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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

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CORPORATION OF THE PRESIDING  
BISHOP OF THE CHURCH OF JESUS  
CHRIST OF LATTER-DAY SAINTS, a Utah  
corporation sole,

Plaintiff,

vs.

THE CITY OF MISSION, and THE CITY  
COUNCIL OF THE CITY OF MISSION,  
currently comprised of Mayor Norberto  
Salinas, Mayor Pro-Tem Leo Olivarez, Sr.,  
Maria Elena Ramirez, Ruben Plaza, and Norie  
Gonzalez Garza,

Defendants.

**COMPLAINT**

Case No. \_\_\_\_\_

**Jury Trial Demanded**

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Plaintiff Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, by and through its attorneys, the law firms of Vinson & Elkins and Canales & Simonson, PC, complains and alleges as follows:

**NATURE OF ACTION**

1. This action arises out of Defendants' repeated denials of a conditional use permit ("CUP") that would have allowed the LDS Church to construct a much-needed house of worship for 550 families who live in the City of Mission, Texas.

2. The LDS Church acquired a site at the corner of N. Mile 2 Road and N. Bryan Road with the understanding that a conditional use permit ("CUP") would be needed to build the proposed church. Twice the Church applied to the City for a CUP and twice it received the

requisite majority of votes for approval. But by arbitrarily creating a supermajority requirement in violation of its own ordinances and by flouting established ethics laws, the City denied the CUP anyway on procedural grounds, depriving the Church of its religious freedoms.

3. First, the City reinterpreted an ordinance—Section 1.23 of the Mission Code of Ordinances—that on its face applies only to changes or amendments to zoning ordinances. The City thereby imposed *legislative* procedures on the *quasi-judicial* proceedings considering the Church’s CUP applications. Specifically, it required a **supermajority** vote of the City Council instead of a simple majority vote of the Planning and Zoning Commission. Thus, both of the Church’s applications were denied procedurally even though a majority of both the Planning and Zoning Commission and the City Council voted to approve.

4. Second, the denials are even more egregious because of irregularities and ethics violations in the City Council votes that should have required at least one City Council member to abstain from voting on the Church’s applications.

5. Had the City not changed the rules for CUP approvals **or** had the Council observed City and State ethics laws, then the Church’s applications would have been granted.

6. The LDS Church critically needs the proposed church because existing facilities are so overcrowded that its members cannot worship according to the dictates of the LDS faith. The religious burdens caused by the denials are substantial and were imposed on the Church and its members in violation of the Texas Religious Freedom Restoration Act (“TRFRA”), the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and the federal and state Constitutions. The denials must be overturned and the Church’s CUP granted.

**JURISDICTION AND VENUE**

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343 (a)(3) and (4), and 42 U.S.C. § 2000cc, which confer original jurisdiction on federal district courts in suits to redress the deprivation of rights. The Court has jurisdiction over Plaintiff's request for declaratory relief, pursuant to 28 U.S.C. §§ 2201 and 2202. Additionally, the Court has supplemental jurisdiction over the Texas statutory and constitutional claims pursuant to 28 U.S.C. § 1367(a).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because this is the judicial district where defendants reside and because this is the judicial district where a substantial part of the events or omissions giving rise to these occurred.

**THE PARTIES**

9. Plaintiff Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, is a Utah corporation sole authorized to do business in Texas. Plaintiff owns and operates property for the ecclesiastical denomination of The Church of Jesus Christ of Latter-day Saints, an unincorporated religious association. Plaintiff and The Church of Jesus Christ of Latter-day Saints are collectively referred to as the "LDS Church" or "Church". (The proposed house of worship itself is referred to herein as the "proposed church" or simply "the church.")

10. Defendant City of Mission (the "City") is a municipal corporation organized pursuant to the laws of the State of Texas.

11. Defendant City Council of the City of Mission (the "City Council") is the duly elected city council of the City. During the time periods relevant to this action, the City Council included among its members, Mayor Norberto Salinas, Mayor Pro-Tem Leo Olivarez, Sr., Maria

Elena Ramirez, Ruben Plaza, and Norie Gonzalez Garza. Pursuant to state and local law, the City Council is authorized to grant or deny conditional use permits.

