KRISTEN CLARKE
Assistant Attorney General
CARRIE PAGNUCCO
Chief
NOAH SACKS
FAIZA MAJEED
Trial Attorneys
Civil Rights Division
Housing and Civil Enforcement Section
U.S. Department of Justice
950 Pennsylvania Avenue NW—4CON
Washington, DC 20530
Tel.: (202) 615-2684/Fax: (202) 514-1116
Faiza.Majeed@usdoj.gov

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Gethsemani Baptist Church, an Arizona nonprofit corporation,

Plaintiff,

vs.

City of San Luis, a political subdivision of the State of Arizona

Defendant.

No. 2:24-cv-00534-GMS

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

I. INTRODUCTION

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517[1] to address two issues raised by the City of San Luis's ("City") Motion to Dismiss Amended Complaint ("Motion" or "Mot."), ECF No. 35: (1) whether

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

Gethsemani Baptist Church's ("Church") claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc - 2000cc-5, are ripe for adjudication, and (2) whether the Church has alleged an individualized assessment, as required by RLUIPA, in its Amended Complaint.[2] The Department of Justice has authority to enforce RLUIPA and to intervene in proceedings involving RLUIPA. 42 U.S.C. § 2000cc-2(f). Because this litigation implicates the proper interpretation and application of RLUIPA, the United States has a strong interest in the issues raised by the City's Motion and believes that its participation will aid the Court. The Church's RLUIPA claims are ripe for adjudication and RLUIPA's individualized assessment provision is satisfied by the allegations of the Amended Complaint. Therefore, the City's Motion with respect to the Church's RLUIPA claims should be denied.

II. BACKGROUND[3]

For nearly twenty-five years, as part of its Christian ministry to help those in need, the Church has operated its Food Ministry at 1010 B Street in San Luis, Arizona, to provide food, clothing, water, and other supplies to the community. First Amended Verified Complaint (Am. Compl.), ECF No. 34 ¶¶4, 11-19. Since the Food Ministry's inception, it has distributed hundreds of thousands of pounds of free food to people experiencing poverty in San Luis, nearby cities, and in Mexico. *Id.* ¶¶ 20-21, 24. The Church stores most of its food and supplies in a warehouse and uses a semi-truck to

---

[2] The United States does not address the parties' other claims or arguments.

[3] As explained more fully below, the United States treats the Plaintiff's allegations as true for the purposes of this Statement of Interest.

transfer food and supplies from its warehouse to the Church's location on B Street for donation that same day. *Id.* ¶¶32, 34-35, 70.

In 2012, when the City adopted its current zoning code, the City designated the Church and the Food Ministry as a "legal nonconforming use" because the Church and its Food Ministry were operating before the zoning code was established. *Id.* ¶39. As a "legal nonconforming use," the Church and its Food Ministry could continue their existing operations without applying for a conditional use permit ("CUP"). *Id.* While the Church's Food Ministry has grown in scale since 1999, it has not "dramatically changed in scope or character" since the zoning code was adopted. *Id.* ¶40.

After actively supporting the Food Ministry for years, the City abruptly changed course in late 2022. *Id.* ¶¶31, 42-46. First, the Mayor prohibited the Church from using the City's warehouse for storage and then attempted to veto the City Council's approval of almost $7,000 in grant funding to the Church. *Id.* ¶¶48, 50. The City then sent a series of letters and notices to the Church declaring that the Church was in violation of the zoning code because the Food Ministry was purportedly not a legal nonconforming use and because the Church's use of semi-trucks to deliver food and supplies was prohibited. *Id*. ¶¶ 51-67. The Church maintains that its use of semi-trucks is allowed by City Code. *Id.* ¶55; *see* San Luis City Code § 10.15.010.

