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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ANCHOR STONE CHRISTIAN CHURCH, a California non-profit religious corporation,

Plaintiff,

v.

CITY OF SANTA ANA, a California municipality, and SANTA ANA CITY COUNCIL,

Defendants.

Case No. 8:25-cv-215

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

The City of Santa Ana has arbitrarily prevented Anchor Stone—a small, mostly first-generation Chinese- and Taiwanese-American Christian church—from using its own property for religious worship.

The City's arbitrary actions are improper, not only under the Constitution and federal statutory law, but also under the City's own land use regulations. Citing its "General Plan"—a high-level policy document setting forth aspirational land use goals—the City claims the property's Flex-3 land use designation prohibits "assembly" uses including churches. But the General Plan ***does not mention "assembly"*** whatsoever.

The City's actions are plainly discriminatory. Santa Ana's purported justification is belied by other "assembly" uses in the zoning district that the City allows. Between the General Plan and zoning ordinance, the City expressly allows museums, art galleries, restaurants, commercial retail, and 10-story office buildings in Anchor Stone's zoning district. The City has no explanation why hundreds of employees "assembling" in multi-level offices for work on Monday is permitted, but a few dozen congregants gathering for worship on Sunday is not.

The City's actions have caused Anchor Stone irreparable harm. Anchor Stone closed on its property—located across the street from another church—only after meeting with the City to discuss use of the building for worship. During that meeting, Santa Ana officials raised no issue with Anchor Stone's proposed use of the building for religious worship, and expressed no concerns regarding "assembly" or General Plan consistency. But after Anchor Stone closed on the property, Santa Ana reversed course—deciding Anchor Stone could not use its property for religious worship. Now, Anchor Stone must pay for a building it cannot use, causing extreme financial hardship. Even worse, Anchor Stone's congregation, which was once expanding, has suffered losses given its inability to congregate.

To end this irreparable harm to Anchor Stone's fundamental rights, the

church requests a preliminary injunction enjoining the City from the following during the pendency of this action: (1) preventing Anchor Stone from assembling for worship at its property and (2) preventing Anchor Stone from carrying out its proposed interior property renovations.

II. FACTUAL BACKGROUND

Anchor Stone is a Chinese- and Taiwanese-American Christian church with approximately 50 members. Ex. A (Lee Decl.) ¶2. It started in 2018 as a small, in-home prayer group, and grew into a fully-fledged church by the next year. *Id.* ¶4. As Anchor Stone grew, it sought a permanent home to worship and found 2938 Daimler Street (the "Property") in Santa Ana. *Id.* ¶5.

Santa Ana has three sources of land use rules: the City's (a) codified zoning ordinances, (b) uncodified "General Plan," and (c) various "specific plans" within the General Plan. *Id.* ¶6. While zoning ordinances impose specific and detailed rules governing land use in a particular area, a general plan is a high-level policy document setting forth a city's land use goals and standards for future development. *Fonseca v. City of Gilroy*, 148 Cal. App. 4th 1174, 1182 (2007). California law requires that all three sources of land use rules be consistent with each other. *Id.*

Anchor Stone's Property is located in (a) the Professional (P) zoning district, (b) the General Plan's Industrial/Flex (Flex-3) land use designation, and (c) the 55 Fwy/Dyer Road Focus Area (i.e., specific plan). *See* Ex. A-10 (City Council Resolution) at 1-4. Churches are permitted in the P zoning district if they obtain a conditional use permit ("CUP"), which may be granted when, among other factors, "the proposed use will not adversely affect the general plan of the city or any specific plan applicable to the area of the proposed use." Santa Ana Municipal Code § 41-313.5(n), § 41-638(a)(1); Ex. B (P Zoning Ordinance) at 1-2.

Anchor Stone reviewed Santa Ana's zoning ordinances, which indicated the Property could be used as a church by obtaining a CUP. Ex. A (Lee Decl.) ¶6. Before closing on the Property, Anchor Stone met with City officials. *Id.* ¶7.

Before this meeting, Anchor Stone emailed the officials a renovation plan for the Property on July 30, 2022, which included a sanctuary, baptism pool, and nursery, among other things. *See id.* ¶¶7-11; Ex. A-1 (Email To Fernanda Arias); Ex. A-2 (Site Plan); Ex. A-3 (Email Confirming Receipt of Site Plan). During the meeting two days later, the City never raised concerns with the proposed use, nor did the City raise concerns it would pose any issue under the City's land use regulations, including the General Plan. Ex. A (Lee Decl.) ¶¶12-13. Indeed, Steven Lee, Anchor Stone's Secretary, discussed obtaining a conditional use permit per the P zoning ordinance. *Id.* City officials led Lee to believe there would be no issue or objection to the CUP. *Id.* The parties also discussed Compass Bible Church—a much larger church located across the street in the same P zoning district—to which the City would soon grant a CUP on August 22, 2022. *Id.*; *see* Ex. A-4 (City Council Resolution on Compass Bible Church's CUP).