12. Each of the individual defendants is named herein in his or her official capacity.

### **STATEMENT OF FACTS**

#### **THE LDS CHURCH'S CRITICAL RELIGIOUS NEED FOR A HOUSE OF WORSHIP IN MISSION**

13. LDS Church membership in Mission consists of two congregations, the Mission 2<sup>nd</sup> Ward (consisting of about 278 families) and the Mission 3<sup>rd</sup> Ward (consisting of about 283 families).

14. With no local church in Mission, these families are forced to travel to McAllen for Sunday services and periodically during the week for other worship activities. They share a church, on the corner of 29<sup>th</sup> and Dove in McAllen, with two other McAllen-based congregations—the McAllen 2<sup>nd</sup> Ward (which has 215 families) and the Mission 1<sup>st</sup> Ward (which has 252 families)—that have the same worship needs. Thus, there are **four** congregations competing for limited space in that McAllen church.

15. On Sundays, this overcrowding means that the four congregations stagger their three-hour worship services, consisting of a congregational meeting in the sanctuary and then two hours of age- and interest-specific instruction in small classrooms.

16. Worship services run from 9:00 a.m. to 6:00 p.m., with two congregations often meeting at once. When the first congregation separates for classroom instruction, the next congregation enters the sanctuary, and so forth. The congregations also stagger morning and evening leadership meetings, so the building is in constant use from approximately 6:00 a.m. to well into the evening.

17. On weekdays, each congregation also needs space for its ministries. The youth ministries have activities one evening a week, as well as early morning Bible study classes on school days. The women's ministries also have regular activities, as do the children's and men's ministries. Again, the four congregations compete for space for their respective ministries, particularly in the multipurpose room, which is the only space that can accommodate many of the evening activities.

18. As Monday evenings are reserved for "family home evenings," the building is available only on Tuesday, Wednesday and Thursday evenings, yet there are four congregations vying for times on those three weekday evenings, with a result that ministry activities are curtailed or changed.

19. In addition, this overcrowding of the McAllen church has created a "ripple effect" that also burdens many other congregations in the surrounding area. For example, the Mission congregations have **displaced** a fifth Church congregation (the Sharyland Ward, consisting of 209 families) that would otherwise meet in the McAllen church.

20. The Sharyland Ward is forced to travel to yet another building that it shares with other congregations. Plans to create a new congregation in that other building have been put on hold (causing yet more crowded conditions in the host church) because the displaced Sharyland Ward currently occupies the space meant for the new congregation.

21. Compounding the substantial burden caused by overcrowding and competition for limited space in these two churches (which affects well over 1,000 families in the four congregations sharing the McAllen church, plus the 209 families of the Sharyland Ward, plus two additional congregations) is the burden on individual members who reside in Mission of having to travel to the McAllen church for each worship activity.

22. The burden on individual members and families includes inaccessibility due to lack of transportation or health concerns; an inability (especially of school-aged youth and young families) to attend early morning or late evening Bible-study classes, ministry activities, or worship services; and a need to choose among competing activities because of the extra time required to drive to Church functions from Mission.

23. Both burdens—(a) the crowding and competition for limited space that results from the Mission congregations sharing the McAllen church and (b) the distance Mission families are required to travel—impair the quality worship for **all** affected congregations and force members in all those congregations to alter or curtail their religious conduct in substantial, real and significant ways, for example:

- a) **Reduced Attendance:** The odd hours and distance strain families, especially for the many member families headed by single parents with limited incomes, those with young children or special needs, the elderly, and members without cars. Many simply can't come. Moreover, seating for Sunday services is limited, forcing members to choose between straining to hear from an overflow area or forgoing critical religious rites (e.g., the Sacrament of the Lord's Supper) offered as part of worship services. Many members testified about these difficulties in the hearings below.
- b) **Diminished Quality of Services:** With four congregations worshiping in a single church, the resulting congestion, noise, and disorder drive away the atmosphere of reverence necessary for members to pray, contemplate and seek God's inspiration. As crowds grow the quality of services noticeably deteriorates.

