the SHZO is not a legitimate time, place, or manner regulation, as it does not serve a significant government interest, and does not leave open ample alternative channels for communication.

195. Section 3.02 of the SHZO, to the extent it requires Plaintiff and all other group worship facilities to obtain special dispensation from the City to use land for religious assembly, as well as affords Defendant unfettered discretion to decide whether to allow religious speech and does not contain in that process the procedural safeguards necessary for a speech-related permit scheme, constitutes a prior restraint on Plaintiff's speech in violation of the First Amendment to the United States Constitution.

196. By discriminating against religious land uses, Defendant has violated and continues to violate Plaintiff's right to the Freedom of Speech under the First Amendment.

197. In addition, Section 3.02 of the SHZO, to the extent it imposes discriminatory burdens on those who seek to assemble in the City for religious exercise and speech, violates Plaintiff's right to assemble and

associate for the purpose of engaging in activities protected by the First Amendment.

198. As a direct result of the City's violations of Plaintiff's rights under the First Amendment to the United States Constitution, as alleged above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs, and attorney fees.

### **COUNT VIII**

***Violation of the Fourteenth Amendment to the United States Constitution  
Equal Protection Clause—42 U.S.C. § 1983  
Facial Challenge***

199. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 198 as fully rewritten herein.

200. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV § 1.

201. The Equal Protection Clause prohibits discrimination by a governmental entity that burdens a “fundamental right” and treats persons unequally based on an “inherently suspect classification.”

202. The First Amendment right to the free exercise of religion is a constitutionally protected fundamental right, and religion is an inherently suspect classification.

203. Governmental action that treats persons unequally based on an “inherently suspect classification” or burdens a “fundamental right is subject to strict scrutiny.

204. As stated above, the City is a government organization and the interpretation and enforcement of Section 3.02 of the SHZO by the City’s Planning Commission constitute government action taken under color of state law.

205. On its face, Section 3.02 of the SHZO denies equal protection of the law to mosques and other group worship facilities since it requires such organizations to obtain special dispensation in the form of SALU approval from the Planning Commission before they may locate anywhere in the City. *See Ex. 3.*

206. By contrast, Section 3.02 of the SHZO allows many secular assembly uses as of right in the City that are similarly situated to mosques and other group worship facilities, including but not limited City-owned and/or operated libraries, museums, administrative offices and recreational facilities. *See Ex. 3.*

207. More specifically, the R-60 zoning district requires mosques and other group worship facilities to apply for and obtain SALU approval from the Planning Commission, whereas similarly situated secular assembly

uses such as City-owned and/or -operated libraries, museums, administrative offices, parks and recreational facilities are all permitted as of right. *See Ex. 3* §§ 3.01(A); 3.02(A).

208. The City has no interests that can be deemed “compelling” for purposes of a constitutional analysis that justify SHZO Section 3.02’s differential treatment of group worship facilities.

209. SHZO Section 3.02’s disparate treatment of group worship facilities bears no rational relationship to any compelling state interests. Any legitimate interest, such as public safety or protecting property values, which compels the regulation of assembly uses in the R-60 zoning district must apply equally to all assembly uses, not just religious assembly uses.

210. Furthermore, Section 3.02 of the SHZO is not narrowly tailored in order to achieve the City’s interests.

211. Since the interests asserted in Section 3.02 of the SHZO are not compelling and the City has not narrowly tailored to achieve its interests, Section 3.02 of the SHZO fails strict scrutiny review.

212. Therefore, Section 3.02 of the SHZO violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating against AICC and other group worship facilities.

213. AICC is suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law as a direct result of Defendant's violation of AICC's rights under the Equal Protection Clause.

214. Furthermore, as a direct result of Defendant's violation of Plaintiff's Fourteenth Amendment equal protection rights, as alleged herein above, Plaintiff has suffered and is entitled to recover damages, equitable relief, costs and attorney fees.

### **COUNT IX**

#### ***Violation of Plaintiff's Rights under the Michigan Constitution***

215. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 214 as fully rewritten herein.

216. There has been an abuse of process and deprivation of rights secured by the Michigan Constitution that Defendant, under the color of state law, has exercised as it has deprived Plaintiff of its rights under Const. 1963, Art. I, section 2, *Equal Protection Clause*; Art. I, section 4, *Free Exercise Clause*; and Art. I, section 5, *Free Speech Clause*, as described above and in one or more of the following particulars:

- a. That Defendant has wrongfully prohibited Plaintiff from exercising its constitutional right to freely exercise its religious beliefs in the City;
- b. That Defendant's actions, under color of law, wrongfully and immediately harm Plaintiff as a direct result of the constitutional violations; and/or



- c. That Defendant has acted contrary to the law, including but not limited to, the concepts set forth in the Michigan Constitution, by wrongfully and substantially burdening Plaintiff's free speech rights, without any record of material fact by Defendant of a compelling governmental interest in any record showing that Defendant's actions are the least restrictive means of furthering a defined and otherwise compelling statement of interest;
- d. That all of the acts of Defendant, its officers, agents, servants, employees or persons acting at Defendant's behest or direction, were done and continue to be done under the color and pretense of state law, including ordinances, regulations, customs, policies and usages of Defendant;
- e. That unless and until the enforcement of the SHZO is enjoined, Plaintiff will suffer, and continues to suffer, irreparable and immediate injury to its federal and state rights as otherwise guaranteed under the Constitutions, including the fear of enforcement and prosecution;
- f. That the actions of Defendant have been ill-motivated and administered with callous disregard for Plaintiff's protected rights as set forth herein.

