

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ORIGINAL BIBLE CHURCH OF ILLINOIS,

Plaintiff,

v.

CITY OF MARKHAM, ILLINOIS,

Defendant.

No. 16 CV 11315

Judge Manish S. Shah

**PRELIMINARY INJUNCTION ORDER**

Plaintiff's motion for preliminary equitable relief, [8], is granted in part. The court enters the following findings of fact and conclusions of law, and orders as follows:

To obtain a preliminary injunction, the moving party must show that its case has some likelihood of success on the merits, it has no adequate remedy at law, and it will suffer irreparable harm if a preliminary injunction is denied. If there is irreparable harm, it must be balanced against the harm that the nonmoving party will suffer if the injunction were to issue. The balancing is not mathematical, but intuitive. *Stuller, Inc. v. Steak N Shake Enters., Inc.*, 695 F.3d 676, 678 (7th Cir. 2012).

Plaintiff Original Bible Church of Illinois leases property at 3509 West 159th Street in Markham, Illinois. The property is located in an area zoned "C-1" under Markham's zoning code. Defendant City of Markham has not authorized the church's use of the property as a place of assembly and worship because, in part, it has conditioned such use on prior approval by the city's Plan Commission. Prior approval has not been granted.

"Conditional uses" and "permitted uses" differ under Markham's zoning code because there are no provisions requiring prior approval of location and development for permitted uses, as there are for conditional uses. The C-1 district is a neighborhood shopping district, and among the permitted uses for property in such a district is a theater. Markham, Ill., Code of Ordinances § 156.146(D)(2). The zoning code treats churches as conditional uses. *Id.* § 156.052(B). Under the terms of the code, the city does not require prior approval of the location and development of a theater in a C-1 district, but it does condition religious assembly in a church on prior approval.

The church has filed suit against the city and, as relevant for present purposes, alleges that the city's treatment of a church as a conditional use violates the Religious Land Use & Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, et seq. Under the act, "[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); *River of Life Kingdom Ministries v. Vill. of Hazel Crest, Ill.*, 611 F.3d 367, 368 (7th Cir. 2010).

The church has a likelihood of success on its RLUIPA equal-terms claim because, by subjecting the church to prior approval on its location and development when the city does not impose such a requirement on a theater in the very same district, the city has imposed a requirement that treats religious assembly on less than equal terms with nonreligious assembly. Imposing parking or other requirements on the church does not necessarily violate RLUIPA; it is the city's requirement that the Plan Commission give prior approval for the use of the property as a church that is likely unlawful. I note that in responding to plaintiff's motion for a preliminary injunction, the city stated that it does not object to the property being used as a place of religious assembly. This lack of objection largely concedes plaintiff's request.

The uncertainty over whether the city will allow the property to be used for a place of religious assembly has caused irreparable harm to the church, because it has caused anxiety over whether the congregation will ever find a home—an anxiety that touches on an intangible right that cannot be compensated with money. The city's interests in preserving public safety and enforcing neutral, generally applicable regulations on land use can be balanced against plaintiff's interests through a narrowly tailored injunction—one that allows the city to continue to enforce the same requirements it imposes on secular assemblies. The public interest weighs in favor of the exercise of religious freedoms.

Federal Rule of Civil Procedure 65(c) requires the movant to give security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined. The limited, narrow injunction issued here is not likely to cause any excess costs or damages to the city, and therefore no bond is necessary.

Accordingly, this Court orders that:

1. Defendant City of Markham, and any agent or employee of defendant (and any person in active concert with defendant) with actual notice of this order, shall not treat plaintiff Original Bible Church of Illinois's use of 3509 West 159th Street as a church to be a conditional use in the C-1 district under Markham's zoning

code. The City of Markham shall not condition the use of the property as a church on the prior approval of such use.

2. Nothing in this injunction prohibits the City of Markham from enforcing parking or other requirements that are equally applicable to other permitted uses in the C-1 district.

3. No bond shall be posted to secure this injunction.

ENTER:

Date: 1/26/2017



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Manish S. Shah  
U.S. District Judge