

CAUSE NO. _____

CITY OF DALLAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	
	§	
MARK B. GOTHELF, JUDITH D. GOTHELF,	§	DALLAS COUNTY, TEXAS
And CONGREGATION TORAS CHAIM,	§	
INC., DBA CONGREGATION TORAS	§	
CHAIM	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, REQUEST FOR TEMPORARY
AND PERMANENT INJUNCTION, REQUESTS FOR DISCLOSURES, AND REQUEST
FOR ENTRY UPON PROPERTY**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the City of Dallas (the “City”), files this Original Petition, Request for Temporary and Permanent Injunction, Requests for Disclosures, and Request for Entry Upon Property against Mark B. Gothelf and Judith D. Gothelf (collectively, the “Gothelfs”), and Congregation Toras Chaim, Inc., dba Congregation Toras Chaim (“CTC”, collectively with the Gothelfs, “Defendants”), and in support would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN, REQUESTS FOR DISCLOSURES, AND REQUEST FOR ENTRY UPON PROPERTY

1. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.
2. Defendants are requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.
3. Pursuant to Rule 196.7 of the Texas Rules of Civil Procedure, the City requests entry upon the property that is the subject of this suit, with the legal description of Dallas City Block

10 Lot 45 of the Highlands of McKamy #5 addition, also known as 7103 Mumford Court, Dallas, Collin County, Texas (the “Property”) to inspect the Property, including the exteriors and interiors of structures on the Property, for compliance with the Dallas City Code (the “City Code”).

4. The City requests this entry by City code and/or building inspectors within 50 days of service of this petition or at an earlier, mutually-agreed upon time, for the purposes of conducting an inspection in accordance with Rule 196.7(c)(1). This request is continuing in nature and the Defendants are hereby notified of the City’s request to enter the Property to determine compliance with any order issued by this Court.

II. PARTIES

5. The City of Dallas is a home-rule Texas municipal corporation primarily situated in Dallas County, Texas, incorporated and operating under the laws of the State of Texas.

6. Defendant, Mark B. Gothelf, is an individual Texas resident who jointly owns the Property. Service of process may be made upon Mr. Gothelf at his residence, 6406 Dykes Way, Dallas, Texas 75230.

7. Defendant, Judith D. Gothelf, is an individual Texas resident who jointly owns the Property. Service of process may be made upon Ms. Gothelf at her residence, 6406 Dykes Way, Dallas, Texas 75230.

8. Defendant, Congregation Toras Chaim, Inc. dba Congregation Toras Chaim (“CTC”), is a Texas corporation that occupies and controls the Property. Service of process may be made to its registered agent, National Registered Agents, Inc. at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

III. VENUE AND JURISDICTION

9. The City brings this cause of action to obtain temporary and permanent injunctive relief and recover civil penalties against Defendants pursuant to Subchapter B of Chapter 54 and Subchapter A of Chapter 211 of the Texas Local Government Code.

10. Venue is proper and this Court has jurisdiction pursuant to Sections 54.013 of the Texas Local Government Code.

IV. FACTS

11. The Property has a single-family house and is in a single-family neighborhood located in a single family zoning district in Far North Dallas.

12. The Gothelfs own the Property, and CTC uses part or all of the house.

13. Defendant CTC operates a synagogue out of a substantial portion of the house, but has failed for at least 15 months to obtain a Certificate of Occupancy (“CO”) for the non-residential use of the Property.

14. Many cities require religious uses of property, such as a synagogue, to obtain a “specific use permit” or “conditional use permit” in order to locate in residential areas. However, the City allows religious uses to operate in all zoning districts, including residential zones, as a matter of right.

15. While religious uses may locate in any part of the City as a matter of right, the City requires anyone using or occupying a building or land for a non-residential purpose¹ to apply for and obtain a CO. *See* Dallas City Code § 51A-1.104, a true and correct copy of which is attached as Exhibit A at 11.

¹ The City requires COs for non-residential purposes, as well as some residential purposes, such as multifamily, retirement housing, and group residential facilities. *See* Dallas City Code § 51A-1.104.

16. Prior to obtaining a CO, a CO applicant must demonstrate that it can comply with all applicable laws for the type of use proposed, including adequate parking, fire and building safety, and handicap accessibility.

17. By at least November of 2013, the City notified CTC that it was required to obtain a CO.

18. In May 2014, CTC submitted an incomplete application for a CO. In October 2014, the City formally informed CTC that the application did not comply with the City's requirements (per City ordinances) to obtain a CO. See Exhibit B at 12. The unfulfilled ordinance requirements were of three types: (1) handicap accessibility;² (2) fire safety;³ and (3) parking.⁴

These ordinances relate to:

- a. The preservation of public safety, relating to the material or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing fixtures, entrances, or exits;
- b. the preservation of public health or the fire safety of a building or other structure or improvement; and/or
- c. zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme.