- c) **Impaired Ministries:** There is simply not enough space for the religiously required activities of the various congregations' ministries. For youth, the scheduling problem in the evenings is compounded by the fact that some congregations are forced to hold activities at the same time that schools hold extra-curricular activities; so, many youth can't participate. Sunday youth activities also suffer. As a specific example, practices for the youth choir cannot be held until late on Sundays to accommodate after-hours worship services. Attendance at youth choir has dropped 50 percent.
- d) **Impaired Growth:** The existing church cannot accommodate growth in membership, yet LDS Church membership in the Mission/McAllen area has grown steadily over the last 10 years and continues to grow. New members feel squeezed rather than welcomed. At least one of the congregations meeting in the McAllen building has grown so large that it should be subdivided, as required by the faith. The LDS Church keeps congregations small so that all members feel integrated and can help in the lay ministry. However, without space the large congregation cannot subdivide as the faith requires because there is nowhere for the new congregation to go.
- e) **Disrupted Rites:** With an active missionary program, new members are baptized almost every Sunday. A baptismal service is a sacred rite that also involves prayer, a sermon, the sharing of testimony, and the singing of hymns. They are to be held on Sundays. However, the overcrowded McAllen church simply cannot accommodate these sacred services for four congregations. Baptisms are delayed or disrupted by other meetings or activities occurring in the church.

- f) **Eliminated Courses:** Age- and interest-appropriate instruction is a critical component of the LDS Church's and its members' religious exercise. Two hours of each congregation's Sunday services are dedicated to targeted gospel teaching. The subjects of course are directed by the Church's Prophet and other clergy through divine inspiration. Yet required courses cannot be taught in the McAllen church because there are not enough classrooms or seating within the rooms to accommodate members.
- g) **Loss of religious community:** An important tenet of the faith is to locate churches in residential areas close to where members live. A local church supports families, gives members a sense of belonging and further establishes the LDS Church in the community. With no paid clergy, the LDS Church relies on the volunteer efforts of members, and leaders cannot effectively administer to the flock when the church is not located in their midst. Lack of a church in Mission denies the 550 families of LDS Church members in Mission a religious home.

#### **SEARCH FOR A SUITABLE SITE**

24. Given this critical religious need, the LDS Church began searching for a suitable site to accommodate a house of worship to serve the 550 member families that reside in Mission.
25. The LDS Church believes that the design and location of a church is inspired by God.
26. All churches of the LDS Church consist of the same elements: a sanctuary for congregational meetings, a specified number of classrooms for small-group instructions, clergy offices for confidential counseling, and a multipurpose room for overflow seating, additional teaching space, and weekday ministry activities.

27. It is a policy of the LDS Church to locate churches in residential areas near where its members live. Accordingly, the Church conducted an extensive search within a nine-square-mile area that it determined by the location of its members' homes in Mission.

28. Church representatives evaluated multiple sites based on spiritual and temporal criteria, namely, a non-commercial area, an approximate size of five acres, within certain cost constraints, and, most importantly, a spiritual confirmation that the chosen site is acceptable to God.

29. The search led the Church to a parcel comprising five acres of vacant land located at the southwest corner of the intersection of N. Mile 2 Road (also known as 2 Mile Road) and N. Bryan Road in the City (the "Property").

30. The Property is ideally situated. Mile 2 Road and Bryan Road are "100-foot minor arterial" roads, one of which (Mile 2 Road) was recently widened and upgraded and the other (Bryan Road) is expected to be. The City's zoning map classifies the intersection of Mile 2 Road and Bryan Road as a "major intersection." And the Property is in a zone—Agricultural Open-Interim ("AO-I")—that expressly permits institutional uses (churches), subject to appropriate conditions. The surrounding area has been or is being developed with large estate homes, most of which are on multi-acre parcels.

31. Moreover, the Property was the **only** site that satisfied the LDS Church's spiritual and temporal requirements for the proposed church.

32. Specifically, President L. Brice Chandler, the senior clergyman who oversees the eight Church congregations in the Mission, McAllen, Hidalgo, La Joya and Rio Grande City areas, testified before the Planning Commission and City Council that a spiritual confirmation

typically comes as leaders investigate all options and then seek direction through prayer. President Chandler testified that he felt spiritually directed to select that particular Property.

33. Given the spiritual direction to President Chandler, the lack of other suitable sites, and the Church's dire need for a home in Mission, the Church entered an option to purchase the Property and then later closed on the purchase.

#### **NEIGHBORHOOD OPPOSITION AND THE CHURCH'S ATTEMPTS AT DIALOGUE**

34. Before seeking City permits, Church representatives and then-property owner Martin Garza ("Mr. Garza") met with neighbors to explain the church and solicit feedback.

35. A few neighbors—representing fewer than 10 households—told the Church that they opposed the proposed house of worship.