In a letter dated September 11, 2023, the City first notified the Church that the use of semi-trucks is prohibited in residential neighborhoods and that the City would "commence enforcement." Am. Compl. ¶51, Ex. A, ECF 34-1. Next, in a Notice of Zoning Violation dated September 29, 2023, and a letter by the Mayor dated October 4,

2023, the City notified the Church that the operation of the Food Ministry was in violation of the zoning code. *Id.* ¶¶ 58-60, 63, Ex. C, D, ECF 34-1. In a subsequent letter dated November 7, 2023, the City notified the Church that the Food Ministry could not operate without a CUP. *Id*. ¶67, Ex. F, ECF 34-2. Even after the Church's counsel informed the City's that its actions were unlawful, the City reiterated in a letter dated December 7, 2023, that a "CUP for food distribution is a requirement" and that "the City reserves the right to enforce all traffic violations." *Id.* ¶¶73-74, Ex. G, H, ECF. 34-2.

On February 22 and 29, 2024 the Church's Pastor received two civil citations, with fines up to $4,000, from a City Code Enforcement Officer related to two delivery trucks that parked at the Church. *Id.* ¶¶77-87, Ex. I, J. The Church cannot afford to pay these fines, and if the Pastor is cited again, he could be criminally cited and face imprisonment. *Id.* ¶¶84-85. These enforcement actions have been continued because of this lawsuit. *Id.* ¶98 n.3. While the City takes enforcement action against the Church, semi-trucks are frequently seen parking on nearby streets at similarly situated entities, and no enforcement action has been taken against those entities. *Id.* ¶¶88-91.

The Church alleges that the City's actions have substantially impaired its Food Ministry by significantly reducing the number of individuals it can serve and interfered with "the Church's ability to share the gospel and follow Jesus' commands." *Id.* ¶¶56-57, 97-106. And it alleges that the City's enforcement efforts have substantially burdened its religious exercise and that the City has treated it on less than equal terms than non-religious assemblies, in violation of RLUIPA. *Id*. ¶¶107-137.

III. ARGUMENT

The Church's RLUIPA claims are ripe for adjudication. The Amended Complaint alleges that the City has made two final decisions: that the Church—which had been operating its Food Ministry for nearly twenty-five years—is not a legal nonconforming use and cannot continue distributing food from its B Street location, and that the Church's use of a semi-truck at its property to deliver food violates the City's zoning laws. Am. Compl. ¶¶39, 51, 58-74. To enforce these decisions, the City has issued two citations to the Church's Pastor, with fines up to $4,000. *Id*. ¶¶ 78, 80. The Church is not required to apply for a CUP for its RLUIPA claims to be ripe, and even if it were, the Church has plausibly alleged that any such attempts would be futile. The City's enforcement letters, citations, and actions have caused the Church to vastly reduce its Food Ministry and the number of people that it can feed and offer its ministry to, inflicting concrete and catastrophic injury to the Church's religious mission of helping those in need. The City's actions thus satisfy the "modest" requirements of prudential ripeness. *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. 474, 478 (2021). Further, the City's actions toward the Church and its application of its code to the Church easily satisfy RLUIPA's individualized assessment requirement.

A. The Church's RLUIPA Claims Are Ripe for Adjudication

The City argues that the Church's RLUIPA claims are not ripe because the Church has not applied for a CUP.[4] Mot. at 7. The City's argument misconstrues the prudential ripeness doctrine and ignores Plaintiff's allegations.

1. *Williamson County's Prudential Ripeness Doctrine*

Under the ripeness doctrine first proscribed in *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, a land use claim is not "ripe" for adjudication unless (1) "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue," and (2) the decision "inflicts an actual, concrete injury." 473 U.S. 172, 186, 193 (1985), overruled on other grounds by *Knick v. Twp. of Scott*, 588 U.S. 180 (2019). The "finality requirement is relatively modest" and requires that a plaintiff only show that "there is no question about how the regulations at issue apply to the particular land in question." *Pakdel,* 594 U.S. at 478 (internal quotations marks and citations omitted). The rationale for finality is to ensure that a plaintiff "has actually been injured by the government's action and is not prematurely suing over hypothetical harm." *Id.* at 479 (internal quotations marks and citations omitted).

