IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

COMPASSION CHURCH, INC., a 501(c)(3) religious corporation; PASTOR JAMES SWOPE; and PASTOR NICHOLAS CANTWELL, Plaintiffs, v. THE CITY OF DAVENPORT, IOWA, an Iowa Municipal Corporation; RAYMOND A. AMBROSE, a City of Davenport Ward Alderman, Individually and in his Official Capacity; MARIA DICKMANN, a City of Davenport Ward Alderman, Individually and in her Official Capacity; and MATTHEW G. FLYNN, Davenport Zoning Official, Individually and in his Official Capacity, Defendants.	)	Case No. 3:17-CV-00054-SMR-CFB ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

On September 5, 2017, Plaintiffs Compassion Church, Inc. ("Church"), Pastor James Swope, and Pastor Nicholas Cantwell, filed a motion for a preliminary injunction. [ECF No. 3]. They requested expedited relief. *Id*. Plaintiffs request the Court enter a preliminary injunction prohibiting Defendants—City of Davenport, Raymond Ambrose, Maria Dickmann, and Matthew Flynn—from: (1) interfering with the operation of the Church and the Church breakfast during the pendency of this action; (2) infringing on the Church's rights by prohibiting a future cease-and-desist order during the pendency of this action; and (3) grant other such relief which is just, proper, and equitable in this case. *Id*. at 4. Defendants resist the motion. [ECF No. 7].

The Court has reviewed Plaintiffs' Motion for a Preliminary Injunction, [ECF No. 3], Plaintiffs' supporting memorandum, [ECF No. 3-2], Defendants' Response to Plaintiffs' Motion

for Preliminary Injunction, [ECF No. 7], and Plaintiffs' reply brief, [ECF No. 8]. The Court has also reviewed all declarations, attachments, and exhibits filed in support and in opposition of the motion. [ECF Nos. 3-1; 3-3; 3-4; 7-1; 7-2; and 7-3]. Plaintiffs' request the Court to set this matter for a hearing. However, the Court finds this matter can be appropriately resolved without oral argument. *See* LR 7.c. For the following reasons, Plaintiffs' Motion for a Preliminary Injunction is DENIED.

I. BACKGROUND

Compassion Church, Inc. ("Church") is a non-profit religious organization, which operates under the name of Timothy's House of Hope. [ECF No. 3-3 ¶ 5]. It currently owns and operates a church at 1602 Washington Street, Davenport, Iowa, formerly known as the Mohassan Grotto ("Grotto") building. *Id*. ¶ 8. The Grotto building is designated as a historic landmark, and had previously been used as a bingo parlor, which operated a kitchen, served meals, and sold alcohol. [ECF No. 1 ¶¶ 21, 26]. This location is zoned as a C-2 General Commercial District ("C-2 district"). [ECF No. 3-3 ¶ 9]. Before the Church began operating at the Grotto building, from 2009 to 2017, the Church's services took place at 1407 West 4th Street, Davenport, Iowa, which is also zoned as a C-2 district. *Id*. ¶ 5. The Church purchased the Grotto building in February 2017 and subsequently began operations there. *Id*. ¶¶ 8, 13.

The Church has two pastors: Pastor James Swope and Pastor Nicholas Cantwell. [ECF Nos. 3-3 ¶ 2; 3-4 ¶ 2]. On April 10, 2017, the Church started serving breakfast to its congregation, including the homeless, from 8:00 a.m. to 10:00 a.m. in conjunction with its daily morning Bible study and prayer services. [ECF No. 3-3 ¶ 13; 7-1 ¶ 5]. The Church also intended to serve breakfast to initiate Sunday worship services as soon as they sold their former location. [ECF No. 7-1 ¶ 5]. After moving, Plaintiffs painted over an existing sign that was attached to a fence

on the property. [ECF No. 1 ¶ 22]. The newly painted sign read: "Timothy's House of Hope – Helping the hungry, hurting, and homeless, one need at a time." *Id*.