36. Due to these neighbors' negative feedback, the Church reevaluated its site selection, but that reevaluation led to the same conclusion, *i.e.*, that the Property was the **only** site that satisfied the Church's spiritual and temporal requirements.

37. At each stage in the successive applications, the Church attempted to further discuss the matter with neighbors but received no response except in public hearings. For example, Church representatives provided a fact sheet and invited neighbors to an open house, without response.

38. Nonetheless, the Church adjusted its design plan to accommodate concerns expressed by the neighbors. Among other changes, the Church re-designed the parking lot, added landscaping, responded in detail to questions about its proposed low-impact lighting, and offered to improve natural barriers.

### **FIRST APPLICATION FOR A CUP**

39. In 2010, pursuant to its option contract to purchase the Property, the LDS Church prepared and submitted an application for a CUP to construct the church as an institutional use in an agricultural zone. The application was signed by Mr. Garza, as property owner.

40. In entering an option contract with Mr. Garza and in applying for the needed CUP, the Church relied upon the conditions for CUP approval contained in Article X of Mission's Code of Ordinances, entitled "Conditional Use Permits":

#### **Section 1.53. - Requirements for approval.**

1. The planning and zoning commission may permit a conditional use subject to appropriate conditions and safeguards when the commission finds:
  - a. That the proposed use meets all the minimum standards established in this ordinance and other applicable ordinances.
  - b. That the proposed use meets the intent of the district in which it is located.
  - c. That the proposed use will not be detrimental to the health, welfare, and safety of the surrounding neighborhood or its occupants, nor be substantially or permanently injurious to neighboring property.

41. Section 1.53 is the only provision of Mission's Code of Ordinances that specifies the requirements for CUP approval. Section 1.53 does not require a CUP application to be heard or approved by the City Council, except upon a verified petition of appeal pursuant to **Section 1.24** of the Code of Ordinances.

42. The CUP application clearly indicated it sought a "CONDITIONAL USE PERMIT" as opposed to rezoning or site plan review, left blank any reference on the application form to requests for zoning changes, and noted that the "C.U.P. DESIRED [was] FOR: Institutional (Church)." Further, the Church paid the fee for a CUP instead of the higher fee for rezoning.

### **CHANGE OF RULES AND DENIAL BY CITY**

43. The City planning staff recommended approval of the CUP, with minor conditions, to which the Church agreed. Specifically, at the Planning and Zoning Commission hearing on December 8, 2010, the planning director emphasized that because adjacent streets are “100-foot minor arterials” and their intersection is a “major intersection,” traffic for the church could “easily be managed by these (widened) perimeter streets.” He further stated that the church met or exceeded all other requirements under Mission’s Code of Ordinances.

44. About 10 residents testified in opposition to the church at the Planning and Zoning Commission hearing, expressing their fears that it would change the residential nature of the neighborhood and/or negatively affect their property values.

45. Hector Cavazos testified that he was a realtor with “Real Estate Investments” (the brokerage owned by Councilwoman Garza) and that he had been “retained” by “the majority of the people that were opposing [the church].” He stated that they opposed the church because it was inconsistent with **future** zoning goals for the area, as reflected on the City’s “Future Land Map.” He then submitted a petition signed by neighbors opposed to the Church that purported to trigger Section 1.23 of Mission’s Code of Ordinances.

46. Section 1.23 states:

**Section 1.23. - Protests and recommendations for denial.**

1. In case of a written protest **against any change in zoning**, signed by the owners of 20 percent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, **such amendment** shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of the City of Mission.
2. A vote of three-fourths of all the members of the legislative body of the City of Mission is also required to overrule a recommendation of the planning and zoning commission that the proposed amendment, supplement, or change be denied.

3. At the option of the applicant, his request for a change in zoning shall be heard by the full council.

(Emphasis added.)

47. Mr. Cavazos offered “his professional opinion” that the requested CUP “would be considered spot zoning,” and contended that Section 1.23 required the City Council to hear and approve the Church’s CUP application by a supermajority vote.

48. The Planning and Zoning Commission voted to approve the CUP, per the staff’s recommendation. Under the facial requirements of Mission’s CUP ordinance (Section 1.53), the CUP would have been granted at this juncture, and the LDS Church would have been allowed to construct the church. Instead, without explanation and without the filing of a verified petition pursuant to Section 1.24, the Church’s application was set for hearing by the City Council.

