

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

PALM BEACH GARDENS BAPTIST )  
CHURCH, INC., and RICHARD K. )  
PARKER, )  
 )  
Plaintiffs, )  
 )  
v. ) Case No.  
 )  
CITY OF PORT SAINT LUCIE, )  
FLORIDA, )  
 )  
Defendant. )

**VERIFIED COMPLAINT FOR DECLARATORY JUDGEMENT,  
INJUNCTIVE RELIEF, AND DAMAGES**

COME NOW the Plaintiffs, by counsel, and for their causes of action against the Defendant CITY OF PORT SAINT LUCIE, FLORIDA (“City”), allege and state the following:

**I. INTRODUCTION**

1. Section 158.120 of the Port St. Lucie Zoning Code (“Zoning Code”) prohibits churches from locating in areas zoned “Neighborhood Convenience Commercial” (“CN”) but allows other assembly uses such as day care centers and private clubs or lodges as a matter of right or as a special exception.<sup>1</sup>

2. The City’s Zoning Code generally treats other types of assemblies more favorably than churches and other places of worship.

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<sup>1</sup> The Zoning Code is a public document and can be accessed at <http://library.municode.com/index.aspx?clientId=13414&stateId=9&stateName=Florida>, by clicking on “Land Usage” and then “Zoning Code.” All references herein to “Sec. 158.\_\_\_\_\_” refer to the Zoning Code, which is incorporated by reference, and can be accessed at the above link.

3. Defendant's actions and Zoning Code violate Plaintiffs' rights under the United States Constitution; the Religious Land Use and Institutionalized Person's Act ("RLUIPA"), 42 U.S.C. §2000cc-1, *et seq.*; and Florida's Religious Freedom Restoration Act of 1998, Fla. Stat. § 761.03, *et seq.*

4. To redress irreparable harm to their rights, Plaintiffs seek declaratory and injunctive relief for violation of their constitutional and statutory rights, and seek compensatory and nominal damages to redress past legal injuries.

## **II. JURISDICTION AND VENUE**

5. This action arises under the United States Constitution; federal law, particularly 42 U.S.C. §§ 1983 and 1988, and RLUIPA, 42 U.S.C. §2000cc-1, *et seq.*; and Florida's Religious Freedom Restoration Act of 1998, Fla. Stat. § 761.03, *et seq.*

6. This Court is vested with original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims arising under Florida law.

7. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

8. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

9. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988, and Fla. Stat. § 761.03 *et seq.*

10. Venue is proper in United States District Court for the Southern District of

Florida under 28 U.S.C. § 1391(b), in that the defendant resides in this district, the events giving rise to the claim occurred within the district, and the subject property is located in this district.

### **III. IDENTIFICATION OF THE PARTIES**

11. Plaintiff Palm Beach Gardens Baptist Church, also known as Gardens Baptist Church, (“Church”) is a religious organization incorporated under the laws of Florida that currently meets at its pastor’s home in Port Saint Lucie, Florida.

12. The Church was holding Sunday services in facilities rented from a private school in Palm Beach Gardens until recently, but that property is no longer available.

13. About 20-30 people attend the Church’s services.

14. Plaintiff Richard K. Parker (“Pastor Parker”) is the Pastor of the Church and resides in Port Saint Lucie, Florida.

15. Defendant City is a municipal corporation located in the State of Florida, existing under the Constitution and laws of the State of Florida, and is a corporate entity capable of suing and being sued.

### **IV. STATEMENT OF FACTS**

16. On November 6, 2010, Pastor Parker, on behalf of the Church, signed a letter of intent to lease 2731 & 2733 Morningside Drive, Port Saint Lucie, Florida (“Property”).

17. The Church wants to rent the Property for holding worship services, including reading the Bible, singing religious songs, praying, and sharing biblical insight.

18. The Church paid a \$2,000 deposit on the Property when signing the letter of intent. A copy of the letter is attached as Exhibit A.

19. The lease was set to begin on December 1, 2010.

20. The parties to the letter of intent agreed to postpone beginning the lease till the matter of whether the City will permit the Church to use the Property for worship services is resolved.

21. The Property is located in the Southport Shopping Center.

22. It is owned by Southport Property Investment, LLC (“Owner”).

23. Nicholas J. Chillemi, Sr. is one of the partners of Southport Property Investment, LLC.

24. The Church would have to invest Two to Seven Thousand Dollars to build out the Property before it is suitable for use.

25. The Church is Christian.

26. Plaintiffs have a sincere religious belief to gather together to read the Bible, sing religious songs, pray, and to share biblical insight.

27. One of the purposes of the Church is to educate, inform, and train people regarding biblical truth, including teaching a biblical worldview of moral, cultural, and civic issues.

28. Individual and communal prayer is a central tenet of Christianity and Plaintiffs’ religious beliefs.

29. Plaintiffs believe that they are to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

30. The Church must be certain it will be able to use the Property for worship services and other religious activities before informing Church attendees and the general public that its service location has changed to the Property.

31. If there is confusion about the location of worship services, the Church's ability to fulfill its religious obligation to assemble together to read the Bible, sing religious songs, pray, and share biblical insight will be substantially burdened.

32. Once it is financially able to do so, the Church plans to purchase property in Pt. St. Lucie so that it can have a permanent place to worship.

33. Two other churches currently lease other space at the Southport Shopping Center: Unity Church for the past five (5) years, and First Born Church of Jesus Christ Apostolic for the past three (3) years.

34. A church has leased property at the Southport Shopping Center for at least the past nine (9) years.

35. A daycare center is currently leasing space at the Southport Shopping Center.

36. Beginning on or about August, 2010, the City issued several notices of "Code Enforcement" to the other churches currently leasing space at Southport Shopping Center and the Owner, notifying them that their use of their property for worship services did not comply with the City's Zoning Code.

37. Southport Shopping Center is located in the Neighborhood Convenience Commercial ("CN") Zoning District, which is described in Sec. 158.120 of the Zoning Code, under the heading "Commercial Districts."

38. Defendant permits various public assembly uses in the CN District.

39. In the CN District, day care centers, restaurants, and offices for administrative, business, or professional use are permitted as a matter of right.

40. In the CN District, private clubs or lodges, and publicly owned or operated buildings are permitted as special exceptions with specific approval by the City Council.

41. A “Church or other place of worship” is defined by the Zoning Code as “A building or group of buildings devoted to the holding of religious services and related religious instruction, but excluding a day care center, preschool facility, school for general education, and outdoor recreation facilities of any type.” *See* Sec. 158.006 “Definitions.”

42. The City only allows churches and other places of worship to locate in the following two (2) zoning districts as a matter of right: Institutional, Sec. 158.110; and Limited Mixed, Sec 158.155.

43. The City allows churches and other places of worship in the following five (5) districts as a special exception: Professional (on a 2 year temporary basis), Sec. 158.122; Service Commercial, Sec. 158.126; Multiple Family Residential (“RM”)-5, Sec. 158.077; RM-8, Sec. 158.078; and RM-11, Sec. 158.079.

44. A “Civic or Cultural Facility” is defined by the Zoning Code as “A facility operated entirely on a public or nonprofit basis for the purpose of providing education, information, training, and/or entertainment of a civic or cultural nature.” *See* Sec. 158.006 “Definitions.”

45. Civic or Cultural Facilities are permitted in the following nine (9) different Zoning Districts as a matter of right: General Commercial, Sec. 158.124; Highway Commercial, Sec. 158.125; Institutional, Sec. 158.100; RM-5, Sec. 158.077; RM-8, Sec. 158.078; RM-11, Sec. 158.079; RM-15, Sec. 158.080; Mobile Home Residential, Sec. 158.081; and Limited Mixed, Sec. 158.155.

46. Civic or Cultural Facilities are permitted in the following five (5) different zoning districts as a special exception: Professional, Sec. 158.122; Estate Residential, Sec. 158.071; Single Family Residential (“RS”)-1, Sec. 158.072; RS-2, Sec. 158.073; and RS-3, Sec. 158.076.

47. A “Club or Lodge (Private)” is defined by the Zoning Code as “A noncommercial and nonprofit establishment restricted to and providing service activities to an organization or group of individuals maintaining membership therein and collectively contributing to the maintenance and upkeep of that establishment through membership fees and periodic dues.” *See* Sec. 158.006 “Definitions.”

48. Private Clubs or Lodges are permitted in the following three (3) different Zoning Districts as a matter of right: General Commercial, Sec. 158.125; Institutional, Sec. 158.100; and Limited Mixed, Sec. 158.155.

49. Private Clubs or Lodges are permitted in the following two (2) different zoning districts as a special exception: CN, Sec. 158.020; and RM-15, Sec. 158.080.

50. A “Day Care Center” is defined by the Zoning Code as “An establishment where five or more persons, other than the members of the family occupying the premises, are cared for



during daytime hours only, and expressly excluding overnight care. The term includes a day nursery, kindergarten, adult day care service, day care agency, nursery school, or play school.”

51. Day Care Centers are permitted in the following two (2) different Zoning Districts as a matter of right: CN, Sec. 158.020; and Limited Mixed, Sec. 158.155.

52. Day Care Centers are permitted in the following six (6) different Zoning Districts as a special exception: General Commercial, Sec. 158.124; Service Commercial, Sec. 158.126; RM-5, Sec. 158.077; RM-8, Sec. 158.078; RM-11, Sec. 158.079; and RM-15, Sec. 158.080.

53. On or about December 21, 2010, Pastor Parker visited the City’s offices to apply for a Certificate of Occupancy.

54. At that time, he was informed by an employee of the City that he could not apply for a Certificate of Occupancy until he actually began leasing and using the Property.

55. When Pastor Parker informed the City employee that he needed to know if he could use the Property for worship services before moving in, she recommended that he speak with John Finizio in the City’s Planning and Zoning Department.

56. Upon information and belief, Mr. Finizio is a planner who works in the City Planning and Zoning Department.

57. Pastor Parker called Mr. Finizio on or about December 21, 2011 and inquired about obtaining a Certificate of Occupancy for using the Property as a church.

58. Mr. Finizio told Pastor Parker that there was no way that the Property could ever be used for a church, and that the Church was not eligible for either a special exemption or variance.

59. The Zoning Code does not allow churches or other places of worship to locate in the CN Zoning District as a matter of right, as a special exemption, or by obtaining a variance.

#### **V. ALLEGATIONS OF LAW**

60. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, codes, regulations, customs, policies and usages of the City.

61. Plaintiffs have no adequate or speedy remedy at law to correct or redress the deprivations their federal and state rights by Defendant.

62. Unless and until enforcement of the provisions of the Zoning Code discriminating against churches – such as prohibiting churches in the CN Zoning District – are enjoined, the Plaintiffs will suffer and continue to suffer irreparable injury to their federal and state rights.

### COUNT 1 – VIOLATION OF RLUIPA

63. Plaintiffs reallege all matters set forth above.

64. Defendant's Zoning Code violates Plaintiffs' free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. §2000cc, *et seq.*

65. Plaintiffs' religious beliefs are sincerely and deeply held.

66. Defendant's Zoning Code imposes a substantial burden on Plaintiffs' religious exercise.

67. Defendant's Zoning Code is not in furtherance of a compelling governmental purpose.

68. Defendant's Zoning Code is not the least restrictive means of furthering any governmental interest.

69. Upon information and belief, Defendant receives federal financial assistance.

70. Upon information and belief, Defendant's Zoning Code affects commerce with foreign nations, among the several states, or with Indian tribes.

71. Defendant's Zoning Code permits it to make individualized assessments of the proposed uses of property within the City, including the Property at issue in this case.

72. Defendant's Zoning Code and actions treat Plaintiffs on less than equal terms with non-religious organizations, institutions, and assemblies.

73. Defendants' Zoning Code and actions discriminate against Plaintiffs on the basis of religion.

74. Defendant's Zoning Code and actions unreasonably limit Plaintiffs within the zoning jurisdiction of the Property, and other districts where churches are discriminated against.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 2 - VIOLATION OF THE FREE EXERCISE CLAUSE  
OF THE FIRST AMENDMENT**

75. Plaintiffs reallege all matters set forth above.

76. Defendant's Zoning Code violates Plaintiffs' right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

77. Plaintiffs' religious beliefs are sincerely and deeply held.

78. Defendant's Zoning Code substantially burdens Plaintiffs' sincerely held religious beliefs.

79. Defendant's Zoning Code is neither a neutral nor general law of applicability.

80. Defendant's Zoning Code specifically and discriminatorily targets religion and religious worship.

81. Defendant's Zoning Code is the result of a system of individualized exemptions such that it is not neutral and generally applicable.

82. There is no compelling government interest sufficient to justify Defendant's Zoning Code.

83. Defendant's Zoning Code is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

84. Defendant's Zoning Code is not a narrowly tailored, as required for restrictions on Plaintiffs' free exercise of religion.

85. Defendant has failed or refused to accommodate Plaintiffs' sincerely held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 3 - VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE  
FOURTEENTH AMENDMENT**

86. Plaintiffs reallege all matters set forth above.

87. Plaintiffs' right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

88. Defendant's Zoning Code is an unconstitutional abridgement of Plaintiffs' affirmative right to equal protection of the laws, is not facially neutral, and specifically targets Plaintiffs' religious viewpoints and speech.

89. Defendant's Zoning Code is unconstitutional because it treats religious organizations, assemblies and institutions less favorably than it treats secular organizations, assemblies, and institutions.

90. Defendant's Zoning Code is an unconstitutional abridgement of Plaintiffs' right to equal protection of the law because Defendant treats Plaintiffs less favorably than other similarly situated organizations and businesses on the basis of Plaintiffs' religious content, viewpoint, and expression.

91. Defendant's Zoning Code is not supported by a compelling governmental interest sufficient to justify its enactment or enforcement against Plaintiffs.

92. Defendant's Zoning Code is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

93. Defendant's Zoning Code does not serve a significant government interest.

94. Defendant's Zoning Code does not leave open ample alternative channels of communication.

95. Defendant's actions are irrational and unreasonable, and impose irrational and unjustifiable restrictions on constitutionally protected speech.

96. Defendant, in violation of the Equal Protection Clause, has caused, and will continue to cause, Plaintiffs to suffer undue and actual hardship and irreparable injury.

97. Plaintiffs have no adequate remedy at law to correct the continuing deprivations of Plaintiffs' most cherished constitutional liberties.

98. As a direct and proximate result of the Defendant's continuing violations of Plaintiffs' rights, Plaintiffs have suffered in the past, and will continue to suffer in the future, direct and consequential damages, including but not limited to, the loss of the ability to exercise their constitutional rights.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 4 - VIOLATION OF FREE SPEECH UNDER  
THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

99. Plaintiffs reallege all matters set forth above.

100. Defendant's Zoning Code violates the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

101. To determine whether a proposed use is a "Church or Place of Worship," a "Civic or Cultural Facility," or "Club or Lodge, Private" under the Zoning Code, the City must analyze the content and viewpoint of speech and other expressive activity.

102. Defendant's Zoning Code, facially and as applied, restricts Plaintiffs' speech based on religious viewpoint and content.

103. Defendant's Zoning Code is underinclusive as it does not place similar restrictions on nonreligious assemblies, institutions or organization which do not incorporate religious speech and viewpoints.

104. Defendant's Zoning Code is overbroad because it sweeps within its ambit protected First Amendment speech, thus violating the rights of Plaintiffs and third parties not before the Court.

105. Defendant's Zoning Code operates as a prior restraint on speech because Plaintiffs and other organizations must obtain permission before engaging in religious speech, such as prayer, Bible reading and discussion, or singing religious songs with others in a place of worship in the City.

106. Defendant's Zoning Code does not leave open ample alternative channels of communication.

107. Defendant does not have a compelling interest for the Zoning Code.

108. Defendant's Zoning Code is not narrowly tailored to achieve a compelling interest.

109. Defendant's Zoning Code is not the least restrictive means of achieving a compelling interest.

110. Defendant's Zoning Code thus constitutes a violation of Plaintiffs' rights under the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray that this Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 5 - VIOLATION OF THE RIGHT TO PEACEABLE ASSEMBLY  
UNDER THE FIRST AMENDMENT**

111. Plaintiffs reallege all matters set forth above.

112. Plaintiffs believe that they must regularly associate to express their devotion to God through communal prayer and worship, discussion regarding religion, and other religious speech.

113. The Defendant's Zoning Code prohibits Plaintiffs from assembling for religious speech and other religious purposes in certain districts.

114. The City has no compelling interest in limiting the peaceable assembly of Plaintiffs.

115. The Defendant's Zoning Code thus constitutes a violation of Plaintiffs' right of peaceable assembly under First Amendment to the United States Constitution, as incorporated and applied to state action under the Fourteenth Amendment.



WHEREFORE, Plaintiffs respectfully pray that this Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 6 - VIOLATION OF THE DUE PROCESS CLAUSE OF THE  
FOURTEENTH AMENDMENT**

116. Plaintiffs reallege all matters set forth above.

117. The definitions in the Zoning code for “Church or other place of worship,” “Club or Lodge, Private,” and “Civic or Cultural facility,” do not adequately describe in which districts these uses are permitted or prohibited.

118. There are no guidelines to assist City officials in determining whether a use is a Church or other place of worship, Private Club or Lodge, or a Civic or Cultural facility.

119. The Zoning Code does not give reasonable notice of where Churches or other places of worship, Private Clubs, or Civic or Cultural facilities are permitted or prohibited.

120. The vagueness of the Zoning Code does not give City officials adequate guidance to enforce it, allowing for unbridled discretion which could lead to viewpoint discrimination.

121. The Zoning Code chills First Amendment rights and constitutes a violation of Plaintiffs’ rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 7 - VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST  
AMENDMENT**

122. Plaintiffs reallege all matters set forth above.

123. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the establishment of any religion and/or excessive government entanglement with religion.

124. To determine whether a gathering of persons is a "Church or other place of worship," the City must analyze the content of speech and other expressive activity.

125. Obtaining sufficient information for the City to analyze the content of speech and other expressive activity of the Plaintiffs requires ongoing, comprehensive government surveillance that impermissibly entangles the City with religion and thus violates the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**COUNT 8 – VIOLATION OF THE RELIGIOUS FREEDOM RESTORATION  
ACT OF 1998 FLA. STAT. § 761.01**

126. Plaintiffs reallege all matters set forth above.

127. Defendant's Zoning Code and actions violate Plaintiffs' right to the free exercise of religion as guaranteed by the Religious Freedom Restoration Act of 1998 (Fla. Stat. § 761.01).

128. Plaintiffs' religious beliefs are sincerely and deeply held.

129. Defendant's Zoning Code imposes a substantial burden on Plaintiffs' religious exercise.

130. Defendant's Zoning Code is not in furtherance of a compelling governmental purpose.

131. Defendant's Zoning Code is not the least restrictive means of furthering any governmental interest.

132. Defendant's Zoning Code and actions are not a narrowly tailored restriction on Plaintiffs' free exercise of religion.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

**PRAYER FOR RELIEF**

Plaintiffs pray for judgment as follows:

a. That this Court preliminarily and permanently enjoin the conduct of Defendant, its officers, agents, servants, and employees which violates the rights of Plaintiffs and other parties not before the Court as protected by the First and Fourteenth Amendments to the United States Constitution, RLUIPA, and the Florida Religious Freedom Restoration Act;

b. That this Court preliminary and permanently enjoin the Defendant from enforcing its Zoning Code against Plaintiffs and from otherwise prohibiting them from meeting with others on the Property for communal prayer, Bible reading, discussion of biblical concepts, singing religious songs, or from otherwise conducting church services on the Property;

c. That this Court render a Declaratory Judgment declaring the Defendant's Zoning Code and actions as alleged herein to be invalid and unconstitutional in all respects under the First and Fourteenth Amendments to the United States Constitution, RLUIPA, and the Florida Religious Freedom Restoration Act;

d. That this Court grant to Plaintiffs compensatory and nominal damages;

e. That this Court grant to Plaintiffs an award of their costs of litigation, including reasonable attorneys' fees and expenses;

f. That this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 19th day of January, 2011.

s/ Kevin H. Theriot

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**Alliance Defense Fund**

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ATTORNEYS FOR PLAINTIFFS

## VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 5th day of January, 2011.

s/ Richard K. Parker  
RICHARD K. PARKER