19. CTC failed to submit an amended CO application, and its CO application expired on October 31, 2014.

20. Thereafter, CTC asserted that it was protected from having to comply with the City Code by the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and the Texas

² See Dallas Building Code Section 1104 (regarding an accessible route); Dallas Building Code Sections 1109 and 1210.2.2 (regarding accessible restrooms with proper wall and floor finishes).

³ See Dallas Building Code Section 903.2.1.3.3 (regarding fire sprinkler system); Dallas Building Code Section 1015 (regarding two exits on the first floor); Dallas Building Code Chapter 10 (regarding egress illumination and signage).

⁴ See Dallas City Code Section 51A-4.204(4)(c).

Religious Freedom Restoration Act (“TRFRA”). See Exhibit C at 14. After reviewing the law, the City disagreed. The law clearly allows cities to enforce routine zoning and fire safety ordinances, as the City is doing here. See Exhibit D at 18. Therefore, the City again informed CTC that the City would enforce the requirements to obtain a valid CO. *See Id.* CTC indicated that it would apply for a CO. See Exhibit E at 21. However, after CTC failed to do so, the City notified CTC that if it did not apply for a CO, and complete needed life-safety renovations according to a certain timeline, the City would file suit against CTC. See Exhibit F at 22. CTC failed to meet the deadlines called for by the City, and at least 15 months after the City originally asked CTC to obtain a CO, CTC has yet to submit a completed application for a CO.

21. Currently, Defendants’ only permissible use of the Property is a single family use. Any other use of the Property that would require a CO, such as the proposed use as a synagogue, without first obtaining a CO and complying with the life-safety requirements entailed therein, presents a substantial danger of injury or adverse health impact to persons and/or property of persons other than the Defendants.

22. The City is aware that in a recent suit, CTC was granted summary judgment dismissing claims brought by certain neighbors of the Property and the Homeowners Association (“HOA”) for the neighborhood alleging that CTC could not operate a synagogue in the neighborhood because such use was barred by private deed restrictions (the “Deed Restriction Suit”). However, in the Deed Restriction Suit, the HOA’s and neighbors’ claims sought to enforce private deed restrictions to which the City was not a party. The Deed Restriction Suit did not seek to enforce City ordinances related to life and fire safety, handicap accessibility, and parking, as the City is doing here.

V. CAUSES OF ACTION

23. These causes of action arise under Subchapter B of Chapter 54 and Subchapter A of Chapter 211 of the Texas Local Government Code.

24. Chapter 54 of the Texas Local Government Code provides: “A municipality may bring a civil action for the enforcement of an ordinance: (1) for the preservation of public safety...; (2) related to preservation of public health...; (3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme...” Tex. Loc. Gov’t Code § 54.012.

25. Chapter 211 of the Texas Local Government Code provides: “if a building, other structure, or land is ... maintained or if a building, other structure or land is used in violation of [a zoning] ordinance ..., the appropriate municipal authority ... may institute appropriate action to: (1) prevent the unlawful ... maintenance, or use; (2) restrain, correct, or abate the violation; (3) prevent the occupancy of the building, structure, or land; or (4) prevent any illegal act, conduct, business, or use on or about the premises.” Tex. Loc. Gov’t Code § 211.012(c).

26. Section 54.016 of the Texas Local Government Code empowers the City to seek injunctive relief against both the owners of the Property and the owner's representative with control over the Property on a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant. This injunction may prohibit specific conduct that violates the ordinance; and/or require specific conduct that is necessary for compliance with the ordinance.

27. Therefore, the City further requests temporary and permanent injunctive relief, ordering Defendants to comply with Dallas City Code and obtain a CO, which necessarily entails complying with the parking, fire safety, and handicap accessibility requirements that accompany an application for a CO.

28. As a matter of law, the City is not required to post a bond to obtain injunctive relief requiring the Defendants to comply with the City Code. See Tex. Civ. Prac. & Rem. Code § 6.002; Dallas City Charter, Ch. II, § 1(4) & ch. XXIV, § 2.

29. Pursuant to Section 54.017 of the Texas Local Government Code, the City requests an award of civil penalties not to exceed \$1,000 per day for each violation of the City Code that exists on the Property.

30. The City seeks a judgment against Mark and Judith Gothelf and CTC.

31. The City also requests post-judgment interest at the maximum amount allowed by law and taxable costs of court.

VI. REQUEST FOR JURY TRIAL

32. The City respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the City prays that the Court:

- (1) grant the City temporary and permanent injunctive relief ordering Defendants to immediately demonstrate that the Property meets all requirements necessary to obtain a Certificate of Occupancy for any non-residential use conducted at the Property ;
 - (2) award the City civil penalties not to exceed \$1,000 per violation for each day that the Property remains in violation of a City ordinance as alleged herein;
 - (3) grant the City judgment for all taxable costs of court;
 - (4) grant the City judgment for post-judgment interest at the highest legal rate;
- and

- (5) grant the City all other and further relief, both general and special, at law or in equity, to which the City may show itself to be justly entitled.

