

June 10, 2014

***Via Hand Delivery
and Certified Mail, Return Receipt Requested***

Ms. Cynthia O'Banner
Director
Property Standards Department
7501-A Independence Parkway
Plano, Texas 75025

Re: Cease and Desist Order from City of Plano on May 7, 2014 and threat by City of Plano of legal action against Agape Resource & Assistance Center, Inc.

Dear Ms. O'Banner:

Agape Resource & Assistance Center, Inc. ("Agape") retained my firm and Liberty Institute regarding this matter. Please direct any further communications regarding Agape to me.

This letter is official notice that the City of Plano's cease and desist order dated May 7, 2014 to Agape violates the Texas Religious Freedom Restoration Act ("TRFRA"), Tex. Civ. Prac. & Rem. Code § 110.001, *et seq.*; the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*; the First Amendment to the United States Constitution; and Article I, Section 6 of the Texas Constitution. The cease and desist order, as well as the threatened legal action against Agape, is a substantial burden on Agape's religious exercise. The City of Plano has no compelling interests that satisfy state or federal law to prevent Agape from counseling women and children who are not residents in Agape-operated homes or to prevent Agape from having all of its residents and others gather together from time-to-time for community fellowship and ministry.

Agape is a faith-based holistic servant ministry of peace and justice committed to serve urgent or unmet shelter and service needs of women, their children and dependents, and unaccompanied youth in poverty and crisis. Agape accomplishes this mission by providing services to vulnerable citizens in need to assist them toward their goal of a quality, self-sustainable life. Agape seeks to bring hope, light and love to those in need in accordance with a Biblical mandate and frequently draws upon the Bible for inspiration, instruction and encouragement of those Agape serves.

Part of Agape's faith-based mission is to provide housing for those in crises and counseling to those who live in the homes Agape manages. Agape feels called by God to minister to as many women and children in need that it can.

Agape complies with the living requirements imposed by the City of Plano's zoning ordinances, including the prohibition on having no more than eight persons along with no more than two caregivers living in any one house. However, Agape does, pursuant to its Biblical calling, provide counseling in one of the homes at various times to women and children in need who may be living in a different Agape home. Agape feels called by God to provide these services and there is no other realistically acceptable alternative to providing counseling and services to non-residents of Agape homes other than invite them to the current Agape location for counseling in a safe, secure and loving environment. It is my understanding that the City of Plano is prohibiting the Agape counselor from meeting in a single location with non-resident women and children who live in Agape homes to minister to their needs when in crisis. Such a prohibition is a violation of federal and state statutory and constitutional law.

Agape is also commanded by God and the Bible to bring all of the residents it serves in all of its homes together from time-to-time for a gathering that includes food, fellowship, faith-based and life instruction and a sense of community and wholeness for the resident women and children. Such meetings give reassurance, as Jesus did, that no one is alone. The Bible calls upon those in need to seek community and fellowship with others who are also in need and Agape accomplishes this with a regular gathering for food and ministry. The City of Plano seeks to completely ban this gathering because it involves residents of several homes meeting for a few hours in one home.

In sum, the City of Plano is banning Agape from ministering in a single location to the needs of women and children in crises who reside in one of the other Agape homes and is banning the residents of Agape homes from meeting in one home, once a month, for food, fellowship and ministry. Such bans impose substantial burdens on Agape and violate state and federal statutory and constitutional law.

In a unanimous opinion applying the TRFRA, the Texas Supreme Court adopted the United States Supreme Court's reasoning in another unanimous opinion:

RFRA requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—*the particular claimant whose sincere exercise of religion is being substantially burdened.*' To satisfy this requirement, this court must 'look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.

Barr v. City of Sinton, 295 S.W.3d 287, 306 (Tex. 2009) (brackets in original) (emphasis added) (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006)). In other words, "broadly formulated interests" such as "incremental reduction of traffic" are insufficient. *Barr*, 295 S.W.3d at 306-07 (quoting Professor Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. Davis L. Rev. 755, 784 (1999)). Broad interests

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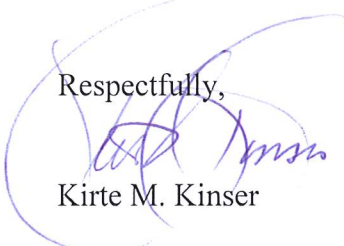
in zoning ordinances in general are irrelevant. The correct question the government must ask and answer is whether there are any compelling interests in denying an exemption or exception to Agape's ministry. The answer is clearly no.

Finally, the two bans violate RLUIPA. According to the City of Plano's interpretation, Plano Zoning Ordinance 1.600's definition of Household Care Facility limits any single Agape house to only provide any kind of ministry, no matter its impact, to the eight or fewer persons actually living in - that particular home, even though the persons do live in another Agape house. Specifically, if one individual lives in the specific home and one other woman who lives in other Agape homes comes to the home for counseling, the City of Plano bans that counseling, even though fewer than eight people reside in the home and, of course, fewer than eight people are actually in the home at the same time. Therefore, the limitation of the number of residents does not justify the ban.

Moreover, there are two uses that seem to contradict the City's position. First, the City allows Household Occupations in all residential zones as a matter of right. Such occupations include providing counseling. So a counselor may see as many non-resident people as he or she wishes under the City's ordinances, but an Agape house may not see a single non-resident even when the total number of persons in the house at one time is less than eight. In addition, there is nothing that prohibits any home in Plano from hosting a Super Bowl party, a Tupperware party or any other type of birthday or anniversary gathering. However, the City prohibits the women and children in Agape homes from meeting together for one night a month in one home. Such distinctions clearly violate RLUIPA's Equal Terms provisions. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 293-94 (5th Cir. 2012).

Agape intends to have its residents once again meet for fellowship and ministry in one home on June 17, 2014. That meeting will consist of approximately 25 people in a home that may accommodate many more under current fire codes. If the City of Plano does not lift its ban on counseling non-residents and its ban on monthly meetings, Agape will seek a Temporary Restraining Order to allow it to continue its critical ministry to women and children in need. The City has until noon on Thursday, June 12, 2014 to respond to this letter.

Respectfully,



Kirte M. Kinser

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*Counsel for Agape Resource &
Assistance Center, Inc.*

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CC: (Via hand Delivery and Certified Mail, Return Receipt Requested)

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