The finality requirement in land use cases is a prudential rather than a jurisdictional rule. *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 733-734 (1997) (describing finality test under *Williamson County* as "*prudential* hurdles") (emphasis

[4] As discussed more fully below, an application for a CUP would not and could not remedy the City's unlawful efforts to prohibit the Church from using semi-trucks to deliver food to and from its property. Nor would it address the Church's RLUIPA equal terms claim.

added); *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1228-29 (10th Cir. 2021) (holding that *Williamson County*'s ripeness test is prudential); *Sherman v. Town of Chester*, 752 F.3d 554, 561 (2d Cir. 2014) (same). "Prudential ripeness is discretionary." *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 65 (9th Cir. 2024) (internal citations omitted). It does not arise from Article III's case or controversy clause and "does not implicate subject matter jurisdiction." *N. Mill St., LLC*, 6 F.4th at 1230. Accordingly, when raised in a motion to dismiss, as the City does here, it should be analyzed under Fed. R. Civ. P. 12(b)(6), not Rule 12(b)(1), and the Court must assume the truth of the well-pleaded allegations of the Church's complaint. *Id*. Further, the Court should not consider matters outside the Complaint, which here would include the Declaration of the City's Director of Development Services Jose Guzman. *See* ECF 35-1. *See, e.g.*, *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (cleaned up) (holding that "a district court may not consider any material beyond the pleadings in ruling on a 12(b)(6) motion.").[5]

2. *The City's Final Decisions Inflicted an Actual, Concrete Injury on the Church*

First, the City has reached a final decision that, after nearly twenty-five years of operating the Food Ministry and operating as a legal nonconforming use per the City's 2012 designation, the Church's continued operation of the Food Ministry is now in violation of the City's zoning code. Am. Compl. ¶¶39, 58-74. The City has informed the Church that it may not operate its food ministry without a CUP, a position that the city

[5] "A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice" in adjudicating a motion to dismiss under Rule 12(b)(6). *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

reinforces in its Motion. *Id.* ¶68, Ex. F, Mot. at 3-4. Second, the City has reached a final decision that because the Church is located in a residential area, the Church's Food Ministry may not use semi-trucks to temporarily load and unload food and other supplies for two hours, even though this is permitted by City Code.[6] San Luis City Code §§ 10.15.250, 10.15.255(D); Am. Compl. ¶¶51, 55.

The City notified the Church of these final decisions in several letters and notices and in two citations. Am. Compl. ¶¶51-74. For example, in its September 11, 2023 letter, the City stated that "per city code semi-trucks are not permitted in residential areas" and "[t]he city will commerce enforcement at the church of no-semi trucks in residential" areas. *Id.* ¶51, Ex A. In its September 29 and October 4, 2023 letters, the City stated that "the operation of a food distribution business" at 1010 B Street is "not considered a pre-existing non-conforming use" and is "in violation of the City of San Luis Zoning Code." *Id.* ¶¶58, 63, Ex. C at 1, Ex. D at 1.

Further, even after the Church's counsel informed the City that its actions were unlawful and that the operation of the Food Ministry was permitted as a legal nonconforming use, the City refused to reconsider its interpretation. *Id.* ¶¶65-74. In its

---

[6] The City's argument that the semi-truck laws at issue are not covered by RLUIPA is misplaced. Mot. at 6. Those laws set different requirements for parking and use of semi-trucks by *zoning district*. *See e.g.*, San Luis City Code § 10.15.255. RLUIPA applies to "zoning laws," *see* 42 U.S.C. § 2000cc-5(5), which, "at its core . . . involves the division of a community into zones based on like land use." *Fortress Bible Church v. Feiner*, 694 F.3d 208, 216 (2d Cir. 2012); *see also Martin v. Houston*, 196 F. Supp. 3d 1258, 1264 (M.D. Ala. 2016) (in construing whether RLUIPA applied, finding that laws which "limit the acceptable uses of property" within certain districts are zoning laws and thus covered by RLUIPA). Accordingly, the parking laws at issue, which prescribe activity on the basis of zoning district, are covered by RLUIPA. *Fortress Bible Church*, 94 F.3d 216-217 (finding that RLUIPA applied to an environmental law because it was used as a "vehicle" for determining zoning issues related to the Church's land use).