City officials were supportive of Anchor Stone's proposed use for the Property, and Fernanda Arias—the Assistant Planner in the City's Planning and Building Agency—emailed Anchor Stone after the meeting that the proposed site plan "looks great." *See* Ex. A-5 (Email From Fernanda Arias). Relying on these interactions with the City, Anchor Stone closed on the Property for approximately $1.6 million on August 13, 2022. Ex. A (Lee Decl.) ¶15.

After closing, Anchor Stone submitted a development project application (a prerequisite to obtaining a CUP) on January 23, 2023, to renovate the Property's interior to accommodate religious worship. Ex. A (Lee Decl.) ¶17. The City, however, went back on its representations. During Anchor Stone's meeting with Development Review Committee ("DRC") staff on February 21, 2023, the City claimed—for the first time—that Anchor Stone's proposed use was inconsistent with the General Plan's "Flex-3" designation. *Id.* The DRC offered Anchor Stone two choices: (1) withdraw the application (i.e., agree not to use the Property as a church) or (2) move forward with the CUP application with a denial

recommendation from the DRC. *Id.* The DRC then issued a perfunctory letter memorializing its recommendation, ironically from Arias, who said the building plan "looks great" months earlier. *See* Ex. A-6 (Letter from Planning and Building Agency).

Because Anchor Stone had already purchased the Property in reliance on the City's initial representations, it had no choice but to proceed with the CUP. Ex. A (Lee Decl.) ¶19. Accordingly, Anchor Stone appealed the DRC denial on June 9, 2023, and submitted a CUP application on July 19, 2023, for the Planning Commission's consideration. *Id.* ¶19-21; Ex. A-7 (Anchor Stone's First Appeal).

At the Planning Commission hearing[1], planning staff parroted the DRC's denial, asserting it was not recommending approval of the CUP because the Flex-3 designation purportedly "does not allow assembly uses such as a church." Ex. A (Lee Decl.) ¶23. One commissioner even said the quiet part out loud: "churches are not intended to be in this area of the city." *Id.*

In response to planning staff, Anchor Stone counsel noted the General Plan does not mention "assembly" or suggest churches are prohibited under the Flex-3 designation. *Id.* Anchor Stone counsel also cautioned the City to consider the Religious Land Use and Institutionalized Persons Act's ("RLUIPA") protections against "local land use being implemented in a prejudicial way to religious organizations." *Id.* The planning staff dismissed the caution: "It's our position that RLUIPA is outside the scope of today's hearing." *Id.* The Planning Commission voted to deny Anchor Stone's CUP application, and Anchor Stone timely appealed to the City Council. *See* Ex. A-8 (Planning Commission Resolution); Ex. A-9 (Anchor Stone's Second Appeal).

[1] Hearing available at: https://www.youtube.com/live/hrubaJF1x7A?si=5AbCZp7wuur4pXTM&t=415.

The City Council heard Anchor Stone's appeal on November 21, 2023.[2] Anchor Stone again raised the City's violation of RLUIPA. Ex. A (Lee Decl.) ¶28. One councilmember expressed offense at its mere mention: "It frustrates me because … we keep seeing RLUIPA thrown at us as an excuse to circumvent our local laws, and why I find it offensive is that it asserts that we are somehow opposed to religious freedom … Every time I hear [RLUIPA] thrown out there, that's a smack in our face." *Id.*

At the hearing, the City Council raised a new, far-fetched justification for discriminating against Anchor Stone—environmental justice. *Id.* Councilmember Thai Viet Phan claimed Anchor Stone's small, once-a-week "assembly would actually increase traffic, noise, [and] pollution" and "many of our low-income residents suffer from poor air quality … [and] … pollution in the dirt and land." *Id.* Councilmember Phan also justified denying Anchor Stone's CUP because of a generalized "compelling public health and safety interest." *Id.*

Ultimately, the hearing was a mere formality: The City Council voted 7-0 to deny Anchor Stone's appeal and adopted a resolution to that effect, finding "the proposed use will adversely affect the general plan of the city or any specific plan applicable to the area of the proposed use." *See* Ex. A-10 (City Council Resolution) at 3, 7. Specifically, the City Council found Anchor Stone's proposed religious assembly inconsistent with (1) the General Plan's Flex-3 designation, (2) the 55 Fwy/Dyer Road Focus Area (specific plan), and (3) various General Plan land-use policies. *Id.* at 3-6.

