

October 24, 2024

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**BY FEDERAL EXPRESS AND EMAIL (MTHAI@SANTA-ANA.ORG)**

Minh Thai  
Executive Director of Planning and Building Agency  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701  
mthai@santa-ana.org

**Re: *Denial of CUP No. 2023-18 – Anchor Stone Christian Church (2938 S. Daimler Street)***

Dear Mr. Thai:

This Firm and First Liberty Institute represent Anchor Stone Christian Church. Anchor Stone owns the property at 2938 Daimler Street, Santa Ana, CA 92705, (the “Property”) and has retained this Firm and First Liberty with respect to the City of Santa Ana’s unlawful restriction of Anchor Stone’s religious liberties: specifically, the City’s denial of Anchor Stone’s application for a Conditional Use Permit (“CUP”) to use the Property as its church campus. Anchor Stone demands that the City immediately grant its CUP application and compensate it for its damages incurred from the City’s unlawful denial of its CUP application. Please forward this letter to the City’s counsel and other interested persons, and direct all future communications regarding this issue to my attention at this Firm.

Anchor Stone is a Chinese-American Christian church that endeavors to spread the gospel to other first-generation Chinese-Americans in Santa Ana and throughout Orange County. Since its inception in 2018 as an in-home prayer group, Anchor Stone has grown abundantly but recently has encountered problems at the hand of the City. In February 2019, Anchor Stone registered as a California religious corporation. Anchor Stone later started looking for a permanent home where its members could plant roots. In 2022, the Church entered into an agreement to purchase the Property, which it intends to use as its worship space, church campus, and headquarters.

Prior to purchasing the Property, Anchor Stone met with the City’s Planning and Building Agency. The meeting was to discuss whether Anchor Stone could use the Property as an office and church campus—including for religious worship services. In advance of this meeting, Anchor Stone shared its site plan for the building with the Planning and Building Agency. The site plan made clear that Anchor Stone intended to use the Property for religious assembly. During the meeting, Anchor Stone discussed with the City the fact that the Property is located in

a “Professional” district for zoning and that to operate a church in a “Professional” district, Anchor Stone would need to obtain a conditional use permit (“CUP”). The City led Anchor Stone to believe that there would be no issue or objection to issuance of a CUP, and the City did not indicate that it would forbid Anchor Stone from using the Property as their sanctuary for worship. The City did not raise the General Plan as a potential obstacle to using the Property for religious assembly. Relying on these representations and assurances, Anchor Stone proceeded with closing its purchase of the Property.

After Anchor Stone purchased the building, the City changed its tune. Anchor Stone filed a CUP application, and despite earlier signaling that the City would have no issue or objection to the CUP, the City’s Development Review Committee declined to recommend approval of the CUP to the City’s Planning Commission. Anchor Stone appealed this decision to the Planning Commission, citing the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). The Commission rejected the appeal, asserting that “assembly” was not permitted in the area and that RLUIPA was “outside the scope” of the inquiry.

Anchor Stone then appealed to the City Council, which considered the appeal in its November 23, 2023 meeting. During that meeting, Anchor Stone’s attorney explained the City’s obligations under RLUIPA and Anchor Stone’s land use consultant explained why the proposed use warranted a CUP. During the hearing, one of the City’s representatives—who Anchor Stone had met with before purchasing the Property—testified falsely that the City had informed Anchor Stone that the General Plan did not permit it to use the Property as a church. Anchor Stone’s speakers during the meeting corrected that representative’s statement. Nevertheless, the City Council denied Anchor Stone’s CUP and found, contrary to fact, that Anchor Stone did not engage with the City regarding the permissibility of their proposed use of the Property before purchasing it. Notably, during the meeting, a council member expressed his offense at the expectation the City would comply with federal law, stating:

We keep seeing RLUIPA thrown at us as an excuse to circumvent our local laws . . . . I find it offensive because it asserts we are somehow opposed to religious freedom . . . . [E]very time I hear that thrown out there, that’s a smack in our face.

Other council members expressed their opposition by claiming the church’s presence would lead to increased traffic congestion for area businesses, even though the primary use of the building would take place in the evening and on weekends. One council member even tried to convince church representatives to give up its church nursery, evidently confusing a quiet room used for young children during worship services with a pre-school.

Due to the City’s denial of its CUP application, Anchor Stone has not only been prevented from using the Property to worship; it has also suffered monetary damage. Anchor Stone has been injured in the amount of at least \$575,000 (and counting). Anchor Stone has suffered loss due to costs associated with the Property, which has sat vacant for two years. Anchor Stone also has suffered income loss caused by the

instability of being unable to use the Property, which it purchased for the purpose of gathering for worship.

The City's denial of Anchor Stone's CUP application is unlawful both under the Free Exercise Clause of the First Amendment as well as the RLUIPA. Under Supreme Court precedent, a plaintiff can prove a free exercise violation "by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). If a plaintiff makes such a showing a court must "find a First Amendment violation unless the government can satisfy 'strict scrutiny' by demonstrating its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.*

Here, it is indisputable that the City has severely burdened Anchor Stone's ability to engage in religious exercise. Indeed, the City has wholly prevented Anchor Stone from using the Property for worship for over two years and by its actions continues to prohibit worship services on the Property.