December 7, 2023 letter the City replied that "[y]our client is reminded that a [CUP] is, and has always been, a requirement for both a church and food distribution." *Id.* Ex. H. Regarding the use of semi-trucks, the City stated, "your client is routinely operating vehicles in a way that violates numerous provisions of the San Luis City Code." *Id.*

The City then enforced these final decisions by issuing citations against the Church's Pastor on two separate occasions when it suspected the presence of food delivery trucks on Church property. *Id.* ¶¶77-83. Enforcement of these citations has been continued *only* because of this lawsuit. *Id.* ¶98, n. 3. As a result, there is "no question" here about the City's views on "how the regulations at issue apply" to the Church. *Pakdel*, 594 U.S. at 478. The City has taken the position that the Church and its Food Ministry are not a legal nonconforming use, that it must seek a CUP, and that it cannot use semi-trucks to receive and deliver food. And the City has punctuated these positions with the use of its police power against the Church.

The City's argument that the Church must apply for a CUP ignores the Church's main contention here, that the Church is already *permitted* to operate a Food Ministry at B Street because it is a legal nonconforming use. Legal nonconforming uses are "entitled to certain constitutional and statutory protections" and "as such, a zoning regulation may not be applied retroactively to extinguish a preexisting use of property." *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 565 (Ct. App. 2013) (citing *Rotter v. Coconino Cnty.*, 169 Ariz. 269, 271 (1991)). Moreover, the Church has been using large trucks as part of its Food Ministry since 2002 and has not "dramatically changed the scope or character" of its Food Ministry since the zoning code was adopted in 2012. Am.

Compl. ¶ 40, Ex. G. *See World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 537 (7th Cir. 2009) (noting that it would be "perverse" to require a permit where a religious organization was already entitled to continue as a lawful nonconforming use).

Further, the Church alleges that the City's insistence that it apply for a CUP, in light of its legal nonconforming status and its inability to afford the CUP application process, is itself a RLUIPA violation. *Id.* ¶¶ 95, 111.[7] Accepting the City's argument, a municipality can abruptly and unlawfully prohibit a legal nonconforming religious use and then require the religious group to go through a prohibitively expensive and time-consuming application process. If the religious entity does not apply because it cannot afford to do so, it foregoes its RLUIPA claim in federal court. Or, if it applies, the religious entity is shuttered by the cost and delay imposed by the application process. In either event, the City wins and religious exercise loses. In enacting RLUIPA, Congress required courts to construe the statute "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). Under these circumstances—when a religious use predates the zoning code in question and is a legal nonconforming use—RLUIPA's broad mandate undermines the City's assertion that the Church must apply for and be denied a CUP before its RLUIPA claims are ripe.

[7] In *Guatay*, the Ninth Circuit was careful to note that its ripeness analysis "does not foreclose an argument that financial obligations alone might constitute a substantial burden for the purposes of RLUIPA." *Guatay Christian Fellowship v. Cnty. of San Diego*, 670 F.3d 957, 982 (9th Cir. 2011) (finding that church, at summary judgment, had failed to prove that application process was too costly for church).