Respectfully submitted,

WARREN M. S. ERNST
Dallas City Attorney

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS

By Chris Bowers

CHRISTOPHER D. BOWERS
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7BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone – 214-670-3519
Telecopier – 214-670-0622

Attorneys for the City of Dallas

STATE OF TEXAS
COUNTY OF DALLAS

I, Juan Ramos, a certified code inspector and Supervisor for the Community Prosecution Code Inspectors with the City of Dallas, after being duly sworn, hereby certify that I am qualified and authorized to make this affidavit, and that I have read each and every factual allegation contained within paragraphs 11-13, 17 and 20 of this Petition, and that said factual allegations are within my personal knowledge and are true and correct.



Juan Ramos

Subscribed and sworn to before me this 26th day of February 2015.

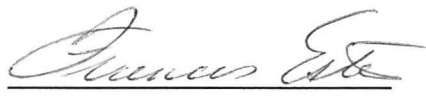


Notary Public

VERIFICATION

STATE OF TEXAS
COUNTY OF DALLAS

I, Frances Estes, an Assistant Building Official with the City of Dallas, after being duly sworn, hereby certify that I am qualified and authorized to make this affidavit, and that I have read each and every factual allegation contained within paragraphs 18-19, 21 of this Petition, and that said factual allegations are within my personal knowledge and are true and correct.



Frances Estes

Subscribed and sworn to before me this 27th day of February 2015.



Notary Public



offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time shall the minimum fine exceed the maximum fine established in this paragraph.

(2) A person is criminally responsible for a violation of this chapter if:

(A) the person knowingly commits the violation or assists in the commission of the violation;

(B) the person owns part or all of the property and knowingly allows the violation to exist;

(C) the person is the agent of the property owner or is an individual employed by the agent or property owner; is in control of the property; knowingly allows the violation to exist; and fails to provide the property owner's name, street address, and telephone number to code enforcement officials; or

(D) the person is the agent of the property owner or is an individual employed by the agent or property owner, knowingly allows the violation to exist, and the citation relates to the construction or development of the property.

(3) A person may not use land or a structure on land located in the city for other than those uses designated as permitted uses in accordance with the provisions of this chapter.

(4) It is a defense to prosecution under this chapter that a person is in compliance with an order of the board of adjustment that specifically authorizes otherwise unlawful conduct.

(5) It is a defense to prosecution under this chapter that a use or structure is nonconforming unless the nonconforming rights attendant to the use or structure have been lost or terminated under Section 51A-4.704.

(b) Civil action. This chapter may be enforced through civil court action as provided by state law.

(c) Utility disconnection. The building official may order city or private utilities to be disconnected upon failure to comply with this chapter or the building laws.

(d) Enforcement authority. This chapter may be enforced by the building official or any other representative of the city. (Ord. Nos. 19455; 19963; 20236; 20599; 26286)

SEC. 51A-1.104. CERTIFICATE OF OCCUPANCY.

Except for single family, handicapped group dwelling unit, and duplex uses, a person shall not use or occupy or change the use or occupancy of a building, a portion of a building, or land without obtaining a certificate of occupancy from the building official in compliance with Section 306, "Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code. (Ord. Nos. 19455; 21735; 22204; 24439; 26579)

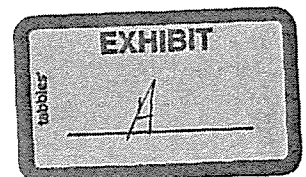
SEC. 51A-1.104.1. APPLICATIONS.

(a) Except conservation district applications and neighborhood stabilization overlay applications, when submitting an application, the applicant must submit proof, such as a tax certificate, that property taxes and any city fees, fines, or penalties are not delinquent on the subject property. Unless such proof is submitted, the application will be considered incomplete and returned to the applicant. A waiver of this requirement may be granted by a two-thirds vote of the city council if:

(1) a waiver will facilitate urban redevelopment, historic conservation, or an important planning objective;

(2) a pending sale of the property is contingent on the zoning application, and the applicant can supply evidence, such as a contract of sale, that the taxes and any city fees, fines, or penalties will be paid at closing; or

(3) the applicant can demonstrate financial hardship that makes payment of taxes impossible, and approval of a waiver will improve the applicant's ability to pay the taxes and any city fees, fines, or penalties.