Additionally, the City's administration of its zoning policies with respect to Anchor Stone violate the principles of neutrality and general applicability. Government entities violate principles of neutrality and general applicability "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Here, under the same zoning regulations applicable to the Property, the City allows secular gatherings similar to those that Anchor Stone seeks to conduct at the Property at art galleries, museums, science centers and daycare centers. The City's application of its zoning policies are also not "generally applicable" because it "incorporates a system of individual exemptions" based on "individualized" assessments by a government official who retains "sole discretion" over the enforcement of those policies. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533, 535 (2021). The City's inconsistent approach to the Church's use—initially signaling no problems and then declining to approve—demonstrates that the City's policies are not "generally applicable."

Further, the City's administration of its zoning policies is inconsistent. Indeed, Compass Bible Church—a much larger church than Anchor Stone that is located across the street from and in the same "P" district as Anchor Stone—has a CUP that allows it to gather for worship.

Finally, any pretense of neutrality (which itself is not credible under these circumstances) does not rescue the City's actions. "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 534 (1993). The City has a history of denying CUPs for religious organizations—in one case the City's actions attracted the attention of the U.S. Department of Justice. See *Micah's Way v. City of Santa Ana*, Case No. 8:23-cv-00183-DOC-KES (C.D. Cal. 2023). And in the November 2023 City Council meeting, one of the council members even vocalized his disdain for the fact that Anchor Stone asserted its rights under federal law when it argued that the City's denial of its CUP violated RLUIPA. Thus, even if the City appeared to comply with the principles of neutrality and general

applicability, which it did not, its denial of Anchor Stone's CUP application is subject to strict scrutiny.

The City's enforcement of its zoning policies fails to satisfy strict scrutiny. "[S]trict scrutiny requires the State to further 'interests of the highest order' by means 'narrowly tailored in pursuit of those interests.'" *Tandon*, 593 U.S. at 64–65. In this case, the community impacts the City supposedly seeks to prevent—noise generation, traffic and queuing, and solid waste generation and circulation—are not unique to worship gatherings. Indeed, the secular gatherings that the City allows in the area around the Property similarly impact the community, thereby undermining any argument the City might raise regarding the existence of a compelling interest. See *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020) ("A law does not advance an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited."). And even if the City's interests were compelling, which they are not, its wholesale prohibition of religious activity at the Property is not narrowly tailored to address those interests. See *Fulton*, 593 U.S. at 541 ("[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.").

In sum, the City's denial of Anchor Stone's CUP has deprived Anchor Stone of its right to engage in religious activities in violation of the First Amendment. The City's activity makes it liable for declaratory, injunctive, and compensatory relief, as well as attorneys' fees under 42 U.S.C. §§ 1983, 1988. Further, City officials who have deprived Anchor Stone of its right to engage in religious activities are subject to liability for monetary damages. See *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("an award of damages against an official in his personal capacity can be executed . . . against the official's personal assets.").

For the same reasons that the City's actions offend the First Amendment, the City has violated RLUIPA. RLUIPA prohibits governments from implementing land use regulations that "impose[] a substantial burden on the religious exercise of a person" unless the government has imposed the burden to further "a compelling governmental interest" using the "least restrictive means." See 42 U.S.C. § 2000cc(a)(1). The City's denial of Anchor Stone's CUP fails these tests. The City has imposed a substantial burden and that burden does not further a compelling governmental interest using the least restrictive means. The City need look no further than its recent litigation with Micah's Way to see the legal peril it faces under RLUIPA should it refuse to change course. See *Micah's Way*, 2023 WL 4680804, at \*5 (C.D. Cal. June 8, 2023). Moreover, by allowing comparable secular uses in the City's "Professional" district while denying the Church's religious use, the City's action also violates RLUIPA's prohibition on enforcing its zoning policies "in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1).

Because the City's denial of Anchor Stone's CUP application has prevented Anchor Stone from exercising its rights of religious exercise in violation of constitutional and federal law, Anchor Stone demands that the City: (1) immediately grant Anchor Stone's CUP application, and (2) compensate Anchor Stone for its \$576,809.07 of costs incurred to maintain the Property and income loss caused by the instability of being unable to use the Property while the City has prohibited Anchor Stone from using it for religious gatherings.

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Please respond to me in writing no later than November 22, 2024 affirming that you will immediately grant Anchor Stone's CUP application and compensate for its \$576,809.07 in costs and income loss. If the City persists in its denial of Anchor Stone's CUP application and/or declines to compensate Anchor Stone, the church is prepared to pursue legal action in which it would seek all available remedies, including injunctive, declaratory, and monetary relief and attorneys' fees.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,



Timothy S. Durst

cc: Noah Sacks, U.S. Department of Justice  
Hiram Sasser, First Liberty Institute  
Jeremy Dys, First Liberty Institute  
Ryan Gardner, First Liberty Institute  
Steven Lee, Anchor Stone Christian Church