Shortly thereafter, members of the community raised concerns with Defendant Davenport Alderman Raymond Ambrose about Plaintiffs serving breakfast to the homeless. *Id*. ¶ 32. Ambrose is the elected fourth ward Alderman where the Church is located. *Id*. ¶ 5. Community members were concerned that because the Church was serving breakfast to the homeless, the Church would be a nuisance and crime would increase in the area. *Id*. ¶ 32. In response to these concerns, Alderman Ambrose spoke with Pastor Swope on two different occasions to express his dissatisfaction. [ECF No. 3-3 ¶¶ 10–12]. Alderman Ambrose has said publicly he "will protect the neighborhood," that "the Church is a problem," and he will "fight this thing (Compassion Church) to the end." [ECF No. 1 ¶¶ 58, 59]. After meeting with members of the business community, Ambrose sought to have the City of Davenport issue a cease-and-desist order to prevent the Church from serving breakfast to the homeless. *Id*. ¶¶ 39, 60–63. A cease-and-desist order was issued by Defendant Matthew Flynn, Davenport's Zoning Administrator, on April 19, 2017. *Id*. ¶¶ 6, 66. The cease-and-desist order stated:

> This property is zoned C-2, General Commercial District. Support Services to the Homeless requires a zoning classification of Planned Institutional District – Housing and Support Services (PID-HSS). The sign on the north side fence and website for Timothy's House of Hope states as its mission statement, "HELPING THE HUNGRY, HURTING AND HOMELESS ONE NEED AT A TIME." Therefore, I have determined the activity of serving meals to the homeless and other support services must cease immediately. Until the property is rezoned to PID-HSS, and all other necessary improvements dictated by the City of Davenport and other regulatory agencies are fulfilled, serving meals to the homeless and other support services must not continue. In addition, the Timothy's House of Hope Sign placed upon the fence north of the building must be immediately removed.

[ECF No. 3-1].

Plaintiffs complied with the cease-and-desist order, stopped serving breakfast, and stopped holding Bible readings and prayer services, from April 19, 2017 until May 15, 2017. [ECF No. 3-3 ¶ 17]. However, as early as May 9, 2017, the City of Davenport communicated to Plaintiffs it would not attempt to enforce the cease-and-desist order. [ECF Nos. 7-1 ¶ 4; 7-2 at 2; 3-3 ¶ 16]. At that time, the City of Davenport decided not to enforce the cease-and-desist order because Davenport Aldermen were considering proposing an amendment to the City's zoning ordinance that would have allowed Plaintiffs to serve "a single daily meal with no overnight sheltering" to the homeless. [ECF No 7-1 ¶ 4].

On May 17, 2017, Defendant Maria Dickmann, a Davenport Alderman for the second ward, spoke with Pastor Cantwell and threatened that unless the Church move to another location she would seek to have the City of Davenport enforce the cease-and-desist order or have another order issued. [ECF Nos. 3-4 ¶¶ 14, 15]. On May 22, 2017, Plaintiffs met with Davenport City Attorney, Thomas Warner. [ECF No. 7-1 ¶¶ 1, 2, 5]. Plaintiffs informed Attorney Warner that their intentions were to use the Grotto building "to serve food in conjunction with a daily morning Bible study and prayer service, and also to later initiate Sunday worship services." [ECF No. 7-1 ¶ 5]. Attorney Warner then told Plaintiffs that operating the church in such a manner would comply with the building's current zoning classification as a C-2 district, and therefore rezoning was unnecessary. *Id*.

On June 10, 2017, Plaintiffs wrote a message on the Facebook page for Timothy's House of Hope that stated "God has won the battle" and linked the message to a news article titled "Davenport no longer requires zoning change for Timothy's House of Hope." [ECF No 7-3 at 2]. On August 23, 2017, Plaintiffs wrote a message on the Facebook page for Timothy's House of Hope stating in relevant part:

> As many of you may have heard we have been in a long battle with the city of Davenport over zoning issues concerning our ministry. We are happy to announce through much prayer God has allowed us to continue this vital ministry . . . . God has prevailed with the city of Davenport . . . . Timothy's House of Hope is still in operation.

Id. at 1–2. Then on August 29, 2017, the City was served with Plaintiffs' complaint. [ECF No. 7-1 ¶ 7]. A few days later, Attorney Warner again spoke with Plaintiffs and informed them the City was still not enforcing the cease-and-desist order. *Id*. The City of Davenport currently considers Plaintiffs to be complying with the C-2 district zoning classification. *Id*. ¶ 8. On September 5, 2017, Plaintiffs filed a motion for a preliminary injunction. [ECF No. 3]. Defendants resist the motion. [ECF No. 7].