The resolution is rife with inaccuracies and misrepresentations:

First, it falsely claims Anchor Stone "did not engage with the City regarding the permissibility of their proposed assembly use on the Property." *Id.* at 1. In fact, Anchor Stone not only met with City representatives, but even sent the City its

[2] Hearing available at: https://www.youtube.com/live/7orlJ7d-a5Q?si=dDqoGowlZ8JdgKgm&t=10850.

proposed floor plan before closing. *See* Exs. A-1 (Email to Fernanda Arias), A-2 (Site Plan).

Second, the City asserted "the subject site is not suitable for the operation of community assembly, nor does [the Flex-3 designation] list community assembly-type uses as permissible under the land use designation." Ex. A-10 at 3. To the contrary, the Flex-3 designation expressly allows numerous uses where assembly is inevitable like "corporate headquarters and campuses," "commercial retail, artist galleries, [and] craft maker spaces." *See* Ex. C (General Plan Land Use Element) at LU-22, LU-56. Moreover, the P zoning ordinance—which must be consistent with the General Plan—allows, as of right, art galleries, museums and science centers, daycare centers, and restaurants. Ex. B (P Zoning Ordinance) at 1. The City has not clarified why it considers a small church an impermissible "assembly use" but not the allowed uses listed in the General Plan and zoning ordinance.

Third, the City incorrectly suggests Anchor Stone's proposed church use is inconsistent with the 55 Fwy/Dyer Road Focus Area (specific plan). *See* Ex. A-10 (City Council Resolution) at 4. This Focus Area is "intended to transition from an area that exclusively focused on professional office to an area that supports a range of commercial, and industrial/flex development" and is "intended to reflect an urban intensity and design, with inspiring building forms and public spaces." *Id.* The City does not attempt to argue Anchor Stone's proposed church use is inconsistent with this vision.

Finally, the City Council resolution arbitrarily and wrongly alleges that Anchor Stone's proposed church use violates the following policies found in the Land Use (LU)[3] and Economic Prosperity (EP)[4] elements of the General Plan:

Land Use Policy 1.1 "encourages compatibility between land uses to

[3] Attached as Exhibit C.
[4] Attached as Exhibit D.

enhance livability and promote healthy lifestyles." *Id.* at 4. The resolution alleges that "introduction of a community assembly use and a Bible school to the existing office complex will generate noise, traffic and queuing, solid waste generation and circulation." *Id.* The City arbitrarily applies these concerns to Anchor Stone because they apply with greater force to various uses the City allows like small-scale clean manufacturing, commercial retail, and multilevel corporate offices.

Land Use Policy 4.1 "supports complete neighborhoods by encouraging a mix of complimentary uses, community services, and people places within a walkable area." *Id.* at 5. The resolution notes that "the nearest residential community is 0.3 miles away" and concludes, without explanation, that "introduction of a religious institution in this site … will not encourage development of place-making within a walkable area." *Id.* In fact, Anchor Stone's proposed church would advance this policy's goal of providing community services and promoting walkability.

Economic Prosperity Policy 1.9 "seeks to avoid potential land use conflicts by prohibiting the location of sensitive receptors and noxious land uses in close proximity." *Id.* at 5-6. Although the General Plan does not define "sensitive receptors," the resolution concludes that "[e]stablishing uses such as community assembly, coupled with youth services and Bible school, would introduce sensitive receptors into an area that is mostly comprised of industrial and office uses." *Id.* at 6. The City again arbitrarily applies these concerns to Anchor Stone without justifying why these concerns do not apply to Compass Bible Church, the church across the street from Anchor Stone and in the same zoning district, or to daycare centers, which the P zoning ordinance allows as of right.

Economic Prosperity Policy 2.3 "encourages the development of mutually beneficial and complementary business clusters within the community." *Id.* at 6. The resolution repeats the concerns about "sensitive receptors" and "noise, traffic, vibrations, queuing, solid waste generation and circulation." *Id.* Moreover, it

concludes without explanation that community assembly use "is not considered among those that foster development of mutually beneficial and complementary business clusters within the community." *Id.*

III. LEGAL STANDARDS

A preliminary injunction is appropriate when the movant establishes that "(1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) a preliminary injunction is in the public interest." *Harbor Missionary Church Corp. v. City of San Buenaventura*, 642 Fed. Appx. 726, 729 (9th Cir. 2016). When the party opposing injunctive relief is a government entity, the third and fourth factors merge. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023). "When the balance of equities tips sharply in the plaintiff's favor, the plaintiff must raise only 'serious questions' on the merits—a lesser showing than likelihood of success." *Id.* at 684.