CITY OF DALLAS

October 6, 2014

CERTIFIED MAIL 7002 2410 0005 0303 7187

Mark Gothelf
6406 Dykes Way
Dallas, Texas 75230

Re: Certificate of Occupancy #1405121150 at 7103 Mumford Court

Dear Mark Gothelf:

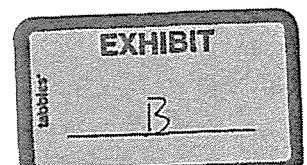
After reviewing the above-referenced application, and in accordance with Dallas City Code Chapter 52, "Administrative Procedures for the Construction Codes," Sections 306.1 and 306.4.2, we have determined that the following additional information is necessary to complete our review of the above-referenced application:

1. The submitted plans show 370 square feet in the main sanctuary; therefore, 13 off-street parking spaces are required for the synagogue, and one additional off-street parking space is required if the structure is also used as a single family residence. Please provide information, including a revised site plan, showing the location of the required off-street parking and/or any remote parking agreements for these required off-street parking spaces.
2. Based upon the submitted plans, an approved automatic fire sprinkler system is required (See Dallas Building Code Section 903.2.1.3.3). Please submit an automatic sprinkler system plan that complies with the Dallas Building Code or, alternatively, submit a revised plan that does not require an automatic fire sprinkler system by:
 - (a) providing for a separated second floor with a fire barrier; or
 - (b) reducing occupancy in the sanctuary to 49 or less by reducing the size of the assembly area or installing fixed pews.

Please note that plan revisions may affect off-street parking and other code requirements.

3. Please submit revised plans showing:
 - a. two exits from the first floor (See Dallas Building Code, Section 1015);
 - b. an accessible route (See Dallas Building Code, Section 1104);

Department of Sustainable Development and Construction - 320 E. Jefferson Blvd., Rm. 105, Dallas, TX 75203





CITY OF DALLAS

- c. two accessible restrooms (See Dallas Building Code, Section 1109) with proper wall and floor finishes in the restrooms (See Dallas Building Code ,1210.2.2); and
- d. egress illumination and exit signage (See Dallas Building Code, Chapter 10).

Please submit the information requested along with an application for any construction permit(s) necessary to complete the proposed work to Sarah.May@dallascityhall.com for item number one and Ved.Gupta@dallascityhall.com for items two and three **before the 30th day after the date of this letter** or the application shall expire and be void *ab initio* if you take no action within this time. (See Section 306.4.2 of Chapter 52, "Administrative Procedures for the Construction Code," of the Dallas City Code).

This letter does not constitute a building permit or certificate of occupancy, nor does it imply that a building permit or certificate of occupancy will be approved without complying with all applicable city rules and regulations.

If you have any questions or would like to discuss alternatives for complying with the code so that the information requested in this letter is submitted within the 30 day time frame, please send an email to Sarah.May@dallascityhall.com.

Sincerely,

A handwritten signature in cursive script that reads "Sarah May".

Sarah May
Senior Planner
Building Inspection Division
Sustainable Development and Construction



LIBERTY I N S T I T U T E

Restoring Religious Liberty in America.

December 3, 2014

Via Email and Certified Mail, RRR

Kelsey Ciluffo
Assistant City Attorney
1500 Marilla St., Room 7DN
Dallas, Texas 75201

Re: 7103 Mumford Court, Dallas, Texas

Dear Ms. Ciluffo:

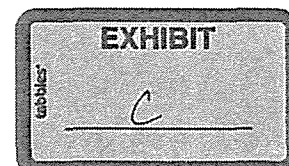
Per our phone conversation of November 21, 2014, I am writing with a proposal to avoid litigation between the City of Dallas and Mark Gothelf and/or the Congregation Toras Chaim (collectively, "CTC").

Background

CTC is a small, Orthodox Jewish congregation that meets at 7103 Mumford Court in Dallas, Collin County, Texas. Most meetings of CTC have between ten and fifteen attendees. Sabbath services may have approximately twenty-five attendees. Because of the members' sincerely-held religious beliefs that they must (1) walk on the Sabbath and (2) cannot carry anything on the Sabbath, including their children, outside of a designated area known as an eruv, only locations within walking distance and inside the North Dallas Eruv are suitable sites for CTC to meet.

CTC had, for several years, met at the home of Rabbi Rich on Bremerton Court about two blocks away from the present meeting place of CTC. Last year, Mark Gothelf bought a house at 7103 Mumford Court in Dallas, Texas (the "Mumford Home"). The Gothelfs considered living in the Mumford Home, but decided against it because of the Gothelfs' concerns about anti-Semitism in the neighborhood. The Gothelfs now live in another neighborhood and thus cannot attend the meetings in the Mumford Home because of their restrictions on Sabbath driving. Instead, Rabbi Rich's son, Avrohom Moshe Rich lives in the Mumford Home full-time. The congregation uses the Mumford Home part of the time.

In 2013, the City of Dallas notified CTC that the City of Dallas believed that CTC should seek a Certificate of Occupancy ("CO") to use the Mumford Home as a church/synagogue. In October of 2013, CTC retained Liberty Institute to investigate the city's position and represent CTC in the dispute with the City of Dallas. Liberty Institute is the largest law firm dedicated solely to preserving religious liberty in the United States



and had just won a major church land use case at the United States Court of Appeals for the Fifth Circuit. *See Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279 (5th Cir. 2012).