49. At the City Council hearing on December 20, 2010, the City again failed to explain why the CUP ordinance (Section 1.53) did not apply to the Church’s CUP, or why it applied the rules of the re-zoning ordinance (Section 1.23) to the Church’s CUP. On its face, Section 1.23 applies to **legislative** acts to “change” or “amend[]” a zoning ordinance, whereas CUPs do not alter zoning ordinances at all, but merely permit uses already contemplated and authorized by **existing** ordinances, subject to certain conditions. A decision to approve or deny a CUP is an **administrative** or “**quasi-judicial**” act, subject to the different procedures set forth in Sections 1.53 and 1.24.

50. Rather than explain its change of rules, the Council summarily announced, without public discussion, that Section 1.23 required a 4/5ths vote to approve the CUP because 75% of the 12 neighbors within 200 feet of the proposed church signed a petition in opposition to the church.

51. Seven residents expressed opposition to the church, again, due to their fears that the church would change the residential nature of the neighborhood and devalue their properties.

- a) Ivan Melendez complained: “We purchased this expensive land, which is relevant because you’re not here to protect our financial interest.”
- b) Melissa Davis stated: “My husband and I have invented, invested quite a bit of money to purchase this land.”
- c) Rick Garcia testified:

“I am like the rest of my neighborhood I have invested a lot of time and money to develop into a nice residential area. We do see this as a commercial building. . . . We’ve been saying all along that the majority that we want to keep it residential. . . . Because I guess the best way that anyone can understand this is to put yourself in of each one of those houses . . . the investments what you see when you get out.”

- d) Jowel Gujet stated: “I just don’t want to see my investment that I have worked long and hard for to be? And this is our, our blood and [our] problems to our investment.”

52. Mr. Cavazos again claimed to be appearing in a “professional” capacity and to “represent the majority of all the neighbors who . . . oppose [the church].” He testified:

This is a residential issue people want to keep their community; they want to keep their residents. . . . Keep our neighborhood our neighborhood that is one the strong things we have. . . . We got some problems if we are going to approve something like this. Look deep into your hearts before you make your vote and think what would you want if your home was there. These are not regular homes these are large pricey lands with people who have invested \$300,000 plus in these homes. As a realtor I have seen a number of different subdivisions of where churches are . . . these are \$100,000 dollar homes . . . I guarantee you it will trickle, it will affect the property values and it will not help it.

53. After testimony concluded, the City Council again summarily noted, contrary to the facial requirements of Mission’s CUP ordinance (Section 1.53), that “four affirmative votes

were needed in order to approve the CUP request.” The result of the vote was 3-2 in favor of the CUP. Therefore, the CUP was denied.

#### **IRREGULARITIES IN THE VOTE**

54. In addition to arbitrarily creating a supermajority requirement in violation of its own ordinances, the City Council flouted established ethics rules in its vote.

55. Upon information or belief, substantial conflicts of interest existed with regard to the LDS Church’s proposed house of worship—including both business and real estate interests—that should have required at least one member of the City Council to abstain from voting on the Church’s applications.

56. As a result of these conflicts of interests, the Council collectively and/or individual members had a material economic interest in maximizing the neighborhood property values and preventing anything that, allegedly, would diminish neighborhood property values.

57. Proceeding to vote on the CUP application notwithstanding these conflicts of interest blatantly violated City and State ethics rules. Section 3.10 of the Mission Code of Ordinances and Section 171.004 of the Texas Local Government Code require a councilmember with conflicts of interest to publicly declare those interests and abstain from any further participation in proceedings relating to the matter. Nonetheless, all members of the City Council participated in the hearing and voted on the application for CUP.

58. Facts regarding these conflicts of interest and ethics violations were unknown to the LDS Church.

59. Had the City Council disclosed these conflicts and had member(s) abstained from voting, the Church’s CUP would have been granted, even under the City’s arbitrary interpretation of its rezoning ordinance to apply to a CUP.

### **NO ALTERNATIVE SITES**

60. Opponents intimated, but offered no evidence in any of the hearings, that there were other available properties that would suit a house of worship. Accordingly, following the denial of the CUP, the Church allowed its option to purchase the Property from Mr. Garza to expire and resumed its search for alternative properties that would meet the Church's spiritual and temporal criteria. But that search again led the Church back **only** to its original choice—the Property at the corner of N. 2 Mile Rd. and N. Bryan Rd.