IV. ARGUMENT

Anchor Stone is entitled to a preliminary injunction because it satisfies the three factors above: First, Anchor Stone is likely to succeed on the merits of its RLUIPA substantial burden and First Amendment claims because the City arbitrarily and categorically denied its CUP application, preventing Anchor Stone from using its Property for religious assembly under any circumstances, and the City fails to identify compelling interests to justify this burden. In addition, Anchor Stone is likely to succeed on its RLUIPA equal terms claim because the City's P zoning ordinance requires churches to get a CUP but not similarly situated secular assemblies. Second, Anchor Stone is suffering irreparable harm in the absence of preliminary relief because it is unable to exercise its First Amendment right to assemble for religious worship until its CUP is granted. Third, the public interest and equities weigh in Anchor Stone's favor because the City deprived Anchor Stone of its First Amendment and federal statutory rights, and injunctive relief

would be limited in scope to Anchor Stone's particular property.

A. Likelihood of Success on the Merits

1. **RLUIPA – Substantial Burden**

Anchor Stone is likely to succeed on the merits of its RLUIPA substantial burden claim because the City substantially burdened Anchor Stone's religious exercise by categorically and arbitrarily denying Anchor Stone's CUP application to use its Property for religious assembly.

RLUIPA provides "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden … (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1). This provision applies when "the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes … individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2).

Put simply, a plaintiff establishes a RLUIPA substantial burden claim when it shows (1) a qualifying land use regulation has (2) substantially burdened (3) the plaintiff's religious exercise. 42 U.S.C. § 2000cc(a). The burden then shifts to the government to show its actions are (4) supported by a compelling interest and (5) the least restrictive means of achieving that interest. 42 U.S.C. § 2000cc(a)(1).

a. **Qualifying Land Use Regulation**

The City's CUP review process is a qualifying land use regulation because it involves individualized assessments of each applicant's proposed use for its property to ensure consistency with, among other things, the City's General Plan.

RLUIPA's substantial burden provision applies to "land use regulation[s] or system[s] 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." 42 U.S.C. § 2000cc(a)(2)(C).

Here, the Santa Ana Municipal Code provides the City "may grant" conditional use permits when it deems five factors are satisfied. The only factor the City raises here provides: "the proposed use will not adversely affect the general plan of the city or any specific plan applicable to the area of the proposed use." SAMC § 41-638.

These factors, which the City considered in denying Anchor Stone's CUP application, require an individualized assessment of a property's proposed use. *See Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1223 (C.D. Cal. 2002) (finding that a city's CUP application review process involved individualized assessments of a church's proposed use for its property); *Spirit of Aloha Temple v. Cnty. of Maui*, 2023 WL 5178248, at *15 (D. Haw. Aug. 11, 2023).

b. **Religious Exercise**

The City burdened Anchor Stone's "religious exercise" by preventing Anchor Stone from using its Property for religious assembly and worship.

Religious exercise includes "any exercise of religion," including the "use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5(7). "For a religious institution, having a place of worship is at the very core of the free exercise of religion." *Int'l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1069 (9th Cir. 2011) (cleaned up). Thus, in denying Anchor Stone's CUP application—preventing Anchor Stone from gathering for worship at its Property—the City burdened Anchor Stone's "religious exercise."

c. **Substantial Burden**

Anchor Stone's burden is "substantial" because the City arbitrarily and

categorically denied its CUP application—preventing Anchor Stone from using its Property for religious assembly *under any circumstances*—and finding an alternative property would entail substantial expense.

A substantial burden is one that imposes a "significantly great restriction or onus upon religious exercise." *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 602 (9th Cir. 2022). A "burden need not be insuperable or insurmountable to be substantial." *Spirit of Aloha*, 2023 WL 5178248, at *11. Nor must it render religious exercise "effectively impracticable," as some other circuits have suggested. *Int'l Church*, 673 F.3d at 1068-69.

Instead, courts consider the totality of the circumstances in determining whether a burden is substantial. *New Harvest*, 29 F.4th at 602. Among the factors courts in the Ninth Circuit consider are "whether the government's reasons for denying an application were arbitrary, such that they could easily apply to future applications by the religious group; whether the religious group has ready alternatives available to it or whether the alternatives would entail substantial uncertainty, delay, or expense; and whether the religious group was precluded from using other sites in the city." *Id.*

Other factors include whether the "relevant zoning authority displayed outward hostility toward or pretextual decision-making about plaintiffs' proposed religious use." *See Athey Creek Christian Fellowship v. Clackamas Cnty.*, 2024 WL 3596969, at *10 (D. Or. July 30, 2024). Finally, courts are more likely to find a substantial burden when the church had a reasonable expectation it could use the property for worship when it bought the property. *See Spirit of Aloha*, 2023 WL 5178248, at *12-13. Conversely, courts are less likely to find a substantial burden when that burden was "self-imposed"—i.e., the church bought the property knowing it could not use it for religious assembly. *Id.*