II. PRELIMINARY INJUNCTION FRAMEWORK

Federal Rule of Civil Procedure 65 permits district courts to issue preliminary injunctions. Fed. R. Civ. P. 65(a). "A preliminary injunction is an extraordinary remedy and the burden of establishing the propriety of an injunction is on the movant." *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (citations omitted). A district court addressing a request for a preliminary injunction must decide "whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). Accordingly, the court considers: "(1) the threat of irreparable harm to the movant; (2) the balance between that harm and the injury that granting the injunction will inflict on the other interested parties; (3) the probability the movant will succeed on the merits; and (4) whether the injunction is in the public interest." *Powell v. Noble*, 798 F.3d 690, 697 (8th Cir. 2015) (citing *Dataphase Sys., Inc.*, 640 F.2d at 114). "The equitable nature of the proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of each case." *Dataphase Sys., Inc.*, 640 F.2d at 113. "A

district court has broad discretion when ruling on requests for preliminary injunction." *Entergy, Ark., Inc. v. Neb.*, 210 F.3d 887, 898 (8th Cir. 2000) (internal quotation marks omitted); *see also*, *Powell v. Noble*, 36 F. Supp. 3d 818, 829 (S.D. Iowa 2014), *aff'd*, 798 F.3d 690 (8th Cir. 2015) ("Trial courts have broad discretion in ruling on requests for preliminary injunctions and temporary restraining orders."). A court's decision will be overturned only if there is abuse of discretion, which occurs if "the district court rests its conclusion on clearly erroneous factual findings or erroneous legal conclusions." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (quoting *Planned Parenthood of Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 733 (8th Cir. 2008) (en banc)). "[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." *Univ. of Texas*, 451 U.S. at 395.

III. ANALYSIS

"The failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction." *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987). A "movant's failure to sustain its burden of proving irreparable harm ends the inquiry 'and the denial of the injunctive request is warranted.'" *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 371 (8th Cir. 1991) (quoting *Gelco Corp.*, 811 F.2d at 420). "The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959). "Thus, to warrant a preliminary injunction, the moving party must demonstrate a sufficient threat of irreparable harm." *Bandag, Inc. v. Jack's Tire & Oil, Inc.*, 190 F.3d 924, 926 (8th Cir. 1999). "It is well established that '[i]rreparable harm occurs when a party has no adequate remedy at law . . . .'" *Grasso Enters., LLC v. Express Scripts, Inc.*, 809 F.3d 1033, 1040 (8th Cir. 2016) (quoting *Gen. Motors Corp. v.*

Harry Brown's, LLC, 563 F.3d 312, 319 (8th Cir. 2009)). "An injury is 'irreparable' only if it cannot be undone through monetary remedies." *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981). "To succeed in demonstrating a threat of irreparable harm, 'a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Roudachevski v. All-Am. Care Ctrs., Inc.*, 648 F.3d 701, 706 (8th Cir. 2011) (quoting *Iowa Utils. Bd. v. Fed. Commc'ns Comm'n*, 109 F.3d 418, 425 (8th Cir. 1996)).

Plaintiffs have failed to show there is a sufficient threat of irreparable harm if a preliminary injunction is not issued. The the cease-and-desist order is not currently being enforced, and has not been enforced since May 9, 2017. [ECF No. 7-1 ¶¶ 4; 7]. Plaintiffs have been informed by the City of Davenport that Plaintiffs are currently complying with the current zoning classification as a C-2 district. Therefore the potential threat of irreparable harm, which might occur if a cease-and-desist order is enforced in the future or a new cease-and-desist order is issued, is minimal and unlikely. [ECF No. 7-1 ¶ 8]. Further, any threat of irreparable harm created by the statements of the Davenport Alderman, which tend to suggest Defendants might seek to enforce a cease-and-desist order in the future, have been sufficiently allayed by the City of Davenport's assurances that it does not intend to enforce the cease-and-desist order, considers the order invalid, and that the Plaintiffs are in compliance with the current C-2 district zoning classification. [ECF Nos. 7 ¶ 6; 7-1 ¶ 5, 7, 8; 3-4 ¶¶ 14, 15; 3-3 ¶¶ 10–12].

Plaintiffs first request is that the Court enter a preliminary injunction prohibiting Defendants from interfering with the operation of the Church and the Church breakfast during the pendency of this action. [ECF No. 3 at 4]. However, Defendants are not currently interfering with

the operation of the Church. They are not currently enforcing a cease-and-desist order and have not enforced the order since May 9, 2017. Thus, a preliminary injunction is unnecessary.

Plaintiffs second request is that the Court enter a preliminary injunction to prevent Defendants from enforcing a cease-and-desist order in the *future*. *Id*. However, the Court finds that because the City of Davenport has assured Plaintiffs that it will not enforce a cease-and-desist order in the future, as long as Plaintiffs continue to operate the Church in the manner described to Attorney Warner on May 22, 2017, [ECF No. 7-1 ¶ 5], the threat of irreparable harm if the injunction is not issued is minimal and unlikely. Currently, the City of Davenport considers Plaintiffs to be complying with the C-2 zoning classification. *Id*. ¶ 8. Further, Attorney Warner told Plaintiffs, a few days after August 29, 2017, the City of Davenport was not enforcing the cease-and-desist order, and it was not contemplating enforcing the order in the future. *Id*. ¶¶ 7– 8. The fact that over five months have passed since the City of Davenport last attempted to enforce the cease-and-desist order shows any threat of irreparable harm is unlikely. Had the City of Davenport intended to enforce a cease-and-desist order or issue a new order against Plaintiffs for operating the Church in their current manner, it would have likely done so by now.