The City's final decisions have also inflicted "an actual, concrete injury" on the Church's Food Ministry. *See Williamson Cnty*., 473 U.S. at 193. Specifically, the Church alleges that it has not been able to serve the number of people in need that it could before, completely stopped operations for a period, and now is "barely operating as a shadow of its previous self." Am. Compl. ¶¶ 97-98, n. 3. Numerous courts have found that prohibiting religious groups from feeding those in need may impose a substantial burden in violation of RLUIPA. *See Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 F. App'x at 726, 729 (9th Cir. 2016); *St. Timothy's Episcopal Church, et al. v. City of Brookings*, No. 22-CV-00156, __F.Supp.3d.__, 2024 WL 1303123, at *8 (D. Or. Mar. 27, 2024); *Micah's Way v. City of Santa Ana*, No. 23-cv-00183, 2023 WL 4680804, at *5 (C.D. Cal. June 8, 2023). Further, the Church alleges that the City's decisions have caused it to suffer the loss of donations and has threatened charitable relationships built over the course of decades, and that the Church faces financial hardship in paying up to $4,000 in fines resulting from the City's citations. Am. Compl. ¶¶84, 105.

Additionally, in examining the issue of prudential ripeness, courts also consider "the hardship to the parties of withholding court consideration." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009). The City's application of its zoning laws here "requires an immediate and significant change in the [Church's] conduct of [its] affairs with serious penalties attached to noncompliance." *Tingley v. Ferguson*, 47 F.4th 1055, 1070-71 (9th Cir. 2022) (hardship satisfied because plaintiff was "forced" to choose between "refraining from desired speech or engaging in that speech and risking costly

sanctions"). Because of the City's threats and enforcement of its zoning laws against the Church, the Church has been forced to greatly reduce the number of people that it can "share the gospel" with and feed, thereby impeding its religious mission. Am. Compl. ¶¶ 92-106; *see Micah's Way*, 2023 WL 4680804, at *5. The hardship alleged by the Church weighs in favor of adjudicating the Church's RLUIPA claims presently.

None of the cases cited by the City support its ripeness argument. In *Guatay*, an opinion ruling on summary judgment, the Ninth Circuit found that a church did not have a valid permit to operate and required that the church submit a use permit application to satisfy ripeness. 670 F.3d at 980. The Court emphasized that a use permit application would enable the Court to "understand precisely how the Church is in fact allowed to use the building" before it engaged in constitutional analysis. *Id.* 979. Here, in contrast, the case is at the motion to dismiss stage, where the Church's factual allegations must be accepted as true. In its Amended Complaint, the Church has plausibly alleged that the City has made it clear through enforcement letters and civil citations that the Church's Food Ministry is not permitted to operate in a residential zone, and therefore, the Church is not allowed to use its property for this function. Am. Compl. ¶¶51-85.[8]

Second, in *Guatay* the church did not present a "colorable argument" of an immediate injury because "it did not need to vacate the premises upon receipt of the

[8] Further, in *Guatay*, although the plaintiff *argued* that it did not need to apply for a use permit because it had already been granted one, it produced no evidence at summary judgment to support this contention. *Guatay*, 670 F.3d at 968-72. Here, in contrast, there are ample facts showing that the Church is a legal nonconforming use and therefore should not have to apply for a CUP. Am. Compl. ¶¶ 16, 31-32, 39-45, 69-70, 94.

County's communications." *Guatay*, 670 F.3d at 979. Here, in contrast, because of the City's threats and enforcement efforts, the Church has "ceased almost all Food Ministry efforts" and is facing fines of up to $4,000. *Id.* ¶¶75, 78, 80, 84, 97-98.[9] The Church alleges that it is only able to operate at a fraction of what it was operating before, thus substantially burdening its religious exercise. *Id*. ¶¶ 97-106.