These factors are not dispositive. *See New Harvest*, 29 F.4th at 602. Thus, "the availability of alternative locations … does not necessarily foreclose a finding

of substantial burden." *Id.* Likewise, "that a religious group has imposed a burden upon itself by acquiring the property whose use is already restricted is relevant to but not dispositive of the substantial burden inquiry." *Id.*

(1) The City's Reasons for Denying Anchor Stone's CUP Application Are Arbitrary

A city substantially burdens a church's religious exercise when it arbitrarily denies the church's CUP application, preventing it from using its property for religious assembly. *See Congregation Etz Chaim v. City of Los Angeles*, 2011 WL 12472550, at *6 (C.D. Cal. July 11, 2011). For example, in *Congregation Etz*, the court found a substantial burden where a city "denied [a CUP] application based in part on a purported desire to comply strictly with the General Plan"—which the city claimed prohibits non-residential uses—"despite the existence of multiple non-residential sites in the [temple's] zone." *Id.* In addition to employing arbitrary reasoning, the court found that the city frequently displayed hostility to the temple's CUP application during the review process and "indicated that it either was not able to or would not apply RLUIPA." *Id.* In sum, the city's arbitrary reasoning and hostility to the temple's CUP application significantly "lessened the possibility that future CUP applications would be successful." *Id.*

Likewise, in *Guru Nanak*, the court found a substantial burden where the county arbitrarily denied a Sikh temple's CUP application. *Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 989 (9th Cir. 2006). The court found the county's broad reasons for denying the application—preventing noise, traffic, and "leapfrog development"—could apply anywhere in the city, severely limiting the temple's options. *Id.* at 991-92. Moreover, the temple "agreed to a host of conditions proposed specifically to allay the [city's] concerns," such as holding all religious assemblies indoors and limiting them to seventy-five people. *Id.* at 991. Nevertheless, the city denied the application. *Id.* "The net effect of the County's two denials—including their underlying rationales and disregard for [the temple's]

accepted mitigation conditions—is to shrink the large amount of land theoretically available to [the temple] under the Zoning Code to several scattered parcels that the County may or may not ultimately approve." *Id.* at 991-92.

Here, the City substantially burdened Anchor Stone's religious exercise by arbitrarily denying its CUP application, completely preventing Anchor Stone from using its Property for religious assembly. As in *Congregation Etz*, the City's denial was based on a purported desire to comply strictly with the General Plan, which the City claims prohibits "assembly uses" in the Flex-3 zone. *See Congregation Etz*, 2011 WL 12472550, at *6. But the General Plan never mentions "assembly uses," and many of the uses allowed by the P zoning ordinance and General Plan are facially "assembly uses." The P zoning ordinance allows art galleries, museums and science centers, daycare centers, and restaurants as of right. Additionally, the General Plan itself enumerates corporate headquarters and campuses (up to ten stories), commercial retail, artist galleries, and craft maker spaces as allowed uses in the Flex-3 zone. Thus, as in *Congregation Etz*, the City's inconsistent application of its General Plan and zoning ordinances rendered its CUP denial arbitrary. *See id.*

The City's other reasons for denying Anchor Stone's CUP application are also arbitrary. For example, the City purportedly worries Anchor Stone's proposed religious assembly would generate noise, traffic and queuing, and solid waste generation and circulation. But, as in *Guru Nanak*, these broad concerns could apply anywhere in the city, so Anchor Stone has no assurance that the City will not raise them again should Anchor Stone find another location. *See Guru Nanak*, 456 F.3d at 991-92. Moreover, these concerns apply with greater force to the allowed uses listed above like ten-story office buildings, museums, and restaurants. The City also denied Anchor Stone's CUP application in part to keep so-called "sensitive receptors"—Anchor Stone's youth services and Bible school—away from industrial uses. But if a Bible school is a sensitive receptor, then a daycare

center is too—and those are allowed as of right in the P zoning district. Thus, the City's reasons for denying Anchor Stone's CUP application were arbitrary and pretextual.

(2) The City Displayed Hostility to Anchor Stone's Proposed Religious Use

In addition to employing arbitrary reasoning, the City displayed hostility to Anchor Stone's CUP application and RLUIPA during the review process. As in *Congregation Etz*, the City consistently indicated that it would not consider RLUIPA. *See Congregation Etz*, 2011 WL 12472550, at *6. At the Planning Commission hearing, City staff brushed off Anchor Stone's invocation of RLUIPA, concluding "RLUIPA is outside the scope of today's hearing." Multiple commissioners expressed offense at Anchor Stone invoking RLUIPA, with one going so far as to accuse Anchor Stone of trying to be "above the law" and "impose the way [it] think[s] upon the city." At the city council hearing, one councilmember described RLUIPA as "an excuse to circumvent our local laws" and its invocation as "a smack in our face." Another councilmember bizarrely painted the proposed church as a "threat to environmental justice" that would harm the city's low-income residents. It is difficult to chalk all of this handwringing over a small church up to anything but hostility to Anchor Stone and RLUIPA generally.