On November 19, 2013, Liberty Institute met with Amy Allen, assistant city attorney; representatives from CTC; and representatives from the City of Dallas's code enforcement division. At that meeting, Liberty Institute informed the City of Dallas that the part-time use of the Mumford Home for Orthodox Jewish services is functionally equivalent to a private home owner having a Bible study or prayer meeting at the home and is protected by the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA") and the Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code § 110.001 *et seq.* ("TRFRA"). The City of Dallas acknowledged the existence of RLUIPA and TRFRA, but instructed CTC to seek a CO and indicated a willingness to work with CTC to avoid RLUIPA/TRFRA litigation.

Desiring to avoid litigation with the City of Dallas if at all possible, CTC first attempted to apply for a CO on January 14, 2014. At that time, Eulises Chacon, Permit Center Manager, refused to accept the application noting that "this is a house, not a church" and stating that because CTC would engage in "religious education," CTC would also need a CO for use as an "educational facility," which would be denied because educational facilities are not permitted in residentially zoned regions.

Following the failed attempt to apply for a CO on January 14, 2014, Amy Allen corrected some of Eulises Chacon's misconceptions and instructed CTC to file again with a proposed shared parking agreement. Although Liberty Institute and CTC did not believe that the city's parking requirements were necessary for CTC due to CTC's Orthodox Jewish religious beliefs and the nature of RLUIPA, CTC agreed to acquire a shared parking agreement. CTC initially sought a shared parking agreement from commercial property that is across the street from the Mumford Home and that is within the North Dallas Eruv. Unfortunately, the owners of the commercial land across the street was unwilling to provide a shared parking agreement—in part because restrictive covenants on the commercial property prohibited its use as a synagogue, and the owners believed that they may be in violation of their restrictive covenants if they entered into a shared parking agreement with CTC. Eventually, CTC was able to enter into a shared parking agreement with the First Chinese Baptist Church of Dallas located at 17817 Hillcrest Road, Dallas, Texas.

On March 6, 2014, CTC again sought to file an application for the CO requested by the City of Dallas. Again, however, the City of Dallas rejected the application, stating that it would be futile because the application did not include a firewall between the portions of the Mumford Home in which Avrohom Rich primarily lived and the portions used by CTC (despite Avrohom's use of the entirety of the premises).

On May 12, 2014, following another round of discussion with the City of Dallas, CTC filed the application for a CO, which was finally accepted by the City.

On June 18, 2014, Liberty Institute, CTC, Amy Allen, and representatives from the City of Dallas's code enforcement division, including Eulises Chacon, met to discuss the application for the CO. At that meeting, the City of Dallas notified CTC that the shared parking agreement would not be acceptable because the First Chinese Baptist Church of Dallas was itself located in a residentially-zoned district, and was thus incapable of serving as the off-site parking location. The City of Dallas also notified CTC of its demands that CTC follow all ADA-mandated requirements such as wheelchair-accessible restrooms, a disabled parking space, and widened internal walkways, and additional requirements such as the firewall that was previously discussed, a sprinkler system, and two exits on the first floor. The City of Dallas also notified CTC that CTC could not place parking in the rear of the Mumford Home because that side of the home is on Frankford and is considered a "front yard" despite Frankford's being walled off on that side with no street access (or even line of sight). Liberty Institute explained to the City of Dallas that the ADA, by its own terms, does not apply to religious uses and that RLUIPA would exempt CTC from these requirements because of the substantial burden of making the requested modifications. *See* 42 U.S.C. § 12187 ("The provisions of this subchapter shall not apply to ... religious organizations or entities controlled by religious organizations, including places or worship.") The City of Dallas rejected this understanding of the ADA and insisted that CTC follow all ADA-mandated requirements.

Despite a strong conviction that the requirements being demanded by the City of Dallas were not in accordance with law, in an effort to avoid litigation, CTC agreed to hire an architect to price the modifications requested by the City of Dallas. CTC hired Steve Norman to perform the analysis. Unfortunately, shortly after beginning his analysis, Mr. Norman suffered a stroke and was delayed in providing the estimate. Following his recovery, Mr. Norman's analysis in November of 2014 was that the cost of implementing the City of Dallas's demands would be within the range of \$160,000 to \$240,000.

Proposal

CTC has worked diligently with the City of Dallas to determine what may be done to avoid litigation with the City while preserving CTC's ability to meet at the Mumford Home—without which ability CTC will be unable to participate in their religious activities because of Sabbath driving restrictions and the need to remain within the North Dallas Eruv. Prohibiting CTC from meeting at the Mumford Home will substantially burden—indeed, it will stop—their religious exercise. Unfortunately, after nearly a year since the City of Dallas indicated a willingness to work with CTC to grant a CO that accommodates the religious situation and the realities of CTC, the City of Dallas has been unwilling to yield on any of its demands and now threatens to file a lawsuit that would stop CTC's congregants from being able to practice their religion.