3. *Applying for a CUP Would Be Futile*

The Church plausibly alleges that any application for a CUP would be futile and pointless because "the City's hostility towards the ministry over the last several months illustrates that its application would almost certainly be denied." Am. Compl. ¶112. The City argues that the Church's claim of futility is a "conclusory allegation," but this ignores the Complaint's detailed allegations of the City's hostility towards the ministry. Mot. at 9; *see, e.g.*, Am. Compl. ¶¶ 48-50 (prohibiting use of City warehouse and public park and attempted veto of $7,000 grant). The City has "repeatedly" informed the Church that "because it is located in a residential zone, the Church may not distribute food or store food at the Church's location as it has done in the past." *Id.* ¶95. The Church alleges that even after submitting testimony to the City Council and letters from its counsel

[9] Other cases cited by the City (Mot. at 7) are inapposite and do not involve a claim of a legal nonconforming use that has existed for nearly twenty-five years. Instead, they are situations where a religious group purchased land in a zoning district where the plaintiff knew or should have known that a permit would be required for its intended use. *See New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 600 (9th Cir. 2022), cert. denied, 143 S. Ct. 567 (2023) (city advised church that zoning code did not permit worship services on the ground floor before church acquired property); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1166 (9th Cir. 2011) (city informed plaintiff that CUP was required before building was purchased). Here, the Church had no reason to suspect that it would need a CUP to operate when it was first established in 1986, or when it began operating the Food Ministry in 1999. *See* Am. Compl. ¶¶11-12.

offering legal support for its operations, the City has not changed its position. *Id.* Under the City Code, the City Council, which includes the Mayor, approves or denies conditional use permits. *See* San Luis City Code §§ 18.15.040(E), 18.15.030(G)(7), 02.05.040(A)(2), 02.05.200. The Church has plausibly alleged that applying for a CUP is not required because this process would be "impossible or highly unlikely to yield governmental approval of the land use that claimants seek[.]" *Guatay*, 670 F.3d at 981.

Even if the Church applied for and received a CUP, that would not resolve the substantial burden on the Church's Food Ministry imposed by the City's prohibition of its use of semi-trucks. *See, e.g.*, Am. Compl. Ex. A ("[S]emi trucks are not permitted in residential areas."). Even with a CUP, the City could continue to enforce its interpretation of its code provisions and "categorically" prohibit the Church from using its semi-truck to temporarily load and unload food and other supplies, thus stifling the Church's religious mission to feed those in need. *Id*. ¶122. Accordingly, applying for a CUP would be futile because it would not permit the Church to use the property for its Food Ministry.

B. The Church's RLUIPA Claims Satisfy the "Individualized Assessment" Prerequisite

The City's argument that the Church's Amended Complaint does not satisfy RLUIPA's individualized assessment prerequisite, Mot. at 10, misconstrues RLUIPA's individualized assessment provision.[10] RLUIPA prohibits a government from

[10] Because RLUIPA's "individualized assessment" clause only applies to its substantial burden provision, *see* 42 U.S.C. § 2000cc(a)(2)(C), the City's argument on this score only applies to the Church's substantial burden claim and not the Church's equal terms claim. 42 U.S.C. § 2000cc.

"impos[ing] or implement[ing] a land use regulation that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution" unless the government demonstrates that the imposition of that burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1); *see Guru Nanak Sikh Soc'y v. Cnty. of Sutter*, 456 F.3d 978, 987 (9th Cir. 2006). For this provision to apply, one of three conditions must be present: first, the "program or activity" must receive federal financial assistance, 42 U.S.C. § 2000cc(a)(2)(A); second, the substantial burden would affect interstate commerce, *see id.* § 2000cc(a)(2)(B);[11] or, third,

> the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or *has in place formal or informal procedures or practices that permit the government to make*, individualized assessments of the proposed uses for the property involved.

Id. § 2000cc(a)(2)(C) (emphasis added).

The City argues that this provision does not apply because it did not conduct an "individualized assessment" of the Church's property, as the Church did not apply for a CUP. First, nothing in the plain language of RLUIPA requires that the City conduct an individualized assessment for RLUIPA to apply. *Id.* Rather, it is sufficient that the land use regulation permits the City to make an individualized assessment of the proposed use of the Church's property. *See Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214,

[11] The Complaint alleges that the Church distributes food to other churches and families in California and Mexico. Am. Compl. ¶¶20, 21. The Motion does not explain why the Food Ministry would not affect interstate commerce given these allegations. *See, e.g., Dilaura v. Ann Arbor Charter Twp.*, 30 F. App'x 501, 510 (6th Cir. 2002) (proposed religious retreat met interstate commerce requirements because "guests could certainly travel in interstate commerce to attend their retreat and sleep at the house").