(3) Finding an Alternative Property Would Entail Substantial Delay and Expense

Finding an alternative site would entail substantial uncertainty, delay, and expense. *See Harbor Missionary*, 642 Fed. Appx. at 729 (finding a substantial burden where denial of a CUP forced a church to relocate at a cost of $1.4 million). Anchor Stone has already invested more than $1.6 million in the Property. Attempting to sell the Property now and finding a suitable alternative—if one is even available—would unquestionably entail substantial uncertainty, delay, and expense.

(4) Anchor Stone's Burden Was Not Self-Imposed

Anchor Stone's burden was not self-imposed because it purchased the Property reasonably believing it could be used for religious assembly. Indeed, Anchor Stone met with officials from the City's planning department *before* closing on the Property, who indicated there would be no issue obtaining a CUP for religious assembly use.

2. **First Amendment Free Exercise**

Anchor Stone is likely to succeed on the merits of its First Amendment claim because the City burdened Anchor Stone's religious exercise by categorically and arbitrarily denying Anchor Stone's CUP application to use its Property for religious assembly.

The Free Exercise Clause of the First Amendment provides that "Congress shall make no law … prohibiting the free exercise [of religion]." In general, the elements of a Free Exercise claim are similar to those of a RLUIPA substantial burden claim. Strict scrutiny applies when the defendant (1) burdened the plaintiff's religious exercise (2) pursuant to a policy that is not neutral or generally applicable. *See Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 533 (2021); *Loffman v. California Dep't of Educ.*, 119 F.4th 1147, 1165 n. 12 (9th Cir. 2024).

a. **Burden**

The City burdened Anchor Stone's religious exercise by arbitrarily and categorically denying its CUP application.

All Anchor Stone must show is that its sincere religious practice was burdened rather than *substantially* burdened. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022); *see also Kravitz v. Purcell*, 87 F.4th 111, 124 (2d Cir. 2023) ("When we are considering government policies that are not neutral and generally applicable … there is no justification for requiring a plaintiff to make a threshold showing of substantial burden."). For the reasons described in the

previous section, the City burdened Anchor Stone's religious exercise.

b. **General Applicability**

The City's CUP review process is not generally applicable because it requires individualized examinations of a party's proposed use for their property.

A law is not generally applicable if it "invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (cleaned up). Courts in the Ninth Circuit have consistently found that a city's CUP application review process is not generally applicable because it requires individualized examination of a property owner's proposed use. *See Spirit of Aloha*, 2023 WL 5178248, at *15; *Cottonwood*, 218 F. Supp. 2d at 1223. Santa Ana's CUP review process is no different: It requires individualized examination of the proposed use of the property and evaluates that use against a number of policies. *See* SAMC § 41-638. Thus, the City's CUP application review process is not generally applicable.

"A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 534. Santa Ana's land use regime fails on this account too. Santa Ana's asserted interests—minimizing assembly, traffic, pollution, etc.—apply with equal or greater force to many of the existing or allowed secular uses in the P zone and Flex-3 area like ten-story office buildings, daycare centers, art galleries, and museums.

Strict scrutiny therefore applies because the City burdened Anchor Stone's religious exercise pursuant to a CUP review process that was not and is not generally applicable.

3. **Strict Scrutiny – RLUIPA Substantial Burden and First Amendment Free Exercise**

As demonstrated above, the City's actions trigger strict scrutiny under both RLUIPA and the First Amendment. To satisfy strict scrutiny, the City must

establish that denying Anchor Stone's CUP application was the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1); *Fulton*, 593 U.S. at 541.

a. **Compelling Interest**

The City's purported interests in denying Anchor Stone's CUP are not compelling because the City allows property uses that undermine its interests to a greater extent than Anchor Stone's proposed use would.

The compelling interest standard is an exceptionally demanding standard. *Spirit of Aloha*, 2023 WL 5178248, at *10. Only "interests of the highest order" tailored to the specific circumstances of the case will suffice; generalized or vague interests will not. *Grace Church of N. Cnty. v. City of San Diego*, 555 F. Supp. 2d 1126, 1140 (S.D. Cal. 2008).