Nevertheless, in an effort to avoid litigation, CTC proposes the following:

- (1) CTC will install fixed seating and/or reduce the size of the room in which CTC mainly meets so that maximum occupancy will be below the 50-person threshold,

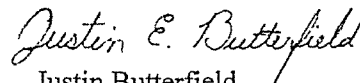
- (2) CTC will file another application for a CO that has a maximum occupancy of less than 50 persons,
- (3) CTC will install illuminated exit signage, and
- (4) The City of Dallas will drop its demands that CTC provide 13 parking spaces, including a disabled space; an automatic sprinkler system; a separated second floor with firewall; two exits from the Mumford Home; wheelchair-accessible walkways; and wheelchair-accessible restrooms.

Considering the past year's extensive, relatively fruitless, and costly interactions with the City of Dallas, CTC would like for this situation to be resolved as quickly and amicably as is possible. Liberty Institute is prepared to defend CTC's religious liberty rights, however. The City of Dallas should be aware that RLUIPA does provide for the recovery of damages and attorneys fees, which can be significant. *See Congregation Etz Chaim v. City of Los Angeles*, No. CV10-1587 CAS (C.D. Cal. 2011) (a substantially similar case involving an Orthodox Jewish congregation and the City of Los Angeles that resulted in a \$950,000 recovery by the congregation).

Again, CTC does not wish to litigate with the City of Dallas and does sincerely desire an amicable resolution of this dispute, but banning the congregants of CTC from practicing their religion would require an aggressive defense of CTC's rights.

If you have any questions about this letter, please do not hesitate to contact me at (972) 941-4451 or at jbutterfield@libertyinstitute.org.

Sincerely,



Justin Butterfield
Senior Counsel
LIBERTY INSTITUTE



January 9, 2015

Via First-Class Mail and Fax

Mr. Justin Butterfield
Liberty Institute
2001 West Plano Pkwy., Ste. 1600
Plano, Texas 75075
Fax: (972) 423-6162

Re: 7103 Mumford Court, Dallas, Texas

Dear Mr. Butterfield:

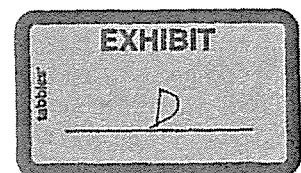
Thank you for your letter dated December 3, 2014. The Dallas City Attorney's Office has carefully examined the complex legal issues you have raised on behalf of your client, Congregation Toras Chaim ("CTC"). This letter summarizes the results of the City Attorney's investigation into the legal issues presented by CTC's use of the single family home located at 7103 Mumford Court as a synagogue.

The City of Dallas has a long and proud tradition of allowing churches, synagogues, and other places of religious worship to be located anywhere in the City, regardless of zoning.¹ Many cities require religious uses to obtain a "specific use permit" or "conditional use permit" in order to locate in residential areas. However, the City allows religious uses to operate in residential zones as a matter of right.

While religious uses may locate in any part of the City as a matter of right, the City requires anyone using or occupying buildings or land for a non-residential purpose to apply for and obtain a Certificate of Occupancy ("CO"). See Dallas City Code § 51A-1.104. This includes religious organizations using a building or land for a religious purpose. Prior to obtaining a CO, the applicant must illustrate that it can meet the City's requirements for the type of use proposed, including regulations ensuring that a use has adequate parking, follows fire and building safety codes, and is handicap accessible.

CTC has applied for a CO, but has not satisfied the City's requirements to obtain one, and so no CO has been issued. The remaining unfulfilled requirements are of three types: (1) handicap accessibility; (2) fire safety; and (3) parking. After looking closely at these issues, the City cannot and will not compromise on any of these issues unless CTC obtains a special exception or a variance to a requirement. The City enforces these requirements for all religious and non-religious uses in the City, and cannot ignore those requirements here.

¹ I note that the Dallas City Council granted the right for the eruv within which 7103 Mumford Court is located to ERUV of Dallas, Inc. in 1991 by passing Ordinance No. 21005 and added additional area to that eruv in 1995 by passing Ordinance No. 22420.



Case law supports the City's right to enforce "run of the mill" zoning ordinances against religious uses. *See, e.g., Affordable Recovery Hous. v. City of Blue Island*, 12-CV-4241, 2012 WL 2885638, at *5 (N.D. Ill. July 13, 2012), *reconsideration denied*, 12-CV-4241, 2013 WL 309171 (N.D. Ill. Jan. 25, 2013) ("RLUIPA does not provide religious institutions with immunity from land use regulation [here, installing a sprinkler system], nor does it relieve religious institutions from applying for variations, special permits, or exceptions to land use regulations"); *Church of Scientology of Georgia, Inc. v. City of Sandy Springs, Ga.*, 843 F. Supp. 2d 1328, 1336 (N.D. Ga. 2012) (City did not discriminate against the church by granting it conditional approval of its rezoning application (approving a smaller size church than the church required for its religious practice) because of inadequate parking and traffic concerns). This is true even as applied to Orthodox Jewish congregations, like CTC, whose members do not drive on the Sabbath. *See, e.g., Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004) ("Requiring churches and synagogues to apply for CUPs allows the zoning commission to consider factors such as size, congruity with existing uses, and availability of parking. We have found that such reasonable "run of the mill" zoning considerations do not constitute substantial burdens on religious exercise."); *Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207, 1211 (S.D. Fla.) *aff'd sub nom. Williams Island Synagogue, Inc. v. City of Aventura, Fla.*, 144 F. App'x 857 (11th Cir. 2005) (denial of conditional use permit to synagogue for inadequate parking did not violate RLUIPA or Florida Religious Freedom Restoration Act).