1225 (11th Cir. 2004) (finding that zoning code, which allowed for "case by case evaluations" of CUP applications, met RLUIPA's individualized assessment requirement even though plaintiff never applied for a CUP); *see also Konikov v. Orange County*, 410 F.3d 1317, 1323 (11th Cir. 2005) (same).

In *St. Timothy's Episcopal Church*, the defendant argued, as the City does here, that the church could not bring a RLUIPA claim because it did not apply for a CUP and therefore the city had not conducted an individualized assessment. The court squarely rejected this argument stating that "[n]othing in RLUIPA requires that the individualized assessment actually take place in order for RLUIPA to apply. . . . [i]t is sufficient that the Ordinance permits an individualized assessment." 2024 WL 1303123, at *6 (internal quotation marks omitted). Here, the City's zoning code "permits" the City to make individualized assessments of the Church's use of its property, including whether there has been a change in a legal nonconforming use, the requirement for a CUP for food distribution, and parking in residential districts. *See* San Luis City Code §§ 18.100.010 (nonconforming use); 18.25.040(C)(5), 18.15.040 (conditional use permit); 10.15.250, 10.15.255 (parking in residential areas). Accordingly, RLUIPA's individualized assessment prong is satisfied.[12]

[12] The City cites *Foursquare Gospel* v. *City of San Leandro,* 673 F.3d 1059 (9th Cir. 2011) in support of its argument. Mot. at 11. In *Foursquare Gospel*, the Ninth Circuit held only that "[t]he City's treatment of the Church's applications constitutes an 'individualized assessment,'" but did not hold that an actual assessment was required, let alone that the plaintiff needed to apply for zoning relief. 673 F.3d at 1066.

Second, even though the City need not actually have conducted an individualized assessment for RLUIPA to apply, the City did so here. In its Motion, the City agrees that RLUIPA applies when a government "take[s] into account the particular details of an applicant's proposed use of land when deciding whether to permit or deny that use." *Guru Nanak Sikh Soc'y*, 456 F.3d at 986; Mot. 10. The City's determination, detailed in several letters and notices and two citations, that the Church's Food Ministry is not a legal nonconforming use and that the Church must apply for a CUP to operate the Food Ministry, in addition to its enforcement of City Code provisions to the Church's food distribution activities, is an individualized assessment under RLUIPA. Am. Compl. ¶¶51-87. These actions were "clearly the result of the City taking into account" the Church's "particular activities and use of the land to determine compliance with the code." *St. Timothy's Episcopal Church*, 2024 WL 1303123, at *7; *see also City Walk – Urb. Mission Inc. v. Wakulla Cnty. Fla.*, 471 F. Supp. 3d 1268, 1281 (N.D. Fla. 2020) (finding that city's violation notices were individualized assessments for RLUIPA purposes).

Accordingly, RLUIPA's individualized assessment prong is met. The City Code provisions at issue in the case permit an individualized assessment. Further, the Amended Complaint alleges that, in determining that the Church was violating the City Code, the City made numerous individualized assessments of the Church's activities.

IV. CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court consider the above views in deciding the City's Motion and deny the Motion with respect to the Church's RLUIPA claims.

Dated: July 29, 2024

RESPECTFULLY SUBMITTED,

KRISTEN CLARKE
Assistant Attorney General

s/ Faiza Majeed
CARRIE PAGNUCCO
Chief
NOAH SACKS
FAIZA MAJEED
Trial Attorneys
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW—4CON
Washington, DC 20530
Tel: (202) 615-2684
Fax: (202) 514-1116
E-mail: Faiza.Majeed@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2024, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all parties of record.

s/ Faiza Majeed