61. As there were no other suitable sites that met the Church's criteria, the Church negotiated to reinstate the option contract with Mr. Garza.

### **RENEWED APPLICATION AND SECOND DENIAL BY CITY COUNCIL**

62. On April 27, 2011, the Planning and Zoning Commission granted the Church's request for a waiver from the waiting period on reapplications, and the Church and Mr. Garza thereafter submitted a second, virtually identical application for a CUP to construct a church on the Property.

63. The 2011 CUP application was accompanied by a packet entitled "Supplement to Application for Conditional Use Permit" that explained at length the critical religious need for the church at the Property in Mission. Church members also testified extensively about the religious burdens imposed on them by the City's refusal to grant approval for the church.

64. Staff again recommended approval of the CUP subject to the same conditions as proposed for the 2010 application. And the Planning and Zoning Commission again voted to approve the application at a public hearing May 18, 2011 in which opponents reiterated their concerns that the church would change the residential nature of the neighborhood and devalue their properties.

65. Notwithstanding this approval, the application was set for a City Council hearing on June 13, 2011. As before, President Chandler detailed the Church's spiritual and temporal requirements for a house of worship and explained that the Property was the **only** site that fulfilled these requirements, including a spiritual confirmation that the site was acceptable to God.

66. Likewise, opponents reiterated their former testimony that the church would change the residential nature of the area and devalue their properties, urging the City to disregard the Church's religious criteria.

a) Ivan Melendez testified:

"The architect says parking is not going to be an issue; well, we beg to differ. He says that property values always increase; we beg to differ. In our particular community we believe that our property value will decrease because the people that we attract are those people that want a rural segment."

b) Shelby Duchesne testified:

"We have put our life savings into this property. . . . We want to keep this a residential area; this means an awful lot to us. My retirement is my home. I have to sell this property someday when I'm ready to retire and this is what I plan on living on and if I lose my property value I've lost my retirement. So I hope that you would take all these things into consideration. I mean this is a big deal for us. . . . This is part of my livelihood."

c) George Powell testified that his daughter and family would not have chosen to build in the neighborhood had they known "the area was going to change this dramatically."

67. The City Council denied the CUP, again inexplicably stretching the rezoning ordinance (Section 1.23) to require a supermajority vote in favor of the CUP. The vote mirrored the December 20, 2010 hearing, with 3-2 in favor and Councilwomen Garza and Ramirez dissenting.

### **MORE IRREGULARITIES IN THE CITY COUNCIL VOTE**

68. The City Council again failed to disclose any facts regarding financial conflicts of interests and again all members of the Council participated in voting on the renewed CUP application.

69. Had each Councilmember with a conflict of interest abstained from voting as required by City and State ethics rules, the Church's CUP would have been granted.

70. Subsequently, the Church notified the City of the conflicts of interests and ethics violations, and requested that the City (a) enforce ethics rules and (b) exercise its discretion to reconsider the CUP application consistent with those rules. The Council failed to rectify the violations in a special hearing on the matter held on September 19, 2011.

### **PURCHASE OF PROPERTY**

71. Following the denial of this second application for a CUP, the Church again searched for alternative properties that could meet the Church's spiritual and temporal criteria. As before, that search led the Church back only to its original choice—the Property at the corner of N. 2 Mile Rd. and N. Bryan Rd.

72. Accordingly, the Church timely exercised its option and thereby prevented the Property from being sold to the unidentified client of Councilwoman Garza.

### **SUBSTANTIAL BURDENS ON THE CHURCH FROM THE CITY'S REPEATED DENIALS OF THE REQUESTED CUP**

73. As detailed above, the City's repeated denials of the CUP have perpetuated, and continue to perpetuate, all these substantial burdens on the Church's and its members' exercise of religion. These burdens are immediate and increasing in severity with the passage of time.

74. Mission members of the Church require a permanent home that can accommodate the two Mission-based congregations and thereby allow worship for all affected congregations as the faith requires.

**NOTICE OF CLAIM**

75. The Church filed a notice of claim with the City pursuant to the requirements of Tex. Civ. Prac. & Rem. Code § 110.006. The notice period expired October 24, 2011.

**FIRST CLAIM FOR RELIEF**

**VIOLATION OF THE RELIGIOUS LAND USE AND  
INSTITUTIONALIZED PERSONS ACT OF 2000 (“RLUIPA”)  
(42 U.S.C. § 2000cc)**

76. Plaintiff repeats and realleges each and every prior allegation contained in Paragraphs 1 through 75 as if fully set forth herein.

77. By repeatedly, arbitrarily and capriciously denying a CUP for the church, by depriving Church members of the opportunity to worship in their own community, by forcing multiple congregations to share overcrowded facilities and, thus, to alter, curtail or forego religious conduct, by proceeding to vote despite the conflicts of interest of Councilwoman Garza, by imposing and manipulating a zoning ordinance to require supermajority approval for a CUP, and/or by such other acts described above, Defendants imposed substantial burdens on the Church’s and its members’ exercise of religion.

78. The imposition of these burdens is not in furtherance of a compelling governmental interest, nor is it the least intrusive means of furthering a compelling government interest.

79. These burdens affect, or the removal of these burdens would affect, interstate commerce. Moreover, the burdens are imposed in the implementation of a system of land use

regulations under which defendants make, and have in place formal and informal procedures or practices that permit them to make individualized assessments of proposed land uses.

80. In addition to the foregoing, Defendants have imposed or implemented land use regulations that unreasonably limit the Church's religious assemblies, institutions, and structures.

81. By the conduct alleged above, including by conducting the municipal approval process in an arbitrary and biased manner, which is discriminatory, Defendants have imposed and implemented the City's land use regulations in a manner that discriminates against the Church on the basis of religion or religious denomination.

82. By virtue of the foregoing conduct, Defendants have violated the Church's rights under RLUIPA and Plaintiff is entitled to a judgment directing the issuance of the requested CUP; and such other relief as the Court finds to be appropriate, including but not limited to declaratory relief, injunctive relief, compensatory damages; and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

**AS AND FOR A SECOND CLAIM FOR RELIEF**

**VIOLATION OF THE TEXAS RELIGIOUS FREEDOM  
RESTORATION ACT ("TRFRA")  
(Tex. Civ. Prac. & Rem. Code § 110.003)**

83. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 82 as if fully set forth herein.

84. Defendants have imposed substantial burdens on the Church's and its members' exercise of religion, as described above, and the imposition of these burdens is not in furtherance of a compelling governmental interest, nor the least intrusive means of furthering a compelling government interest.

85. By virtue of the foregoing conduct, Defendants have violated the Church's rights under TRFRA and Plaintiff is entitled to a judgment directing the issuance of the requested CUP;

and such other relief as the Court finds to be appropriate; and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

**THIRD CLAIM FOR RELIEF**

**VIOLATION OF THE UNITED STATES CONSTITUTION  
FREE EXERCISE OF RELIGION: FIRST AND FOURTEENTH AMENDMENTS  
(42 U.S.C. § 1983)**

86. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 85 as if fully set forth herein.

87. Defendants have deprived and continue to deprive the Church of its right to the free exercise of religion, as secured by the First Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, by inter alia unreasonably inhibiting its right to construct a house of worship on its own Property.

88. The City's land use regulations, as applied to the Church, are not neutral or of general application and they burden not only the exercise of religion but also other constitutional rights, including the freedom speech, the freedom of assembly, and, as alleged more fully below, procedural and substantive due process rights.

89. The City's denials burdened the freedom of speech (secured by the First Amendment and made applicable to the states by the Fourteenth Amendment, and by Article 1, Section 8 of the Texas Constitution) because the design of the proposed church is expressive in nature. By denying the CUO, Defendants inhibited the Church's symbolic statements of welcome and of the necessity of looking to God for salvation.

90. The City's denials burdened the freedom of assembly (secured by the First Amendment and made applicable to the states by the Fourteenth Amendment, and by Article 1, Section 27 of the Texas Constitution) by prohibiting Church members in Mission from peaceably worshipping in their community where similar groups would be permitted to peaceably assemble.

91. Moreover, Defendants make, and have in place formal and informal procedures or practices that permit them to make, individualized assessments of proposed land uses. In applying these regulations to the Church, Defendants have violated the First Amendment by substantially burdening the Church's and its members' exercise of religion without a compelling governmental interest and without tailoring the application of such regulations to advance a compelling governmental interest through the least restrictive means.

**FOURTH CLAIM FOR RELIEF**

**VIOLATION OF THE TEXAS CONSTITUTION  
FREEDOM OF WORSHIP: ARTICLE 1, SECTION 6**

92. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 91 as if fully set forth herein.

93. Defendants have deprived and continue to deprive the Church of its right to the freedom of worship, as secured by Article 1, Section 6 of the Texas Constitution, by inter alia unreasonably inhibiting its right to construct a house of worship on its own Property.

**FIFTH CLAIM FOR RELIEF**

**VIOLATION OF THE UNITED STATES CONSTITUTION  
DUE PROCESS: THE FOURTEENTH AMENDMENT  
(42 U.S.C. § 1983)**

94. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 93 as if fully set forth herein.

95. The Church has the right, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to a fair decision-making process and an impartial decision-maker before being deprived the right to use its Property for religious purposes. Specifically, the Church has a procedural due process right to a land use review process that is unbiased and complies with established requirements.

96. By the conduct alleged above, Defendants have deprived and continue to deprive the Church of its right to procedural due process.

97. First, the City arbitrarily, capriciously and without explanation manipulated its interpretation of Section 1.23 of the Mission Code of Ordinances to require a supermajority vote of the City Council to approve a **CUP**, notwithstanding that Section 1.23 on its face applies only to a “**change in zoning**” (emphasis added).

98. Second, the City Council collectively and Council member(s) individually failed to disclose material business and real estate interests, to be detailed at trial, that created financial incentives to deny the CUP and avert the devaluation of property that allegedly would result from granting the CUP. Moreover, all members of the City Council participated in both City Council hearings concerning the CUP. Accordingly, both denials were tainted by conflicts of interest, in contravention of Section 3.10 of the Mission Code of Ordinances and Section 171.004 of the Texas Local Government Code.

99. Under Texas law, the CUP would have been granted had **either** the City adhered to the facial requirements of Section 1.23 **or** the City Council observed ethics laws requiring members with conflicts of interest to declare their conflicts and abstain from voting.

100. Plaintiffs have a substantive due process right, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, not to be deprived of the use of their Property except by laws, regulations, or government actions that are rationally related to a legitimate governmental interest.

101. By the conduct alleged above, including by conducting the municipal approval process in an arbitrary and biased manner, which is discriminatory, Defendants have deprived and continue to deprive the Church of substantive due process.

**SIXTH CLAIM FOR RELIEF**

**VIOLATION OF THE TEXAS CONSTITUTION  
DUE PROCESS: ARTICLE 1, SECTION 19**

102. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 101 as if fully set forth herein.

103. Defendants have deprived the Church of due process of law, as secured by Article 1, Section 19 of the Texas Constitution, by conducting the land use review process in a manner that is arbitrary, biased and discriminatory.

**SEVENTH CLAIM FOR RELIEF**

**AWARD OF COSTS AND ATTORNEYS' FEES  
(42 U.S.C. § 1983)**

104. The Church repeats and realleges each and every prior allegation contained in Paragraphs 1 through 103 as if fully set forth herein.

105. Because this is a proceeding in vindication of civil rights, Plaintiff is entitled to an award of costs, including its reasonable attorneys' fees and expert fees.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests an Order and Judgment:

- 1) annulling the City Council's December 20, 2010 and June 13, 2011 votes, which denied the Church approval to construct a house of worship consistent with its religious needs as a violation of TRFRA, Tex. Civ. Prac. & Rem. Code § 110.003;
- 2) annulling the City Council's December 20, 2010 and June 13, 2011 votes, which denied the Church approval to construct a house of worship consistent with its religious needs as a violation of RLUIPA, 42 USC § 2000cc(a);
- 3) annulling the City Council's December 20, 2010 and June 13, 2011 votes, which denied the Church approval to construct a house of worship consistent with its religious needs as violations of the federal and state constitutions;
- 4) directing the Defendants to grant the Church all necessary permits and approvals to construct and operate its church, subject only to reasonable conditions and safeguards within forty-five (45) days of the entry of the Order and Judgment;

- 5) awarding Plaintiff its costs, including attorneys' fees and expert fees, incurred in connection with this action; and
- 6) granting such other and further relief as this Court deems just and proper.

Dated: October 31, 2011.

Respectfully submitted,

/s/ J. A. Canales

J. A. Canales

Federal I.D. No. 1163

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