"One way to evaluate a claim of compelling interest is to consider whether in the past the governmental actor has consistently and vigorously protected that interest." *Id.* at 1140-41. In the land use context, if a city allows uses that undermine its proffered interest to a similar or greater extent than the challenged use, that interest is not compelling. *See id.*

During the CUP review process, the City identified a number of interests supposedly justifying denying Anchor Stone's CUP. First, the City expressed an interest in strictly complying with its General Plan by inventing a prohibition on "community assembly-type uses" in the Industrial/Flex-3 zone. But the General Plan's Flex-3 designation does not prohibit assembly uses: It never uses the word "assembly," and many expressly allowed uses clearly involve assembly. Even if the Industrial/Flex-3 designation did prohibit assembly, "preservation of industrial lands for industrial uses does not constitute a compelling interest for purposes of RLUIPA." *Grace Church*, 555 F. Supp. 2d at 1140; *Int'l Church*, 673 F.3d at 1071. Moreover, compliance with a general plan for compliance's sake is not a compelling interest. *See Congregation Etz*, 2011 WL 12472550, at *5 ("[T]he

Ninth Circuit in *International Church* rejected this reasoning and the finding of a compelling interest in preserving lands for industrial use simply because such preservation is required by the City's General Plan."). Thus, the City's purported interest in prohibiting assembly uses in the General Plan's Industrial/Flex-3 zone is not compelling.

Second, the City improperly claims broad, generalized interests in minimizing noise, traffic and queuing, and solid waste generation and circulation. But the City is not "consistently and vigorously" protecting these interests. It allows numerous uses that undermine them to a greater extent than a small church would. For example, allowed uses like restaurants, museums, daycare centers, and ten-story office buildings would undoubtedly produce more noise, traffic, and waste than Anchor Stone's small, single-story church. The City's tolerance for such uses shows it is "leav[ing] appreciable damage to [its] supposedly vital interest unprohibited," and its enforcement of that interest is therefore "fatally underinclusive." *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020).

Moreover, courts have consistently found these sorts of interests uncompelling. *See Vietnamese Buddhism Study Temple In Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1174-75 (C.D. Cal. 2006) (suggesting traffic and parking concerns over a proposed temple were not compelling because they apply equally to allowed uses). For example, in *Congregation Etz*, the court rejected as uncompelling a city's "broad" traffic and parking concerns because the city "present[ed] 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 proposed religious assembly use. *Congregation Etz*, 2011 WL 12472550, at *7. So too here. Santa Ana has alleged only a generalized interest in minimizing noise, traffic, and waste generation; it has not identified how that interest applies to Anchor Stone's particular property, as it must to satisfy strict scrutiny. *See Fulton*, 593 U.S. at 541

(noting strict scrutiny "demands a more precise analysis" and courts must "scrutinize the asserted harm of granting specific exemptions to particular religious claimants").

Third, the City alleges an interest in "avoid[ing] potential land use conflicts by prohibiting the location of sensitive receptors and noxious land uses in close proximity." Although the General Plan never defines "sensitive receptor," the City concludes Anchor Stone's "community assembly, coupled with youth services and Bible school, would introduce sensitive receptors into an area that is mostly comprised of industrial and office uses." However, the City allows daycare centers as of right and granted a CUP to another church across the street from and in the same zone as Anchor Stone's property. If Anchor Stone's church and youth Bible school are sensitive receptors, surely these are too. Thus, the City's sensitive-receptor interest is not compelling because the City has not vigorously and consistently protected it.

b. **Least Restrictive Means**

Even if the City's interests were compelling, categorical denial of Anchor Stone's CUP would not be the least restrictive means to achieve those interests.

The "exceptionally demanding" strict scrutiny standard requires cities to use less restrictive means when they are available. *See Spirit of Aloha*, 2023 WL 5178248, at *10. In the CUP context, this typically means granting a church's CUP subject to limited, reasonable conditions (if any). *See Harbor Missionary*, 642 Fed. Appx. at 730 (finding that denying a church's CUP was not the least restrictive means when "implementing [various] conditions might have achieved the City's health and safety interests."). But here, the City made no attempt to narrowly tailor its actions to address its purported interests. Instead, the City completely denied Anchor Stone's CUP application—preventing Anchor Stone from using its Property for religious assembly under any circumstances. This is far from the least restrictive means.

4. **RLUIPA – Equal Terms**

The City's Professional (P) zoning ordinance facially violates RLUIPA's equal terms provision because it requires churches to obtain a CUP but not similarly situated secular assemblies.

The equal terms provision provides that "[n]o government shall impose or implement a land use regulation 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). Unlike a RLUIPA substantial burden claim or Free Exercise claim, equal terms violations cannot be justified by a compelling interest, and the plaintiff need not prove any burden. *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1172 (9th Cir. 2011).

