FIRST LIBERTY

October 6, 2025

Joan Riley
City Manager
425 E Dewey Avenue
Sapulpa, OK 74066
[redacted]

Sent via email

Re: Lee & Walnut Church of Christ

Dear Ms. Riley:

First Liberty Institute is a non-profit law firm dedicated to defending and restoring religious liberty for all Americans. We represent Lee & Walnut Church of Christ (the "Church"), the owner of the property located at 10289 U.S. Rte 66, Sapulpa, OK 74066 (the "Property"). The Church retained First Liberty after the City Council (the "Council") for the City of Sapulpa (the "City") denied the Church's Special Use Permit application ("SUP") to operate its ministry at the Property on September 2, 2025 after the SUP was unanimously approved by the City's Planning Commission on August 26, 2025. Please direct all communications regarding this matter to me.

As explained below, the Church's right to purchase and use the Property for religious purposes is fully and clearly protected by the First and Fourteenth Amendments of the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc *et seq.* ("RLUIPA"), and the Oklahoma Religious Freedom Act, 51 O.S. § 251 *et seq*. ("ORFA"). While we understand that the City is now reconsidering the Church's SUP, we write to remind the Council of its obligations under federal and state law as it considers this matter.

The Free Exercise Clause prohibits government action that burdens an individual's sincere religious practice with a policy that is not neutral or generally applicable. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421–22 (2022). Thus, government entities must treat religious activity in a neutral manner, and any action "that targets religious conduct for distinctive treatment" is subject to strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Likewise, government entities violate principles of neutrality and general applicability "whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). And when laws provide discretion to government officials or are imposed pursuant to systems of "individualized exemptions," such laws are not generally applicable. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877–78 (2021) (applying strict scrutiny to a law that gave city officials the "sole discretion" to determine exemptions from the law).

Here, by seeking to operate a Christian church on the Property, there is no question that the Church "seeks to engage in a sincerely motivated religious exercise." *Kennedy*, 142 S. Ct. at 2422. There is also no question that the Council's denial of the SUP burdens the Church's religious

conduct. Further, this burden stems from a law that is neither neutral nor generally applicable. The SUP application process is not generally applicable because the Council retains discretion to approve individualized applications. *See Fulton*, 141 S. Ct. at 1877–78. It is also not neutral because it treats other comparable secular activities more favorably than the Church's religious activity. Indeed, the City permitted the previous owner of the Property, the Red Bison Dispensary, to operate a marijuana dispensary and event center for hosting bingo, corn hole tournaments, comedy nights, and mental health support groups, among other activities. There can be no doubt that a secular event center is comparable to a church's religious gatherings. *Tandon*, 141 S. Ct. at 1297. This disparate treatment of the Church raises serious constitutional concerns.

Because the City has treated comparable secular activities more favorably than the Church's religious activity, the Council must prove its actions are furthering "interests of the highest order by means narrowly tailored in pursuit of those interests." *Id.* at 1298 (internal quotation marks omitted); *see also Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"). Here, the only reason the Council discussed for denying the Church's SUP was that it would lead to a decrease in the City's tax revenue because of the Church's tax-exempt status. This justification falls far short of a compelling interest and is tantamount to a ban on churches owning property because of their religious status. The Supreme Court has held such discriminatory treatment based on religious status to be "odious to our Constitution." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017).

Even assuming the Council's interest was compelling—which it is not—it cannot show how a permanent prohibition on the Church operating at the Property is narrowly tailored way to advance those interests. Government action that burdens religious exercise is narrowly tailored *only if* it is the "least restrictive means of achieving some compelling state interest." *Thomas*, 450 U.S. at 718. That is, the Council must "show that measures less restrictive [other than an all-out ban] of the First Amendment activity could not address its interest." *Tandon*, 41 S. Ct. at 1296–97. The fact that the Planning and Zoning Commission unanimously approved the Church's SUP and that the City's own staff recommends approval of the SUP demonstrates that a less restrictive means exists for the City to achieve its interest in generating property tax revenue. Thus, the Council's denial violated the First Amendment.

For the same reasons that the Council's actions and interests cannot satisfy the First Amendment's strict scrutiny test, they also cannot satisfy RLUIPA and its strict scrutiny test. RLUIPA's provisions provide, in pertinent part:

> No 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 on that person, assembly, or institution—
>
> (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) (emphasis added). RLUIPA also prevents cities from "impos[ing] or implement[ing] 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). As discussed above, the City is treating the Church on less than equal terms than the secular Red Bison Dispensary event center that previously resided at the Property. The City cannot permit a secular event center to operate at a property while barring a church from having similar gatherings for religious purposes. *See id.* Thus, the Council's denial of the Church's right to engage in religious activities at the Property violates RLUIPA.

Finally, as the Council's actions and interests cannot satisfy the First Amendment's strict scrutiny test and RLUIPA's strict scrutiny test, it further cannot satisfy the strict scrutiny test under ORFA:

> No governmental entity shall *substantially burden a person's free exercise of religion* unless it demonstrates that application of the burden to the person is: 1. Essential to further a *compelling governmental interest*; and 2. The *least restrictive means* of furthering that compelling governmental interest.

51 O.S. § 253(B) (emphasis added). Here, the denial of the Church's SUP to operate as a Christian church cannot be seen as anything less than a substantial burden on its ability to freely exercise religion under ORFA. As such, like under the Free Exercise Clause of the First Amendment and RLUIPA, strict scrutiny—or a compelling governmental interest with the least restrictive means—applies. But, as stated previously, the Council cannot satisfy strict scrutiny. Thus, by denying the SUP, the Council has deprived the Church of its protected rights under ORFA.

In sum, the denial of the Church's SUP raises serious concerns under the First and Fourteenth Amendments, RLUIPA, and ORFA. We understand, however, that the City is already taking steps to remedy these violations by reconsidering its unlawful denial. We further understand that this matter is set to be considered by the Council tonight. The Council must approve the Church's SUP. Should the Council nevertheless persist in its denial of the Church's right to religious exercise, it will pursue all available legal options, not limited to the principles articulated herein.

Thank you for your attention to this matter. I can be reached at hsasser@firstliberty.org or 972-941-4444. I look forward to hearing from you soon.

Respectfully,

Hiram Sasser, Executive General Counsel
Ryan Gardner, Senior Counsel
First Liberty Institute

cc: Anthony J. (A.J.) Ferate, Of Counsel, Spencer Fane LLP
David Widdoes, City Attorney for the City of Sapulpa, Oklahoma