#### **COUNT V**

#### ***Violation of Plaintiff's Rights under the Michigan Zoning Enabling Act - M.C.L. 125.3504(3)***

217. Plaintiff restates and incorporates by reference the allegations in paragraphs 1 through 216 as fully rewritten herein.

218. Under the Michigan Zoning Enabling Act ("ZEA"), "[a] request for approval of a land use or activity ***shall be approved*** if the request is in compliance with the standards stated in the zoning ordinance, the conditions

imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.” MCL 125.3504(3) (emphasis added).

219. The Planning Office’s August 2015 Staff Report and the August 13, 2015 Planning Commission meeting minutes confirm AICC’s SALU request was in full compliance with the SHZO. *Ex. 1* at 2; *Ex. 6* at 2.

220. When AICC made certain revisions to its plans after the August Planning Commission hearing, the revisions also complied with the SHZO. *Ex. 8* at 2.

221. Strikingly, the City acknowledges the potential for violating the ZEA in a “Questions and Answers” document Planner Mende prepared in August 2015 for City Council members to answer questions from residents. *Exhibit 13*, AICC Questions & Answers.

222. In the document, Planner Mende recognized that under the ZEA, “a request for a Special Land Use *shall be approved* if the request is in compliance with the standards and conditions as stated in the zoning ordinance.” *Id.* at 3 (emphasis added).

223. In the same document, Planner Mende repeatedly admits AICC’s application complies with the SHZO: it complies with lot coverage requirements, off-street parking requirements, traffic requirements, structure height requirements, and noise and light requirements. *Id.* at 2-3.

224. Further, in response to email correspondence to residents of the City of Sterling Heights, the Mayor acknowledged that AICC is entitled to site plan approval because the site plan met all of the requirements of the Michigan Zoning Enabling Act. *Exhibit 14*, 8/18/15 emails.

225. Despite being aware of MCL 125.3504(3) and knowing AICC's application complied with the SHZO, the Planning Commission nevertheless voted to unanimously deny AICC's SALU request just one month later.

226. Thus, there is no genuine issue of material fact that the City violated the Michigan Zoning Enabling Act by denying AICC's SALU request when the request fully complied with the SHZO.

227. AICC is suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law as a direct result of Defendant's violation of AICC's rights under the Michigan Zoning and Enabling Act.

228. Furthermore, as a direct result of Defendant's violation of Plaintiff's rights under the Michigan Zoning and Enabling Act, Plaintiff has suffered and is entitled to equitable relief.

### **Relief Requested**

WHEREFORE, Plaintiff AICC respectfully requests this Honorable Court enter a judgment against Defendant City of Sterling Heights in an amount to be determined by this Court and a jury, plus attorney fees, costs, interest, exemplary and punitive damages, and that this Honorable Court enter an order that:

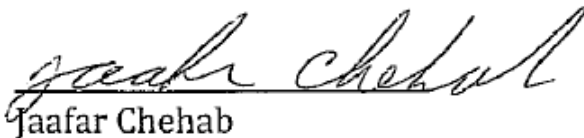
- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy so that such declaration shall have the force and effect of final judgment and that the Court retains jurisdiction of this matter for the purpose of enforcing the Court's Order;
- B. Pursuant to 28 U.S.C. § 2201, declare the aforementioned Section 3.02 of the SHZO, and to the extent such provision is not severable, the entire SHZO, to be in violation of RLUIPA and the First and Fourteenth Amendments to the United States Constitution, and further declare that Plaintiff is permitted to operate a mosque at the Property as a means of exercising its constitutional right to freely exercise its religious beliefs;
- C. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 64, 42 U.S.C. § 1983, and 42 U.S.C. § 2000cc-4 preliminarily enjoin Defendant from enforcing any provision of the SHZO to the extent that it prevents Plaintiff from operating a mosque at the Property;
- D. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 65, 42 U.S.C. § 1983, and 42 U.S.C. § 1988, 42 U.S.C. § 2000cc-4 award Plaintiff all necessary and appropriate equitable relief;
- E. Pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 2000cc-4(d), Fed. R. Civ. P. 54(d), and other applicable law, award Plaintiff its reasonable attorney fees, costs; and
- F. Grant such other and further relief, injunctive or otherwise, as the

Court deems equitable, just and proper.

**Verification**

Pursuant to 28 U.S.C. § 1746, I, Jaafar Chehab, declare under penalty of perjury that I have personal knowledge of matters contained in paragraphs 6-16, 23, 83, 113-114 of this Complaint and that to the best of my knowledge, information and belief, the allegations contained herein are true and accurate.

Executed this 10<sup>th</sup> day of August, 2016.



Jaafar Chehab  
Director, American Islamic Community Center, Inc.

**Demand for Trial by Jury**

The Plaintiff herein demands a trial by jury in this cause of action.

Respectfully Submitted,

**Dalton & Tomich PLC**

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Respectfully Submitted,

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Respectfully Submitted

**Mohammed Abdrabboh PC**

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Respectfully Submitted,

**Clark Hill PLC**

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klane@clarkhill.com

Dated: August 10, 2016

### **Certificate of Service**

I HEREBY CERTIFY that I have on this 10th day of August, 2016, served a copy of the foregoing on counsel for all parties to this proceeding by operation of the Court's CM/ECF system.

*/s/ Daniel P. Dalton*

Attorney for Plaintiff