"The equal terms provision contemplates both facial and as-applied challenges." *New Harvest*, 29 F.4th at 604. Facial challenges rest on the text of the zoning ordinance alone. *Id.* at 605. The plaintiff establishes a prima facie case by showing an express distinction between religious assemblies and nonreligious assemblies on the face of the zoning ordinance. *Id.* The burden of persuasion then shifts to the government to show that any nonreligious assembly allowed as of right is not similarly situated to a religious assembly "with respect to an accepted zoning criterion." *Id.* at 606. The burden is on the city—not the church—to identify a similarly situated secular assembly and to show that the church's treatment is not unequal where it appears unequal on the face of the ordinance. *Id.*

In *Centro Familiar*, the court found a facial equal terms violation where a city's zoning code required churches to obtain a CUP but allowed auditoriums, performing art centers, museums, art galleries, and fitness centers as of right. *Centro Familiar*, 651 F.3d at 1167, 1175. Similarly, in *New Harvest*, the court found a facial equal terms violation where a city's zoning ordinance prohibited religious assemblies but allowed theaters in the same zone. *New Harvest*, 29 F.4th at 608.

Here, Santa Ana's Professional (P) zoning ordinance violates the equal terms provision on its face because it requires religious assemblies to obtain a conditional use permit but allows various secular assemblies to operate as of right. The P zoning ordinance requires a CUP for "churches and accessory church buildings," but various secular assemblies are permitted as of right: art galleries; museums and science centers; daycare centers; and freestanding restaurants, cafes, and eating establishments.

Santa Ana's P zoning ordinance suffers from the same defects as the zoning ordinances in *Centro Familiar* and *New Harvest*: It requires churches to obtain a CUP but not similarly situated secular assemblies like museums and art galleries. *See Centro Familiar*, 651 F.3d at 1167; *New Harvest*, 29 F.4th at 608. The City now shoulders the heavy burden of justifying this facially unequal treatment.

B. Irreparable Harm

Irreparable harm is satisfied because Santa Ana has deprived Anchor Stone of its First Amendment right to use its Property for worship.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) . Thus, the Ninth Circuit has held that "a party seeking preliminary injunctive relief in the First Amendment context can establish irreparable injury" merely by "demonstrating the existence of a colorable First Amendment claim." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005).

Here, Santa Ana has prevented Anchor Stone from conducting worship services on its own property. Other courts in this circuit have held similar burdens on religious exercise constitute irreparable injury. *See Vietnamese Buddhism*, 460 F. Supp. 2d at 1172. For example, in *Vietnamese Buddhism*, the court found irreparable harm where a city denied a Buddhist temple's CUP application to conduct religious services on its property. *Id.* As the court noted, "every day the [Temple leader] is forced to deny religious services to his congregation is a day that

the Temple congregation is denied the First Amendment rights of freedom of speech, freedom of association, and free exercise of religion." *Id.* Additionally, the court found that "the Temple has suffered financial difficulties as a result of suspending services." *Id.* at 1170 ("The Temple relies heavily on donations and contributions, which have greatly reduced while services are not being performed. There is a danger that if the [Temple] cannot resume services soon, [it] will be forced to shut down … altogether.").

While loss of First Amendment freedoms is itself irreparable injury, *see Elrod*, 427 U.S. at 373, it is not the only irreparable injury here. Anchor Stone has suffered financial difficulties because it cannot conduct worship services on its Property. Ex. A (Lee Decl.) ¶31. Like the temple in *Vietnamese Buddhism*, Anchor Stone "relies heavily on donations and contributions, which have greatly reduced while services are not being performed." *See Vietnamese Buddhism* 460 F. Supp. 2d at 1170. These donations cover important ongoing expenses like property taxes. Ex. A ¶31. If Anchor Stone is unable to conduct services soon, it may be forced to sell the Property or face financial ruin. *Id.*

C. Balance of the Equities and Public Interest

The public interest and equities weigh in Anchor Stone's favor because the City deprived Anchor Stone of its First Amendment and federal statutory rights, and injunctive relief would be limited in scope to Anchor Stone's particular property.

"It is always in the public interest to prevent the violation of a party's constitutional rights." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) (cleaned up). Thus, merely "rais[ing] serious First Amendment questions … compels a finding that the balance of hardships tips sharply in [the movant's] favor." *Id.* (cleaned up). Anchor Stone has, at the very least, "raised serious First Amendment questions" and thus established that the balance of hardships tips sharply in its favor.

Should the Court grant Anchor Stone's preliminary injunction motion, the City's hardship would not be similarly severe. *See Vietnamese Buddhism*, 460 F. Supp. 2d at 1173 (finding the impact on the city's police power to be "minimal" compared to the temple's loss of First Amendment rights). Santa Ana's hardship is minimal because the injunction is "limited in duration, scope, and effect" and applies only to Anchor Stone's particular property. *See id.*

V. CONCLUSION

For the reasons described above, Anchor Stone respectfully requests a preliminary injunction enjoining the City from the following during the pendency of this action: (1) preventing Anchor Stone from assembling for worship at its property and (2) preventing Anchor Stone from carrying out its proposed interior property renovations.

The undersigned, counsel of record for Anchor Stone Christian Church, certifies that this brief contains 6,999 words, which complies with the word limit of L.R. 11-6.1.

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