The City also notes that, despite the exemption from the Americans With Disabilities Act (ADA) pointed out in your letter, the City can enforce its requirement that CTC provide accommodations for handicapped persons in the areas outside the rooms primarily used for religious rituals at 7103 Mumford Court. While it is true that the ADA does not apply to religious organizations (*see* 42 U.S.C. § 12187), and therefore does not affect CTC, the Texas Architectural Barriers Act ("TABAA") and the Dallas Building Code exempt only the places used primarily for religious rituals within a building or facility of a religious organization from its accessibility standards. *See* Tex. Gov't Code § 469.003(c); Dallas Building Code § 1103.2.17. This exemption is specifically limited to the area within a building used primarily for religious ritual. It does not apply to common use areas, such as parking facilities, accessible routes, hallways, and toilet facilities. *See* 16 Tex. Admin. Code § 68.30; Dallas Building Code § 1103.2.17. The City therefore stands behind its requirement that CTC provide an accessible route and two accessible restrooms, as well as handicap accessible parking.

Your letter claims *Congregation Etz Chaim v. City of Los Angeles* is a substantially similar case in which an Orthodox Jewish congregation recovered \$950,000 from the City of Los Angeles. *See Congregation Etz Chaim v. City of Los Angeles*, No. CV10-1587 CAS EX, 2011 WL 12472550, at *6 (C.D. Cal. July 11, 2011). However, there are significant differences between that case and the one here that make the case inapposite. First, Los Angeles did not allow religious land uses in residential zones as a matter of right, as Dallas does. Second, the court found that there was history showing that Los Angeles would not allow a religious use to ever successfully obtain a conditional use permit ("CUP") to locate in residential zoning, which is not the case here. *Id.* at *6. In Dallas, many churches and synagogues can and have obtained COs in

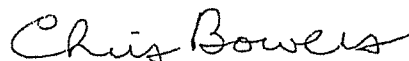
residential zones.² Finally, in the *Congregation Etz Chaim* case, Los Angeles put forward no evidence “that any traffic or parking concerns actually existed, nor that such concerns could not be mitigated in such a way as to allow the Congregation's use at the subject property.” *Id.* at *7. Here, several neighbors have told city employees that parking, traffic, and noise have become issues in the neighborhood because CTC has inadequate parking for its members. For these reasons, the *Congregation Etz Chaim* case does not support CTC's position in this case.

CTC's application for a CO expired on October 31, 2014, after CTC failed to submit revised plans per the City's October 1, 2014 letter to Mark Gothelf. Your December 3, 2014 letter states that, if CTC chooses to re-apply for a CO, it may apply for a different type based on reduced occupancy. The City welcomes CTC to apply for the appropriate CO, and acknowledges that City's requirements for obtaining a CO may be different if CTC decides to lower its maximum occupancy. However, the City intends to enforce relevant parking, fire safety, and accessibility laws for the type of CO submitted. If CTC wishes to obtain a CO without complying with one or more of these requirements, it must follow the designated procedures for obtaining a special exception or variance, if any, to that requirement.

The City's land use laws apply to religious and non-religious uses, and the law supports the City's position that here, the City can enforce its fire safety, parking, and handicap accessibility requirements against CTC. Accordingly, the City respectfully declines CTC's suggested compromise and demands that CTC promptly take steps to comply with those requirements and obtain a CO. As CTC's non-compliance with these requirements has lasted for more than 18 months to the detriment of the neighborhood and the public, the City respectfully requests CTC to commit in writing by noon on January 23rd that it will promptly take steps to comply with the City's requirements. If the City does not receive such a commitment by that time, the City will pursue all appropriate legal remedies to enforce its laws.

If you have any questions about these matters, please contact me at (214) 670-3035.

Sincerely,



Christopher D. Bowers
First Assistant City Attorney

² For example, Baruch HaShem Messianic Synagogue, Congregation Shaare Tefilla, Congregation Tiferet Israel, and Preston Highlands Baptist Church all have COs in residential zones. The City also has a history of issuing COs to religious uses in single family homes, including to Congregation Ohev Shalom, an Orthodox Jewish synagogue in a single family home not far from CTC. However, in that case, Congregation Ohev Shalom complied with the City's parking and building code requirements.