Plaintiffs' own communications show that on June 10, 2017 and August 23, 2017, they believed a threat of irreparable harm was unlikely. Although Plaintiffs say in their motion they "are under a cloud of uncertainty that Defendants will again attempt to enforce a Cease and Desist Order," [ECF No. 3 ¶ 2], Plaintiffs posted on June 10, 2017, on Timothy's House of Hope Facebook page, a news article that said Davenport no longer required a zoning change, and Plaintiffs announced the battle had been won. [ECF No. 7-3 at 2]. Plaintiffs also said on August 23, 2017, that they had prevailed with the City of Davenport over zoning issues, and Timothy's House of Hope was still in operation. *Id*. at 1–2. Even if Plaintiffs were "under a cloud

of uncertainty that Defendants" would attempt to enforce a future cease-and-desist order, the Court would still be required to deny Plaintiffs' motion because a threat of irreparable harm must be "*certain* and great and of such imminence that there is a *clear* and present need for equitable relief." *Roudachevski*, 648 F.3d at 706 (emphasis added) (quoting *Iowa Utils. Bd.*, 109 F.3d at 425).

Moreover, any threat of irreparable harm created by the statements of the Davenport Aldermen have been sufficiently allayed by the City of Davenport's assurances that it will not seek to enforce a cease-and-desist order. On May 17, 2017, Alderman Dickmann threatened Pastor Cantwell that unless the Church moved to another location she would seek to have the City of Davenport enforce the cease-and-desist order or have another order issued. [ECF Nos. 3-4 ¶¶ 14, 15]. During this time, Alderman Ambrose also communicated to Plaintiffs his dissatisfaction, and made other comments which tend to suggest an intent to enforce a cease-and-desist order in the future. [ECF No. 3-3 ¶10–12; 1 ¶¶ 58, 59]. In the absence of additional information, these statements made by Aldermans Dickmann and Ambrose would tend to show a potential threat of irreparable harm if a preliminary injunction were not issued.

However, since these comments were made, Plaintiffs have been informed twice by the Davenport City Attorney, Thomas Warner, that the City of Davenport would not enforce a cease-and-desist order. Warner first spoke with Plaintiffs on May 22, 2017. After being informed by Plaintiffs that they intended to serve food only in conjunction with a daily morning Bible study, prayer service, and later to initiate Sunday worship services, Warner told Plaintiffs that operating the Church in that way would comply with the current zoning classification, and therefore rezoning was unnecessary. [ECF No. 7-1 ¶ 5]. Warner again spoke with Plaintiffs a few days after August 29, 2017, and told them the City of Davenport was not enforcing the cease-and-desist order. The City of Davenport currently considers Plaintiffs to be complying with their zoning

classification as a C-2 district. Further, Defendants have made no other statements after these conversations with Attorney Warner that would tend to show Plaintiffs will likely suffer irreparable harm. Over five months have passed since the comments of Aldermans Dickmann and Ambrose were made. If they intended to still enforce the cease-and-desist order despite Attorney Warner's assurances, they likely would have attempted to do so.

"To succeed in demonstrating a threat of irreparable harm, 'a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Roudachevski*, 648 F.3d at 706 (quoting *Iowa Utils. Bd.*, 109 F.3d at 425). Under the present facts, the Court finds a threat of irreparable harm is unlikely and minimal, and thus there is no clear and present need for equitable relief. Therefore, because the Court finds that Plaintiffs have failed to show they will suffer irreparable harm if the preliminary injunction is not issued, additional analysis is unnecessary. *See Gelco Corp.*, 811 F.2d at 420 ("After determining that there [is] no irreparable harm . . . [a] district court [is] not required to go further.").

IV. CONCLUSION

The Court therefore finds Plaintiffs will not suffer immediate and irreparable injury, loss, or damage absent issuance of a preliminary injunction. Plaintiffs' Motion for a Preliminary Injunction, [ECF No. 3], is accordingly DENIED.

IT IS SO ORDERED.

Dated this 16th day of October, 2017.

Stephanie M. Rose

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT