

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CHRIST LIBERTY FAMILY )  
LIFE CENTER, )

Plaintiff, )

v. )

CITY OF AVONDALE ESTATES, )  
GEORGIA, )

Defendant. )

CASE NO. 1:10-cv-02326-CAP

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PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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Comes now Plaintiff Christ Liberty Family Life Center (“Christ Liberty” or the “Church”), by and through counsel, and pursuant to Rule 65 of the Federal Rules of Civil Procedure, moves this Court for a Preliminary Injunction, enjoining the Defendant City of Avondale Estates (“City”) from enforcing its illegal zoning ordinance and interfering with the Church ministry of Christ Liberty at 137 Maple Street, Avondale Estates, Georgia. As grounds for this Motion, Christ Liberty states the following:

1. Christ Liberty is a small congregation that began worshipping in December of 2009 at its leased property at 137 Maple Street, Avondale Estates, until it was stopped by the City in April of 2010 because the Church was located on less than three acres – a requirement that does not apply to non-religious assemblies. Ex. 1, Declaration of Apostle Rose Thomas (“Thomas Dec.”) ¶¶ 1, 4, 18.<sup>1</sup>

2. Christ Liberty’s continued existence is endangered due to a continuing drop in weekly parishioner attendance and the resulting financial strain put on the Church—all because of the City’s unlawful zoning ordinance that inhibits Christ Liberty’s religious mission and keeps it from using its desired property at 137 Maple Street, Avondale Estates, Georgia (the “Maple Street Property”), for church ministry. Ex. 1, Thomas Dec. ¶¶ 4, 5.

3. Being denied the right to meet, Christ Liberty has had to cancel the following religious ministries, among others:

- a. Evening worship services and activities;
- b. After-service or before-service prayer;
- c. Sunday school;

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<sup>1</sup> The following abbreviations are used throughout: “Dec.” for “Declaration of Apostle Rose Thomas”; “Ex.” for “Exhibit”; and “Compl.” for “Verified Complaint”.

- d. Intercessory prayer service;
- e. Nursery and children's ministry;
- f. Youth ministry;
- g. Band and choir rehearsal;
- h. Praise team performances;
- i. Baby dedications;
- j. Weddings;
- k. Funerals;
- l. Baptisms;
- m. Outreach functions;
- n. Social gatherings; and
- o. Tutoring classes.

Ex. 1, Thomas Dec. ¶ 20.

4. Being denied the right to meet, Christ Liberty has had to severely limit the following religious ministries, among others:

- a. Praise and worship time during the Sunday service;
- b. Face-to-face pastoral counseling; and
- c. Prayer meetings.

*Id.*

5. In October 2009, Apostle Rose Ann Thomas, founder and overseer of Christ Liberty, felt the call of God to minister to the youth, the poor, and those in need in the Avondale Estates community through Christ Liberty. *Id.* ¶ 1; Ex. 9, Compl. ¶ 1.

6. On December 16, 2009, on behalf of Christ Liberty, Apostle Thomas signed a one-year lease for property at 137 Maple Street, Avondale Estates, Georgia, intending to use it as a church. The monthly rent is \$850.00. Ex. 1, Thomas Dec. ¶ 4.

7. The Maple Street Property is a 1.19-acre parcel at the end of a dead-end street in the far northwest corner of Avondale Estates. See Ex. 2, satellite image of property.

8. Christ Liberty's Maple Street Property is located in the Central Business District (CBD), Area 3. See Ex. 3, certain provisions of City of Avondale Estates, Georgia Zoning Ordinance of 2009 (collectively "Ordinance"), pg. 80.

9. Churches are excluded from Area 3 unless they obtain a “conditional use permit.” Ex. 3, Ordinance Sec. 818; and see Ex. 4, Table of Permitted and Conditional Uses by District, pg. 47.

10. A “conditional use permit” is obtained through discretionary special review and approval from the Board of Mayor and Commissioners regarding the use of property, subject to limitations, requirements and conditions as imposed by the Board. See Ex. 3 Ordinance, Sec. 1401.

11. “Cultural facilities” such as “art galleries, museums, libraries, and other similar uses” are permitted uses in Area 3. Ex. 3, Ordinance Sec. 811(2); and see Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46.

12. In other words, in order to locate in Avondale Estates’ Central Business District, Area 3, these “cultural facility” uses do not have to go through the highly discretionary and extensive “conditional use permit” process as churches are required to do. Ex. 3, Ordinance Sec. 818; Sec. 811(2); and see Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46 – collectively, the “Discriminatory Permit Provisions”.

13. Defendant's Ordinance also requires "religious facilities" to be located on *at least three acres* and have *at least 100 feet of public street frontage* (see Ex. 3, Ordinance, Sec. 818(1)(A) – the "Discriminatory Property Size Provision"), but does not place this three acre/100 foot requirement on *any* non-religious assembly uses. See Ex. 3, Ordinance, Sec. 811; Sec. 818.

14. Defendant's Ordinance also excludes all "religious facilities" from *every* zoning district in the City unless they first get special permission from the City in the form of a "conditional use permit." See Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46 & 47 – the "Exclusionary Provision".

15. Christ Liberty originally had a congregation of approximately 60 people. However, because the City banned Christ Liberty from the Maple Street Property, the congregation has decreased to about 15 people. Ex. 1, Thomas Dec. ¶¶ 2, 22.

16. On March 31, 2010, Caryl Albarran, Code Enforcement Officer for Avondale Estates, left a notice on the Maple Street property door to contact her regarding a "Code Violation Religious Facilities Section 818 not permitted." See Ex. 5, Notice.

17. On April 5, 2010, Angela Hawkins, assistant director and secretary of the Church, called Caryl Albarran to inquire about the violation. Ms. Albarran said that the Church was in violation of the zoning code by operating at the Maple Street location. See Ex. 1, Thomas Dec. ¶ 9.

18. On April 7, Apostle Thomas and Angela Hawkins met with Caryl Albarran. Ms. Albarran told Apostle Thomas to complete a “conditional use application” and talk to Clai Brown, city manager for the City of Avondale Estates. Ms. Albarran told Apostle Thomas and Ms. Hawkins that Christ Liberty had 15 days to move out of the Maple Street Property. See Ex. 1, Thomas Dec. ¶ 10; and see Ex. 6, Dec. of Angela Hawkins (“Hawkins Dec.”) ¶ 2.

19. On April 14, 2010, Angela Hawkins hand-delivered the conditional use application along with the \$50 fee to the Avondale Estates Public Works Department. However, neither Caryl Albarran nor Bryan Armsted, Director of Public Works, would accept the application and fee. Ex. 6, Hawkins Dec. ¶ 3.

20. Apostle Thomas called Clai Brown to ask why the City would not accept the application and Brown referred Apostle Thomas to Bryan Armstead who was not in the office. Ex. 1, Thomas Dec. ¶ 11.

21. On April 15, 2010, on behalf of Christ Liberty, Dr. Emma Byrd, mentor and overseer to Apostle Thomas, called Clai Brown to speak to him about the Church and asked if she could meet with him regarding the Church. See Ex. 7, Dec. of Dr. Emma Dunlap Byrd (“Byrd Dec.”) ¶ 3.

22. On April 19, 2010, on behalf of Christ Liberty, Dr. Byrd submitted the conditional use application to Clai Brown. Ex. 7, Byrd Dec. ¶ 4.

23. No action has been taken on that application. See Ex. 8, letter dated April 29, 2010 from Clai Brown (“Brown Letter”).

24. On April 22, 2010, Dr. Byrd and Pastor Willie Hawkins, a pastor of Christ Liberty, met with Clai Brown about the Church meeting at the Maple Street Property. Brown told Dr. Byrd and Pastor Hawkins that outreach programs could continue but not religious worship services. Dr. Byrd told him that the Church’s religious worship services and outreach to the community were all the same related activities of the Church. Brown



said that he would let the Church know of the City's decision in a few days. Ex. 7, Byrd Dec. ¶ 5.

25. On April 25, 2010, the congregation of Christ Liberty held worship services for the last time at the Maple Street Property. Ex. 1, Thomas Dec. ¶ 15.

26. Christ Liberty is now forced to meet in temporary locations that change every Sunday. *Id.* ¶ 20.

27. On April 28, 2010, the leaders of Christ Liberty met with a reporter from Channel 5 News on the sidewalk outside of the building, took pictures, and prayed inside. *Id.* ¶ 17.

28. On April 29, 2010, Christ Liberty received a letter from Clai Brown stating that worship service activities at the Maple Street property were in direct violation of Avondale Estates' Zoning Ordinance, Section 818 (1) (A), which requires religious facilities to be located on a site containing at least three acres of land and having a least 100 feet of frontage on a public street. Ex. 8, Brown Letter; Ex. 3, Ordinance, Sec. 818(1)(A).

29. Section 2(b)(1) of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §2000cc (b)(1) (equal terms provision),

requires that churches be a permitted use wherever other assembly uses are freely permitted.

30. The equal terms provision of RLUIPA requires that religious assembly use be treated the same as non-religious assembly uses. *Id.*

31. The City violates RLUIPA's equal terms through its Discriminatory Permit Provisions (see ¶ 13), its Discriminatory Property Size Provision (see ¶ 14), and its Exclusionary Provision (see ¶ 15).

32. The City also violates, *inter alia*, the Equal Protection Clause of the Fourteenth Amendment through its Discriminatory Permit Provisions (see ¶ 12), its Discriminatory Property Size Provision (see ¶ 13), and its Exclusionary Provision (see ¶ 14).

33. The City's actions have caused Christ Liberty to lose members and irreplaceable ministry opportunities. Ex. 1, Thomas Dec. ¶¶ 21-23; Ex. 7, Byrd Dec. ¶¶ 7-8.

34. Without immediate judicial relief, Christ Liberty is forced to use ill-suited temporary meeting space that changes weekly, which significantly impairs its church operation. Ex. 1, Thomas Dec. ¶¶ 3, 19, 21.

35. Even though money damages may be recouped later, the loss of parishioners and the loss of ministry opportunities cannot. Ex. 1, Dec. 21, 22.

36. Christ Liberty requests oral argument for this Motion. As described above, this case concerns critical issues regarding federal statutory and constitutional rights, and Christ Liberty does not know how much longer it can continue to exist due to the City's interference and the resulting hardship to the Church. Given the paramount interests at stake, and the danger of its ministries being fully destroyed that Christ Liberty faces, an oral explication of the arguments will allow counsel for Plaintiff to answer any questions the Court may have toward helping the Court reach a proper result.

37. Christ Liberty also requests waiver of any bond requirement. *See BellSouth Telecomms., Inc. v. MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11<sup>th</sup> Cir. 2005) ("the court may elect to require no security at all")(citations omitted).

38. Because of the ongoing hardship it experiences from the City's illegal interference with its intended church use of the Maple Street Property, Christ Liberty is financially unable to pay any bond requirement in

connection with the issuance of a temporary restraining order/preliminary injunction. Ex. 1, Thomas Dec. ¶ 19.

39. Section 4 of RLUIPA, 42 U.S.C. §2000cc-2, authorizes this Court to grant the “appropriate relief” that Christ Liberty requests.

40. In support of this Motion, Christ Liberty relies on the foregoing, the attached Exhibits numbering 1 through 8, along with the Complaint, the sworn Declarations of Apostle Rose Thomas, Dr. Emma Dunlap Byrd, and Angela Hawkins, the Memorandum of Law in Support of Plaintiff’s Motion for Preliminary Injunction filed concurrently, and any oral argument regarding this Motion.

WHEREFORE, Christ Liberty respectfully requests that this Court enter an order preliminarily (1) enjoining the City from acting under its zoning code to prevent or to attempt to prevent Christ Liberty from using 137 Maple Street as a church; (2) requiring the City, its agents, and its employees to grant Christ Liberty all other rights and privileges to use its property at 137 Maple Street as if churches were a permitted use of the property under the zoning code; and (3) granting any other relief appropriate in these circumstances.

By the signatures below, it is certified that this document was prepared in 13 point, Century Schoolbook font.

Respectfully submitted this 29<sup>th</sup> day of July, 2010.

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\*Petition for Admission *Pro Hac*  
*Vice* submitted.

CERTIFICATE OF NOTICE AND SERVICE

I hereby certify that on July 29, 2010, I electronically filed a motion for preliminary injunction on behalf of Christ Liberty Family Center, which will be served upon the defendant with the complaint via process server.

s/ Kevin Theriot

\_\_\_\_\_  
KEVIN THERIOT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
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CHRIST LIBERTY FAMILY )  
LIFE CENTER )

Plaintiff, )

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CITY OF AVONDALE ESTATES, )  
GEORGIA, )

Defendant. )

CASE NO. 1:10-cv-02326-CAP

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

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## I. INTRODUCTION

In October 2009, Apostle Rose Ann Thomas, founder and overseer of Christ Liberty Family Life Center (“Christ Liberty” or “the Church”), felt the call of God to minister to the youth, the poor, and those in need in the Avondale Estates community through Christ Liberty. Ex. 1, Declaration of Apostle Rose Ann Thomas (“Thomas Dec.”) ¶¶ 1, 7.<sup>1</sup> Christ Liberty is a small congregation that began worshipping in December of 2009 at its leased property at 137 Maple Street, Avondale Estates, Georgia (the “Maple Street Property”), until it was stopped by Avondale Estates in April of 2010 because the Church was located on less than three acres. Ex. 1, Thomas Dec. ¶¶ 5-18. Through its facially illegal zoning ordinance, Avondale Estates has discriminated against and nearly destroyed Christ Liberty by banning it from its leased Maple Street Property and forcing it to meet in ill-suited, temporary meeting space that changes weekly, resulting in the cancellation of much of its ministry, lost members, lost ministry opportunities, and lost revenue. Ex. 1, Thomas Dec. ¶¶ 2, 3, 19-22.

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<sup>1</sup> The following abbreviations are used throughout: “Dec.” for “Declaration of Apostle Rose Ann Thomas”; “Ex.” for “Exhibit”; and “Compl.” for “Verified Complaint”. All references to Exhibits refer to the Exhibits attached to Plaintiff’s Motion.

Indeed, due to the Defendant's unlawful zoning restrictions and enforcement actions, Christ Liberty's average weekly church attendance has quickly plummeted to approximately 15 people—a 75% drop from its prior average of 60 parishioners. *Id.* ¶¶2, 22; Compl. ¶ 2. Christ Liberty has also lost the opportunity to add new members due to Defendant's prohibition of the Church from locating at its desired location, a place that affords much needed additional space and easier access for attendees. Ex. 1, Thomas Dec. ¶ 20. Christ Liberty has also cancelled its children's ministry, nursery, youth ministry, intercessory prayer ministry, tutoring classes, singing and musical performances, outreach functions, and social gatherings of the congregation due to insufficient space at the temporary locations where it now meets. Ex. 1, Thomas Dec. ¶ 20.

The City's enforcement of its zoning code threatens the continued existence of Christ Liberty, interfering with the Church's religious mission and growth and putting a major financial strain on the Church. Ex. 1, Thomas Dec. ¶¶ 20-21. Avondale Estates has closed the doors to Christ Liberty and its ministries may soon be completely eliminated. Christ Liberty

accordingly challenges, both facially and as-applied to its religious speech and exercise, certain zoning provisions found in the City of Avondale Estates, Georgia Zoning Ordinance of 2009 (collectively, “Ordinance”), Ex. 3.

## **II. STATEMENT OF FACTS<sup>2</sup>**

### **III. ARGUMENT**

The City’s Ordinance directly and facially violates the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) by:

1. excluding churches from the Central Business District (CBD), Area 3, unless they obtain a “conditional use permit,” but freely allowing “cultural facilities” such as “art galleries, museums, libraries, and other similar uses” as permitted uses in Area 3. Ex. 3, Ordinance Sec. 818, 811(2); and see Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46 – the “Discriminatory Permit Provisions”;
2. requiring “religious facilities” to be located on at least three acres and have at least 100 feet of public street frontage (see Ex. 3,

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<sup>2</sup> Instead of repeating every fact from the Complaint, Plaintiff incorporates by reference the facts in the Complaint, Motion for Preliminary Injunction, and attachments thereto.

Ordinance, Sec. 818(1)(A) – the “Discriminatory Property Size Provision”), but not placing this three acre/100 foot restriction on *any* non-religious assembly uses; and

3. excluding all “religious facilities” from *every* zoning district in the City unless they get special permission from the City in the form of a “conditional use permit.” See Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46 & 47 – the “Exclusionary Provision”.

Christ Liberty is entitled to a preliminary injunction, enjoining the City from enforcing the zoning ordinance until the Court issues a final ruling. To satisfy the preliminary injunction standard, Christ Liberty must show: (1) a substantial likelihood of success on the merits; (2) irreparable injury without the injunction; (3) the threatened injury outweighs any harm that injunctive relief would inflict on the City; and (4) that injunctive relief is in the public interest. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *A.C.L.U. v. Miller*, 977 F. Supp. 1228, 1231 (N.D.Ga. 1997). Christ Liberty prevails under each part of the above analysis, and this Court should issue preliminary relief in its favor.

**A. Christ Liberty's Likelihood of Success Is Strong on Multiple Statutory and Constitutional Grounds.**

There is a substantial likelihood of Christ Liberty succeeding on the merits. The Ordinance on its face discriminates against churches like Christ Liberty in violation of RLUIPA, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Free Exercise Clause of the First Amendment to the United States Constitution.

**1. The Ordinance Facially and As Applied Violates the Church's Statutory Rights Under RLUIPA**

**a. RLUIPA was enacted to remedy the precise type of violation occurring here.**

The Church is forced to meet in ill-suited property (where it has had to cancel much of its ministry), in different locations, while obligated to pay rent on a property the City prohibits them from using as a church based on its discretionary and discriminatory Ordinance. Ex. 1, Thomas Dec. ¶¶ 19, 20. "As indicated during nine hearings held before both houses of Congress, RLUIPA targets zoning codes which use individualized and discretionary processes to exclude churches, especially 'new, small or unfamiliar churches . . . [like] black churches and Jewish shuls and synagogues.'" *Midrash*

*Sephardi v. Town of Surfside*, 366 F.3d 1214, 1236 (11th Cir. 2004) (quoting 146 CONG. REC. S7774-01).

Importantly, RLUIPA requires a broad construction: “This Act shall be construed in favor of broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” 42 U.S.C § 2000cc-3(g).

**b. The City has violated RLUIPA’s “discrimination and exclusion” section.**

The City’s Ordinance violates the equal terms provision<sup>3</sup> of the discrimination and exclusion subsection:

(b) Discrimination and exclusion.

(1) Equal terms. No government<sup>4</sup> shall impose or implement a land use regulation<sup>5</sup> in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

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<sup>3</sup> Due to space limitations and urgency, Christ Liberty only briefs the RLUIPA equal terms provision for purposes of this Motion. Christ Liberty does not waive its other claims under RLUIPA and will brief these claims if necessary as the case proceeds.

<sup>4</sup> RLUIPA applies to the City’s action, for it is applicable to all levels of government, which includes “(i) a State, county, municipality, or other government entity created under the authority of a State; (ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and (iii) any other persons acting under color of State law.” § 2000cc-5(4).

<sup>5</sup> A “land use regulation” that is addressed under RLUIPA includes a “zoning or landmarking law, or the application of such law, that limits or restricts a claimant’s use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest...” §2000cc-5(5)



By requiring “religious facilities” to be located on at least three acres and have at least 100 feet of public street frontage, but not placing this restriction on *any* non-religious assembly uses, the Avondale Estates zoning ordinance *on its face* does not treat religious assemblies on equal terms with non-religious assemblies.

The Ordinance conveniently includes a summary chart that contains the various types of uses along with the districts where they are allowed to locate. See Ex. 4, Table of Permitted and Conditional Uses by District, pg. 46. According to the Ordinance, the Central Business District is divided into four subareas. “Religious Facilities” are not allowed as a “permitted” use in *any* district of the City and are forced to obtain a “conditional use permit” to meet for religious purposes. *Id.*

Yet, “cultural facilities” such as “art galleries, museums, libraries, and other similar uses” are permitted as of right and are not required to obtain a “conditional use permit” in the Area 3 district.<sup>6</sup> Ex. 3, Ordinance Sec. 811.

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(emphasis added). The City’s Ordinance is such a land use regulation that completely restricts Christ Liberty’s leasehold use of the Maple Street Property.

<sup>6</sup> In addition to “cultural facilities,” the following uses are also permitted as of right in the Area 3 district: (1) Bars & Taverns; (2) Child Care Facilities, Residential; (3) Condominiums; (4) Day Care Facilities; (5) Grocery Stores and Bakeries; (6) Hardware

This discriminatory provision alone dooms the City's Ordinance. *Midrash Sephardi v. Town of Surfside*, 366 F.3d at 1219-20.

In *Midrash*, the Eleventh Circuit held that where a town did not treat churches the same as private clubs and lodges, it violated the equal terms provision of RLUIPA. 366 F.3d at 1219-20.<sup>7</sup> The town of Surfside prohibited churches and synagogues in seven out of the eight zoning districts, including the business district where the synagogue wished to locate. *Id.* In order to determine which uses were similarly situated for sake of comparison, the court held that RLUIPA's categories of "assemblies or institutions" should be the natural perimeter. *Id.* at 1230. Finding a church to be similar in nature to a private club or lodge, the *Midrash* court held that "churches and synagogues, as well as private clubs and lodges, fall within the natural perimeter of 'assembly or institution.'" *Id.*

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Stores; (7) Home Occupations; (8) Live/Work Units; (9) Office and Professional Services; (10) Family Personal Care Homes; (11) Group Personal Care Homes; (12) Congregate Personal Care Homes; (13) Restaurants; (14) Retail Trade, excluding Grocery Stores; (15) Single Family Dwelling Detached; (16) Single Family Dwelling Attached; and (17) Upstairs Accessory Residential Use. See Ex. 4, Table of Permitted and Conditional Uses by District, pp. 46, 47.

<sup>7</sup> Even though religious uses are treated the same as private clubs and lodges here (except for the three acre/100ft. frontage requirement), the Ordinance treats other assemblies like theaters and museums more favorably, thus violating RLUIPA.

Salient too is the Southern District of Florida's decision in *Chabad of Nova v. City of Cooper City*, 533 F.Supp.2d 1220 (S.D.Fla. 2008), holding that a city's ordinance violated RLUIPA's equal terms provision by prohibiting religious assemblies in business districts, but permitting nonreligious assemblies such as "day care centers," "indoor recreational facilities" and "theaters" within the same districts. 533 F.Supp.2d at 1222-23 (citation omitted).

Further, in *Konikov v. Orange County*, 410 F.3d 1317, 1325 (11th Cir. 2005), the court noted that for purposes of a RLUIPA claim, "[l]oosely understood, a family day care home could qualify as an assembly."

Here, the City of Avondale Estates permits the following uses to exist as of right in the Area 3 district—the zone in which the Maple Street Property is situated—and without the three acre/100 foot requirement:

- (a) "Cultural Facilities";
- (b) "art galleries, museums, libraries and other similar uses";
- (c) "Day Care Facilities";
- (d) "Family Personal Care Homes";
- (e) "Group Personal Care Homes"; and

(f) “Congregate Personal Care Homes.”

Ex. 3, Ordinance Sec. 811.

Pursuant to *Midrash*, *Chabad of Nova*, and *Konikov*, these permitted uses are properly categorized as “assemblies,” as is Christ Liberty’s religious use. To shut down a church while allowing other comparable assembly uses is a terrible injustice and an explicit violation of the equal terms provision of RLUIPA.<sup>8</sup>

**c. Strict scrutiny applies to a violation of RLUIPA’s “equal terms” section.**

Government regulations that discriminate against religious assemblies or institutions on their face fall under RLUIPA’s “equal terms” provision. The Eleventh Circuit in *Midrash* held that “a violation of § (b)’s equal

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<sup>8</sup> Importantly, for purposes of RLUIPA’s equal terms provision, the City’s treatment of churches must be compared with its treatment of secular assembly uses in the pertinent district zone where Christ Liberty’s Maple Street Property is located (Central Business District, Area 3)—not its treatment of churches in other areas where Christ Liberty has neither a property nor a desire to locate. This rule stems not only from the Supreme Court’s holdings in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (examining only the permitted uses in Cleburne’s R-3 zone) and *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 77 (1981) (holding that “one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place”), but also that of other federal courts. *See, e.g., Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 616 (7th Cir. 2007) (“The existence of alternative sites for a church is relevant only when a zoning ordinance is challenged as imposing a ‘substantial burden’ on religious uses of land...under a different section of [RLUIPA] from the equal-terms section at issue in this appeal”); *Cornerstone Bible Church v. City of Hastings*, 948 F.2d 464 (8th Cir. 1991) (examining solely uses in C-3 zone in adjudicating equal treatment violation).

treatment provision ... must undergo strict scrutiny.” 366 F.3d at 1232. The City cannot satisfy the strict scrutiny test. Any interests asserted by the City must fail as both legally and factually insufficient. The City has not furthered any possible interest by the least restrictive means. “The City has done the equivalent of using a sledgehammer to kill an ant.” *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F.Supp.2d 1203, 1229 (C.D.Cal. 2002).

The City may address certain issues on a specific (narrowly-tailored or least restrictive means) basis, but what it may not do under the law is what it has done here: shut down a church while allowing non-religious assembly uses. Indeed, *Midrash* held that a city’s restrictions on a synagogue failed narrow-tailoring in substantial respects: “The proffered interests of retail synergy are not pursued against analogous nonreligious conduct, and those interests could be achieved by narrower ordinances that do not improperly distinguish between similar secular and religious assemblies.” 366 F.3d at 1235.

**B. The Ordinance Facially and As Applied Violates the Church’s Constitutional Rights**

In addition to violating RLUIPA, the City's discriminatory Ordinance violates the Church's constitutional rights.<sup>9</sup>

**1. The City's Ordinance Violates the Church's Equal Protection Rights.**

The Equal Protection Clause provides in pertinent part, "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend XIV, § 1. This is "essentially a direction that all persons similarly situated should be treated alike." *Cleburne*, 473 U.S. at 439 (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). As discussed above in the opening paragraph of the Argument (pp. 2, 3), the City's Ordinance treats churches differently than non-religious assembly groups.

**a. The City's actions are subject to strict scrutiny.**

If a "classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage," it must satisfy strict scrutiny. *City of New Orleans v. Dukes*, 427 U.S. 297, 303

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<sup>9</sup> Christ Liberty only discusses the violation of its Fourteenth Amendment Equal Protection rights in this brief, but does not waive its claims for violation of other constitutional rights, including, but not limited to, free exercise, free speech, free assembly, and violations of Georgia's Constitution. Christ Liberty will brief these claims if necessary as the case proceeds.

(1976). “Unquestionably, the free exercise of religion is a fundamental right,” protected by the Constitution. *Johnson v. Robinson*, 415 U.S. 361, 375 n.14 (1974). Avondale Estates’ Ordinance both trammels fundamental personal rights and is drawn upon a suspect class, religion, and therefore is subjected to strict scrutiny, sustainable only if “suitably tailored to serve a compelling state interest.” *Cleburne*, 473 U.S. at 440.

“Equal protection limits the power of a legislature to target a particular individual, organization, or group by requiring that the legislature confer benefits or impose costs on a larger, neutrally defined group; it cannot pick on the most vulnerable.” *Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston*, 250 F. Supp. 2d 961, 975 (N.D.Ill. 2003). Avondale Estates is indeed picking on the most vulnerable here. Christ Liberty is a small inner-city church with approximately 15 current members and no deep pockets, politically or monetarily. It has no ability to fend for itself and it has been rebuffed by the City. And, despite the fact that the Church has struggled to exist for a few months at constantly-changing temporary locations, the City nonetheless has denied the Church the right to operate at their Maple Street Property without valid reason.

The court in *Vineyard Christian Fellowship* analyzed whether the ordinance in question there classified on the basis of religion by looking at a prior case where an ordinance discriminated against churches:

Suppose, for example, a group of people wished to assemble on a regular basis in [the city] to discuss and hear lectures on classical literature. This group might also wish to have seminars for young people after school or on weekends to expose them to “great books.” These people could rent a building in any business or commercial zone and have their meetings. But if that same group of people wished to assemble for the purpose of religious worship and to hold classes for its young people to educate them about religion, they would have to get special permission from [the city].

250 F. Supp. 2d at 976 (citing *Love Church*, 671 F. Supp. at 518-19 (N.D. Ill. 1987), *vacated on other grounds*, 896 F.2d 1082 (7th Cir. 1990)). This portrayal applies here, as Christ Liberty wishes to meet for worship in the Area 3 district, but cannot because the “great book” they wish to study is the Bible.

**b. The City cannot show a compelling government interest that is narrowly tailored.**

Following the determination that the Ordinance classifies on the basis of religion, “the court must inquire whether the provision of the ordinance . . . furthers a compelling interest and is narrowly-tailored to meet that interest.”



*Vineyard Christian Fellowship*, 250 F.Supp.2d at 977. For those reasons found in the RLUIPA section, *supra*, the City of Avondale Estates fails both requirements.

**c. The City's actions fail the rational basis test.**

In addition to the fact that the City cannot meet its burden under strict scrutiny, it cannot even meet the much lower level rational basis test. "Rational basis review requires the court to examine whether permitting Vineyard to hold worship services at the subject property 'would threaten legitimate interests of the city in a way that other permitted uses . . . [such as cultural centers] would not.'" *Vineyard Christian Fellowship*, 250 F. Supp. 2d at 978 (quoting *Cleburne*, 473 U.S. at 448).

The City of Avondale Estates has no rational basis for discriminating against churches when other similar uses (such as "cultural facilities") are permitted by right, and without the three acre/100 foot requirement, in the same zone where churches are banned without special permission. *See* Ex. 3, Ordinance Sec. 818.

**C. Christ Liberty and Its Members Are Suffering Irreparable Harm.**

Christ Liberty's remedy at law is inadequate if preliminary relief is not granted. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *KH Outdoor, LLC v. Trussville*, 458 F.3d 1261, 1271-1272 (11th Cir. 2006) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Christ Liberty's damages here go far beyond money; they are losing members and worship and ministry opportunities that cannot be replaced—injuries for which money cannot compensate. Ex. 1, Thomas Dec. ¶¶ 20-22.

**D. An Injunction Will Not Harm Others.**

Granting a preliminary injunction that protects Christ Liberty's constitutional rights threatens no significant harm to Avondale Estates. The City has no governmental interest that is served by forcing churches to get special permission from the Board of Mayor and Commissioners while freely admitting other non-religious assembly uses such as "Cultural Facilities," "art galleries," "museums," "libraries," and "Day Care Facilities". The harm done to Christ Liberty by inhibiting its ministry far outweighs any speculative harm that a preliminary injunction might cause to Avondale Estates. *Tillman v. Miller*, 917 F.Supp. 799, 801 (N.D. Ga. 1995).

**E. An Injunction Will Serve The Public Interest.**

As the Eleventh Circuit held in *KH Outdoor*, 458 F.3d 1272: “the public has no interest in enforcing an unconstitutional ordinance.” *See also, ACLU of Georgia*, 977 F.Supp. at 1235 (“No long string of citations is necessary to find that the public interest weighs in favor of having access to a free flow of constitutionally protected speech”) (quotation and citation omitted). Here, the public has no interest in seeing an unlawful Ordinance enforced to squelch religious activities and expression, and every interest in seeing Christ Liberty locate at the Maple Street Property and conduct church ministries.

**IV. CONCLUSION**

The City’s Ordinance violates several of the Christ Liberty’s statutory and constitutional rights, including, but not limited to, those under the equal terms provision of RLUIPA, and Equal Protection. Accordingly, the Church’s Motion to for Preliminary Injunction should be granted.

By the signatures below, it is certified that this document was prepared in 13 point, Century Schoolbook font.

Respectfully submitted this 29th day of July, 2010.

JOHN W. MAUCK\*  
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S/ KEVIN THERIOT

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KEVIN THERIOT  
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ATTORNEYS FOR PLAINTIFF

\*PETITION FOR ADMISSION PRO HAC  
VICE SUBMITTED.

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2010, I electronically filed a memorandum in support of a motion for preliminary injunction on behalf of Christ Liberty Family Center, which will be served upon the defendant with the complaint via process server.

s/ Kevin Theriot  
\_\_\_\_\_  
KEVIN THERIOT

**EXHIBIT**

**1**

**TO**

**MOTION**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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CHRIST LIBERTY FAMILY LIFE  
CENTER,

Plaintiff,

v.

CITY OF AVONDALE ESTATES,

Defendant

---

NO.

DECLARATION OF APOSTLE ROSE ANN THOMAS

I, Rose Ann Thomas, make this declaration upon my personal knowledge and as I would testify were I called as a witness in open court.

1. I am the Founder and Overseer of Christ Liberty Family Life Center ("Christ Liberty" or "the Church"), and am personally familiar with the matters to which I make reference to below.

2. Christ Liberty is a Georgia church, and is tax-exempt pursuant to the Internal Revenue Code. We used to have a congregation of about 60 people before the City shut us down.

3. We currently meet in temporary space that changes every Sunday for religious assembly, training, and worship.

4. On December 16, 2009, on behalf of Christ Liberty, I signed a one-year lease for the property at 137 Maple Street, Avondale Estates, Georgia (the "Maple Street property") commencing on December 16, 2009, with rent of \$850 per month.

When Christ Liberty signed the lease, we based our selection of this property on the assurance of our landlord that it could be used as a church.

5. Christ Liberty leased the Maple Street property, a 1.19-acre parcel, after searching for a suitable place for over a year. We leased this property with the understanding and expectation that the landlord would renew the lease after the first year. In fact, the landlord has expressed his excitement about our church and ministry and has acknowledged that the Avondale Estates community needs it.

6. Christ Liberty redecorated the property by stripping and painting the walls and ceiling, replacing broken light fixtures, water leaks, roof, removing water damaged carpet, mold and mildew. At a cost of over \$2,500, the Church purchased paint, light fixtures, furniture, sound and music equipment, office furniture and equipment, and a pulpit. None of the redecorating work required a building permit.

7. Christ Liberty plans to conduct the following ministries at the Maple Street property, which are essential religious beliefs and exercises of the Church and of its members:

- a. weekly assembly of the congregation to worship (Hebrews 10:25);
- b. weekly preaching, including speech relating to personal morality, God, social, cultural and political issues (2 Timothy 4:2);
- c. pastoral counseling for the disturbed, lonely and bereaved;
- d. prayer meetings (Acts 1:13-14);
- e. singing and musical performances (Psalms 81:1-2);



f. baptisms, confirmations, weddings, funerals, and communion  
(Matthew 28:19; Luke 22:19);

g. Bible studies;

h. nurseries or crib rooms for infants and toddlers;

i. youth activities, including games and sports;

j. social gatherings such as church dinners;

k. service projects for members of the congregation, the poor, and the general community, such as gatherings for Boys and Girls Clubs of Atlanta, ex-offender re-socialization groups, and seniors groups (James 1:27);

l. expression of faith through the architecture of the house of worship, signs, crosses, paintings, windows, banners, or decorations;

m. evangelism - sharing the Christian message and encouraging others to believe in Jesus the Messiah, particularly those who visit their church meetings; and

n. financial giving and fundraising events to support salaries, building costs, the poor, and ministries for members of the congregation.

8. On March 31, 2010, Caryl Albarran, Code Enforcement Officer, left a notice on the Maple Street property door to contact her regarding a Section 818 code violation regarding religious facilities not permitted.

9. On April 5, 2010, on behalf of Christ Liberty, Angela Hawkins, assistant director and secretary of the Church, called Caryl Albarran to inquire

about the violation. She said that the Church was in violation of the zoning code, and should not be operating as a church at that location.

10. On April 7, I, along with Angela Hawkins, met with Caryl Albarran. She told me to complete a Conditional Use application and talk to Clai Brown, city manager for the City of Avondale Estates. She told us that we had 15 days to move out of the Maple Street property.

11. On April 14, 2010, Angela Hawkins hand-delivered the Conditional Use application along with the \$50 fee to the Avondale Estates Public Works Department. However, Caryl Albarran, an employee at the Public Works Department, and Bryan Armstead, Director of Public Works, would not accept the application and fee. I called Clai Brown to ask him why they would not accept the application, and he told me to talk to Bryan Armstead. However, Bryan Armstead was not in the office, and I missed his return call. I called Dr. Emma Dunlap Byrd, my overseer and mentor, to ask her to help us with this matter.

12. On April 15, 2010, on behalf of Christ Liberty, Dr. Byrd called Clai Brown and spoke to him about the Church, and if she could meet with him regarding the Church.

13. On April 19, 2010, on behalf of Christ Liberty, Dr. Byrd submitted a package, which contained the Conditional Use application and a letter of support to Clai Brown.

14. On April 22, 2010, on behalf of Christ Liberty, Dr. Byrd and Pastor Willie Hawkins, Pastor of Christ Liberty, met with Clai Brown. Brown told them

that outreach programs could continue but not religious worship services. Dr. Byrd told him that the Church's religious worship services and outreach to the community were all the same related activities of the Church. Brown told them that the City would let them know of their decision.

15. On April 25, 2010, Christ Liberty met for service for the last time at the Maple Street Property.

16. On April 27, 2010, Bryan Armstead called Dr. Byrd and told her that Christ Liberty's Conditional Use application was denied, but gave no reason or explanation.

17. On April 28, 2010, the leaders of Christ Liberty met with a reporter from Channel 5 News on the sidewalk outside of the building, took pictures, and prayed inside.

18. On April 29, 2010, Christ Liberty received a letter from Clai Brown stating that the worship service activities at the Maple Street property were in direct violation of Avondale Estates' Zoning Ordinance, Section 818 (1) (A), which requires a place of worship to be located on a site containing at least three (3) acres of land and having a least 100 feet of frontage on a public street.

19. Although we cannot worship or occupy our Maple Street property, we are still required to pay approximately \$850 monthly for lease payments and utilities. All of this has put a significant financial drain on the Church's finances, and is interfering with the Church's religious mission and growth.

20. By having to meet in the temporary space that changes weekly, the Church experiences the following hindrances or disruptions of its religious ministries:

a. Christ Liberty can only have a limited Sunday worship service from 11:30 a.m. 2:00 p.m. If the Church could use the Maple Street property, its normal Sunday morning worship would be from 9:00 a.m. to 3:00 p.m., which includes Sunday School, Morning Worship, and fellowship after service.

b. The Church cannot hold any evening worship services.

c. The Maple Street property can seat up to 125 comfortably. We don't know how many people the temporary space will hold because it changes weekly.

d. The changing of temporary location has made church attendance difficult for some families, like the Mother of the Church, Mary Johnson, one of the members of the Board of Mothers.

e. Christ Liberty cannot conduct its Sunday service in the same manner as it would at the Maple Street property.

f. Christ Liberty cannot have after-hours or before-hours prayer or Sunday school because of no permanent location.

g. The availability of face-to-face pastoral counseling is limited at the temporary locations because of privacy and time constraints. I now have to do counseling over the telephone.

h. Special prayer meetings, singing and musical performances, outreach functions, and social gatherings of the congregation have been

cancelled because Christ Liberty cannot meet at the Maple Street property anymore. In order to conduct these functions, Christ Liberty would have to rent other space, which is too costly for the Church.

i. Christ Liberty has cancelled its nursery and children's ministry because of the changing temporary locations. In the Maple Street location, the Church was in the process of setting up special rooms for the children. This would allow the parents to get ministered without having to have the distraction of the children, and the children to have their Bible study in a child-friendly atmosphere. In the temporary locations, the children must be in the church service along with the adults, resulting in numerous interruptions and distractions. The youth and children ministry available at the Maple Street property is what motivated most of Christ Liberty families to join the Church. Now Christ Liberty is faced with losing those families because of this lack of service at the temporary locations.

j. Christ Liberty is unable to have band or choir rehearsals at the temporary locations.

k. Christ Liberty is unable to use expressions of faith through decoration because it cannot place items on the walls at the temporary locations.

l. Christ Liberty has had to cancel funerals, weddings, and baptisms due to the lack of access at the temporary locations.

m. Christ Liberty has had to cancel guest speakers for events at the Maple Street property that would have served as significant fundraisers for the Church.

n. Christ Liberty lost an opportunity to have its planned kick-off fundraiser at the Maple Street property.

o. Christ Liberty cancelled its tutoring classes for the upcoming school year because of lack of permanent space.

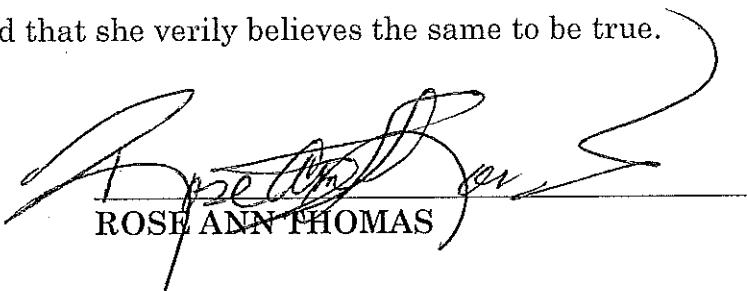
21. Christ Liberty lost its momentum in ministering to the citizens of Avondale Estates at the Maple Street property after being shut down by the City.

22. Christ Liberty has lost members because of the City's actions.

23. The Church and my integrity have been harmed as a result of the actions of Avondale Estates shutting down Christ Liberty.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

June 28, 2010

  
ROSE ANN THOMAS

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**EXHIBIT**

**2**

**TO**

**MOTION**





**EXHIBIT**

**3**

**TO**

**MOTION**

Feb 3 2009

**ARTICLE 6. ZONING DISTRICTS**

In order to regulate, restrict and segregate the use of land, buildings and structures; to regulate and restrict the height and bulk of buildings and the area of yards and other open spaces surrounding buildings; to regulate and restrict density of population and to implement the intent of this Ordinance, the incorporated area of the City of Avondale Estates, DeKalb County, Georgia, is hereby divided into the following zoning districts:


<b>District</b>	<b>General Definition</b>
R-24 Very Low Density Single Family Detached Residential	A single family residential district having a minimum lot size of 24,000 square feet intended for establishment of one (1) detached dwelling.
R-12 Low Density Single Family Detached Residential	A single family residential district having a minimum lot size of 12,000 square feet intended for establishment of one (1) detached dwelling.
MFR Multifamily Residential	A multifamily residential district that allows up to eight (8) dwelling units per net acre.
PD Planned Development	A mixed use district that allows for the combination of any single family residential uses, neighborhood shopping use or office and institutional use as provided for herein in accordance with a specific development plan and subject to approval by the Board of Mayor and Commissioners.
O-I Office – Institutional	A district for office, institutional and limited commercial uses not involving the sale or processing of merchandise unless otherwise permitted herein.
NS Neighborhood Shopping	A district for planned shopping centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood and community with convenience goods, retail services and personal services.
GC General Commercial	A district for general business and independent uses designed to serve a community or area with convenience goods, retail sales and personal services.
LI Light Industrial	A district primarily planned for limited manufacturing, industrial uses, warehousing and related activities.
OS-R Open Space & Recreation	A district in which land is reserved for wildlife sanctuaries, dedicated open space, lakes and recreational facilities for the use of City of Avondale Estates residents.
CBD Central Business District	A mixed use district that allows for the combination of office – institutional, neighborhood shopping, residential and general commercial uses as provided herein.

Feb 3 2009

Sec. 810. Communication Facilities

1. Radio and television stations.
2. Point-to-point communication agencies.
3. Telephone business office.
4. Cellular phone tower or other communication tower.

Communication facilities are permitted only with conditional use approval pursuant to Section 1401. Every communication facility use must comply with the terms of Chapter 14, Article 11, of the City of Avondale Estates Code of Ordinances.

 Sec. 811. Private Community Facilities

1. Assembly halls, including conference halls, business meetings, civic halls, meeting places for civil service, garden, neighborhood and private clubs and activities of a similar nature. This use may include office space where incidental to the principal use.
2. Cultural facilities. Art galleries, museums, libraries and other similar uses.
3. Golf courses and clubhouses, private.
  - A. The golf course shall be a full 9-hole or 18-hole golf course.
  - B. Any building or structure established in connection with this use shall be set back not less than 100 feet from any property line except where this property line is a street right-of-way line. In this case, the front yard setback established for the district shall apply. When a property line is on a natural waterway, a property line setback shall not be required.
  - C. Lighting shall be established in such a way that no direct light is cast upon adjacent properties and roadways.
4. Exhibitions, private. This use shall be limited to planetariums, aquariums, botanical gardens and other nature exhibitions, provided that no structure is located closer than 100 feet to any property used or intended to be used for residential purposes.
5. Community Swimming Pool, Private.
  - A. The swimming pool shall be set back 100 feet from any property line.
  - B. The swimming pool shall be surrounded by a fence having a minimum height of four (4) feet and a maximum height of six (6) feet which shall be secured when the facility is closed and not patrolled by a lifeguard.

**EXHIBIT**

**4**

**TO**

**MOTION**

**ARTICLE 9. TABLE OF PERMITTED AND CONDITIONAL USES BY DISTRICT**

REGULATED USES	R-24	R-12	MFR	PD	O-I	NS	GC	OS -R	LI	CBD			
										Area 1	Area 2	Area 3	Area 4
Accessory Dwellings (Sec. 801)	P	P											
Accessory Uses & Structures (Sec. 801)	P	P	C	C	C					C	C	C	C
Animal Hospitals & Veterinary Clinics (Sec. 806)						P	P		P	C	C	C	C
Apartment Development			P							C	C	C	C
Automotive Sales and Service, excluding Motor Vehicle Parking lots & Parking Garages (Sec. 807)							P		P				
Bars & Taverns (Sec. 814)				C		C				P	P	P	P
Building Material Stores, excluding Lumber, Hardware & Electrical Supply Stores (Sec. 808)							P		P			C	
Child Care Facilities, Residential (Sec. 815)	P	P		C	P	P	P		P	P	P	P	P
Commercial Recreation & Entertainment Facilities (Sec. 809)					C	P	P	C	P	C	C		
Communication Facilities (Sec. 810)					C		C		C	C	C	C	C
Community Facilities, Private, excluding Cultural Facilities (Sec. 811)					C			C		C	C	C	C
Condominiums (Sec. 813)			P	C						P	P	P	P
Construction Trailers (Sec. 803)	C	C	C	C	C	C	C		C	C	C	C	C
Cultural Facilities (Sec. 811)					C	C				P	P	C	P
Day Care Facilities (Sec. 815)				C	P	P	P		P	P	P	P	P
Dog Grooming Shops (Sec. 806)						P	P		P	C	C	C	C
Drive-in Restaurants (Sec. 814)							P		P	C	C	C	C
Electrical Supply Stores (Sec. 808)						P	P		P	C	C	C	C
Grocery Stores and Bakeries (Sec. 819)				C	C	P	P		P	C	P	P	C
Hardware Stores (Sec. 808)						P	P		P	P	P	P	P
Home Occupations (Sec. 805)	P	P	C	C						P	P	P	P
Institutions of Higher Learning (Sec. 815)				C	P	C	C		C	C	C	C	C
Live/Work Units (Sec. 813)										P	P	P	P
Lodging: Hotels, 15 or more guest rooms (Sec. 816)							C						
Lodging: Hotels, 14 or less guest rooms (Sec. 816)							C			C	C	C	C
Lodging: Motels, excluding Hotels & Boarding Houses (Sec. 816)							C						
Permitted Uses	P												
Conditional Uses, Granted Pursuant to Sec. 1401	C												
Unmarked Box indicates a Prohibited Use													

REGULATED USES	R-24	R-12	MFR	PD	O-I	NS	GC	OS -R	LI	CBD			
										Area 1	Area 2	Area 3	Area 4
Lodging: Bed & Breakfasts (Sec. 816)	C	C		C	C	C	C		C	C	C	C	C
Lumber Yards (Sec. 808)							P		P				
Medical & Health Services, Office and Retail Health Uses (Sec. 822(1))				C	C	C	P		P	C	C	C	C
Medical & Health Services, Intensive (Sec. 822(2))				C	C	C	C		C	C	C	C	C
Multifamily Dwellings, including Duplexes, Triplexes (Sec. 813)			P	C						C	C	C	C
Office and Professional Services (Sec. 824)				C	P	P	P		P	P	P	P	P
Outdoor Special Events (Sec. 809)								C		C	C	C	C
Family Personal Care Homes (Sec. 822(2))					P	P	C			P	P	P	P
Group Personal Care Homes (Sec. 822(2))				C	P	P	P			P	P	P	P
Congregate Personal Care Homes (Sec. 822(2))				C	P	P	P			P	P	P	P
Personal Services (Sec. 820)					C	P	P		P	C	C	C	C
Printing Facilities (Sec. 817)					P	P	P		P	C	C	C	C
Public Facilities (Sec. 812)	C	C	C	C	C	C	C	C	C	C	C	C	C
Religious Facilities (Sec. 818)	C	C		C	C	C	C		C	C	C	C	C
Repair Services (Sec. 821)						P	P		P	C	C	C	C
Restaurants (Sec. 814)					C	P	P		P	P	P	P	P
Retail Trade, excluding Grocery Stores (Sec. 819)				C	C	P	P		P	P	P	P	P
Schools, Primary & Secondary Education (Sec. 815)				C	P	C	C		C	C	C	C	C
Single Family Dwelling Detached (Sec. 813)	P	P	P	C						P	P	P	P
Single Family Dwelling Attached (Sec. 813)			P	C						P	C	P	C
Specialized Schools (Sec. 815)				C	C	C	C		C	C	C	C	C
Temporary Storage Containers (Sec. 803)	C	C	C	C	C	C	C		C	C	C	C	C
Transportation and Storage Facilities (Sec. 825)							P		P				
Transportation and Warehouse Facilities (Sec. 826)						C	C		C				
Upstairs Accessory Residential Use (Sec. 813)				C		C				P	P	P	P
Wholesale Sales Offices (Sec. 826)					C		P		P			C	
Wholesale Trade & Dist. Establishments (Sec. 826)									P				
Permitted Uses	P												
Conditional Uses, Granted Pursuant to Sec. 1401	C												
Unmarked Box indicates a Prohibited Use													

NOTE: The individual zoning districts are more fully described in Article 6.

**EXHIBIT**

**5**

**TO**

**MOTION**

**CITY OF AVONDALE ESTATES  
PUBLIC WORKS/ZONING  
21 NORTH AVONDALE PLAZA  
AVONDALE ESTATES, GA 30002**

*Caryl Albarran*

has attempted to contact

137A Maple St.

Name

at 9:15 3-31-10

Time

Please contact our office regarding:

- Code Violation
- Solid Waste Pick Up
- Arrange for Special Pick Up
- Other

Religious Facilities Sec 810

not permitted

Telephone: ~~404-294-5400~~ or

(404) 392-3134



**EXHIBIT**

**6**

**TO**

**MOTION**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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**CHRIST LIBERTY FAMILY LIFE  
CENTER,**

**Plaintiff,**

**v.**

**CITY OF AVONDALE ESTATES,**

**Defendant**

**NO.**

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**DECLARATION OF ANGELA HAWKINS**

I, Angela Hawkins, make this declaration upon my personal knowledge and as I would testify, was I called as a witness in open court.

1. I am the assistant director and secretary of Christ Liberty Family Life Center ("Christ Liberty" or "the Church"), and am personally familiar with the matters to which I make reference to below.

2. On April 7, 2010, I accompanied Apostle Rose Thomas to pick up the Conditional Use application from Caryl Albarran, Code Enforcement Officer for Avondale Estates. Ms. Albarran told us that we had 15 days to move out of 137 Maple Street, Avondale Estates, Georgia (the "Maple Street property").

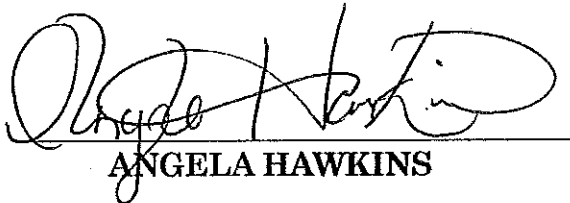
3. On April 14, 2010, I hand delivered the Conditional Use application along with the \$50 fee to the Avondale Estates Public Works department. However, an employee there would not accept the application and fee.

4. On April 14, 2010, I met with Caryl Albarran and Bryan Armstead, Director of Public Works. They both kept asking me if I was sure that I wanted to submit the application and fee. Bryan Armstead said that it was going to be a long drawn out process. Afterwards, Caryl Albarran gave the application back to me, and told me to tell Apostle Thomas to talk to Clai Brown.

5. Apostle Rose Thomas called Clai Brown to ask him why they would not accept the application, and he told Apostle Thomas to talk to Bryan Armstead, Director of Public Works. However, Bryan Armstead was not in the office, and Pastor Thomas missed his return call. Afterwards, Apostle Rose Thomas called Dr. Emma Dunlap Byrd, Christ Liberty's overseer and Apostle Rose Thomas' mentor, to ask her to help Christ Liberty with this matter.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he or she verily believes the same to be true.

June 21, 2010



ANGELA HAWKINS

F:\Clients\2926\Declarations\Declaration of Angela Hawkins.doc

**EXHIBIT**

**7**

**TO**

**MOTION**

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

---

CHRIST LIBERTY FAMILY LIFE  
CENTER,

Plaintiff,

v.

CITY OF AVONDALE ESTATES,

Defendant

---

NO.

DECLARATION OF DR. EMMA DUNLAP BYRD

I, Dr. Emma Dunlap Byrd, make this declaration upon my personal knowledge and as I would testify were I called as a witness in open court.

1. I am the overseer and mentor of Apostle Rose Ann Thomas of Christ Liberty Family Life Center ("Christ Liberty" or "the Church"), and am personally familiar with the matters to which I make reference to below.

2. I have a Doctor of Divinity degree from Avotra Seminary; and have pastored churches throughout the country. In addition, I operate several of my own businesses. I am personally familiar with the matters to which I make reference below.

3. On April 15, 2010, on behalf of Christ Liberty, I called Clai Brown and spoke to him about the church, and I asked if I could meet with him regarding the Church.

4. On April 19, 2010, on behalf of Christ Liberty, I submitted a package, which contained the Conditional Use application, filing fee and a letter of support to Clai Brown.

5. On April 22, 2010, I, on behalf of Christ Liberty, along with Pastor Willie Hawkins, Pastor of Christ Liberty, met with Clai Brown. Brown told us that outreach programs could continue but not religious worship services. I told him that the Church's religious worship services and outreach to the community were all the same related activities of the Church. He told me that the City would let us know of their decision.

6. On April 27, 2010, Bryan Armstead, Director of Public Works called me and told me that Christ Liberty's Conditional Use application was denied, but gave no reason or explanation.

7. Christ Liberty has lost members because of the actions of Avondale Estates shutting down the Church.

8. The Church and the pastor's integrity have been harmed as a result of these events.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

June 28, 2010

  
DR. EMMA DUNLAP BYRD

**EXHIBIT**

**8**

**TO**

**MOTION**

BOARD OF MAYOR  
AND COMMISSIONERS

Ed Roper  
Mayor  
David A. Milligan  
Mayor Pro Tem  
Terry Givens  
Commissioner  
Chris Lee  
Commissioner  
Michael D. Payne  
Commissioner



H. Clay Brown  
City Manager  
Judith Sims Owsen  
City Clerk  
Robert E. Weston  
City Auditor  
Stephen W. Neuman  
City Judge

April 29, 2010

Mr. Joe Gargiulo  
P.O. Box 33623  
Decatur, GA 30033-0623

Pastor Rose Thomas  
Christ Liberty Temple of Deliverance  
27 East Lake Dr N.E.  
Atlanta, GA 30317

Re:

Dear Mr. Gargiulo and Pastor Thomas:

It has come to my attention that Christ Liberty Temple of Deliverance ("CLTD") continues to hold worship services at the property owned by Mr. Gargiulo located at 137 Maple Street in the City of Avondale Estates. This activity is in direct violation of Avondale Estates' Zoning Ordinance, Section 818(1)(A), which requires a place of worship to be located on a site containing at least three (3) acres of land and having at least 100 feet of frontage on a public street.

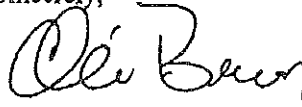
The location at 137 Maple Street does not meet either of these requirements and therefore the use of the property for worship services is in violation of the City Zoning Ordinance as you were previously informed by letter dated April 8, 2010. A copy of this letter is enclosed herewith for your review. As you can see from the previous letter, you were given a deadline of April 26, 2010 to come into compliance with the City Code. The City allowed for this grace period as a courtesy to you, but you have now continued to violate the Ordinance beyond the deadline. If worship services continue at 137 Maple Street in violation of the City Code then both of you, as landlord and tenant, will be issued citations by City Code Enforcement.

The City of Avondale Estates welcomes all religious groups, including CLTD, but the Zoning Ordinance must be complied with by all residents and property owners within the City. I encourage CLTD to find another location that complies with the Zoning Ordinance requirements for a religious facility where it could continue to operate with the City's support. In the alternative, Mr. Gargiulo, as the property owner, may apply to the Board of Mayor and Commissioners for a text amendment to modify Section 818 of the Zoning Ordinance. The rules and requirements for requesting a text amendment to the Zoning Ordinance are set forth in Article 17 of the Zoning Ordinance.



I look forward to your coming into compliance with the Zoning Ordinance so that the City is not forced to issue any citations.

Sincerely,

A handwritten signature in black ink, appearing to read "Clai Brown". The signature is written in a cursive, somewhat stylized font.

Clai Brown, City Manager

Enclosure