January 23, 2014

Via Regular Mail, Fax, and Email

Christopher D. Bowers
First Assistant City Attorney
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
Fax: (214) 670-0622

Re: 7103 Mumford Court, Dallas, Texas


Dear Mr. Bowers:

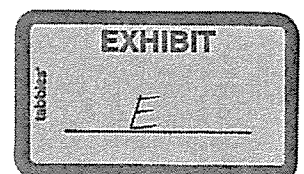
Thank you for your letter of January 9, 2015, regarding the City of Dallas's (the "City") position on Congregation Toras Chaim's ("CTC") use of the home at 7103 Mumford Court, Dallas, Texas, for religious meetings.

While we disagree with the City's analysis of RLUIPA—particularly to the extent that it implies that exhaustion of remedies are required in a land-use context or that general, non-particularized interests are relevant in establishing the City's compelling interest, *see, e.g., Holt v. Hobbs*, 574 U.S. ___ (Jan. 20, 2015) (slip op., at 8–9); *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 979 (9th Cir. 2011)—CTC is willing to file a new application for a Certificate of Occupancy with a reduced maximum occupancy.

We continue to be hopeful that we can resolve this situation to each party's satisfaction without the need for litigation, and we are willing to work with the City to that end.

Sincerely,


Justin Butterfield
Senior Counsel
LIBERTY INSTITUTE





January 29, 2015

Via E-mail

Mr. Justin Butterfield
Liberty Institute
2001 West Plano Pkwy., Ste. 1600
Plano, Texas 75075
jbutterfield@libertyinstitute.org

Re: 7103 Mumford Court, Dallas, Texas

Dear Mr. Butterfield:

Thank you for informing us of Congregation Toras Chaim's ("CTC") intention to file a new Certificate of Occupancy ("CO") application in your letter dated January 23, 2015 (copy attached). However, since receiving your letter, I've heard nothing more regarding CTC's plans to comply with City of Dallas (the "City") ordinances, and your letter failed to provide any specifics in terms of timing for CTC to remedy its violation of City ordinances. As you know, CTC's previous CO application expired on October 31, 2014, after CTC failed to submit the materials requested by the City in a letter dated October 1, 2014. Among the concerns raised in the City's October 1, 2014 letter were several life and safety issues, including that CTC did not have the appropriate fire sprinkler system, fire barriers, fire exits, and egress illumination and signage for its usage. While the City enforces all of its ordinances, it takes especially seriously life and safety concerns, and these issues must be addressed with greater alacrity than CTC has shown in the past. The City echoes your sentiment that it would like to resolve the issues without recourse to litigation. However, given the delay that has already occurred in this case, CTC's past difficulty with complying with some of the City's requirements (like parking), and the importance of these issues, the City is setting the following deadlines for CTC.

- CTC must apply for a CO by February 13, 2015;
- CTC must comply with the life safety requirements for the type of CO it has applied for by February 27, 2015;
- If CTC receives a notice of missing or incorrect items from its CO application, CTC must supply requested items from the CO application, or file an application for the appropriate special exception or variance within 14 days of being notified of missing or incorrect items. If CTC files an application for a special exception or variance that is denied, it must comply with the City's original request within 14 days of notice of denial of the special exception or variance; and



- CTC must obtain a valid CO by April 6, 2015. This deadline is negotiable if a complete CO application has been pending for more than two weeks before the City on this date, or if a special exception or variance action is pending before the Board of Adjustment.

If CTC submits its CO application and receives a notice of missing or incorrect items, and CTC then desires to clarify with the City how it can successfully complete its CO application, I am willing to meet with CTC with the appropriate City personnel present. However, this meeting must be requested within a week of CTC's receipt of the deficiency notice.

Please note that the City Attorney's Office represents the City, and therefore, counsel for CTC should not directly contact any City employees, but should contact my office. Your clients should submit their initial CO application to the City's Building Inspection Division at 320 E. Jefferson Blvd. After that, any further communications with the City will go through the City Attorney.

The City reserves all legal remedies available to it to enforce its ordinances, including filing suit against CTC. The City is willing to allow CTC a short amount of time to go through the necessary processes to come into compliance with City Code. However, if CTC misses one of the above deadlines, or is not diligent in seeking its CO, or indicates that it does not intend to comply with the requirements necessary to obtain a CO, the City will file suit against CTC to seek compliance with its ordinances.

Should you have any questions, please contact me at (214) 670-3035.

Sincerely,



Christopher D. Bowers
First Assistant City Attorney

January 23, 2014

Via Regular Mail, Fax, and Email

Christopher D. Bowers
First Assistant City Attorney
1500 Marilla Street, Room 7DN
Dallas, Texas 75201
Fax: (214) 670-0622

Re: 7103 Mumford Court, Dallas, Texas

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Justin Butterfield
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