

**UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

*Lighthouse Rescue Mission, Inc,
a Mississippi Non-profit Corporation,*

Plaintiff,

Hon. Keith Starrett
Magistrate Judge Michael T. Parker
Case No.: 2:12-CV-00184-KS-MTP

v.

*The City of Hattiesburg, Mississippi,
a Mississippi Municipal Body,*

Defendant.

First Amended Complaint

NOW COMES the Plaintiff, Lighthouse Rescue Mission, and for its Amended Complaint against Defendant, the City of Hattiesburg, Mississippi, states as follows:

Introduction

1. This is an action for declaratory judgment, injunctive relief and damages arising from the City's violation of federal and state constitutional and federal statutory rights. Lighthouse alleges that the City's zoning and land use ordinances, both on their face and as applied to the Church, violate Lighthouse's rights under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA" or the "Act"), the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (the "FHA"), the First and Fourteenth Amendments to the United States Constitution, and the Mississippi Constitution.
2. Plaintiff Lighthouse Rescue Mission is a nondenominational Christian organization formed for the purpose of worshiping God and ministering to women and children

by providing religious training, overnight stay, drug and alcohol counseling, job training, and life skills until the families have the financial and personal strength to transition into an independent living environment. Plaintiff sincerely believes that the foregoing are duties they owe to God as set forth in the Bible.

Parties

3. Plaintiff Lighthouse Rescue Mission, located at 204 Eupora Street in Hattiesburg, Mississippi (“Lighthouse,” the “Church” or the “Mission”), is an ecclesiastical corporation organized under the laws of the State of Mississippi.
4. Defendant City of Hattiesburg, Mississippi (the “City”) is a municipal body organized under the Constitution and laws of the State of Mississippi.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as a Court of original jurisdiction over all civil actions arising under the laws and Constitution of the United States; under 28 U.S.C. § 1343(a)(3), in that this case is brought to redress deprivations under color of state law, of rights, privileges and immunities secured by the United States Constitution; under RLUIPA, 42 U.S.C. § 2000cc *et seq.* and the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, in that it seeks to recover damages and equitable relief under acts of Congress, and under 28 U.S.C. § 2201(a) to secure declaratory and injunctive relief under 28 U.S.C. § 2202. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over the state constitutional law claims asserted herein as those claims form part of the same case or controversy as the federal questions asserted herein.

6. The venue in this action is proper within the Southern District of Mississippi pursuant to 28 U.S.C. § 1391(b), in that (i) Defendant is situated within this judicial district, (ii) Plaintiff is located within this judicial district, and (iii) all of the claims asserted by Plaintiff arose within this judicial district.

Factual Allegations

The Property

7. In 2005, Lighthouse became aware that the former Jefferson Davis Elementary School (the “Property”), located at 204 Eupora Street in Hattiesburg, Mississippi, was available for purchase from the Hattiesburg School Board. ***See Exhibit 1***
8. The Property is comprised of approximately six acres of land with lot frontage of 1398 feet, depth of 375.50 feet, and zoned R-1A under the City of Hattiesburg Land Use Code. ***See Exhibit 2, p. 1***
9. The land adjacent to the Property is primarily comprised of residential uses, both single-family and multi-family, that permit overnight stay on two sides and industrial on the other two sides. ***Id., p. 2***
10. Before purchasing the Property, Lighthouse advised the Hattiesburg School Board that its intent was to use the Property for religious service, counseling and overnight stay. ***See Exhibit 3***
11. Pursuant to statute, the Hattiesburg School Board sold the Property to Lighthouse upon a finding that the sale promoted and fostered the development and improvement of the community as well as the civic, social, educational, cultural, moral, economic or industrial welfare thereof. ***See Exhibit 4***
12. On November 21, 2005, in furtherance of its ministry and to facilitate the foregoing purposes, Lighthouse purchased the Property from the Hattiesburg School Board.

13. After closing on the purchase of the former elementary school, Lighthouse began the process of renovating the elementary school into an overnight stay facility which includes twelve (12) bedrooms, eight (8) showers, a 4,000 square foot kitchen and dining room, a 600 square foot children's playroom, a laundry room with four (4) washers and dryers, a work center with ten (10) computers, renovated classrooms for religious, life skills and Alcoholic Anonymous meetings, and five (5) other rooms with bathrooms.



The Zoning Code

14. The City regulates the use of land within its geographical jurisdiction pursuant to its Zoning Ordinance (referred to hereafter as the “Ordinance” or “Land Use Code”), which is part of the City Code.
15. The Property at issue is zoned R-1A. The Land Use Code provides that “[t]he principal use is for single-family dwellings and related recreational, religious and educational facilities normally required to provide the basic elements of a balanced and attractive residential area.” See **Exhibit 5**, Section 52.01 of the Land Use Code.
16. The Land Use Code allows overnight stay in the R-1A zoning district. The area adjacent to the Property is essentially residential. The property to the west is zoned

R-2 and B-2 and is currently used as multi-family; the property to the east is zoned R-1A and is used as single-family; the property to the south is zoned R-2 and R-1A and used as multi-family and single-family; and the property to the north is zoned I-1, industrial. It is the vacant Hercules plant.

Request for Re-Zoning

17. Upon purchasing the Property, Lighthouse representatives met with City representatives, who recommended that Lighthouse seek a zoning classification change from R-1A to B-2 in order to permit Lighthouse to use the Property for overnight stay. ***See Exhibit 6***
18. Lighthouse then followed the proper procedures and filed the required paperwork in requesting the recommended zoning amendment on August 12, 2009. ***See Exhibit 7***
19. On September 9, 2009, the Planning Commission denied the request for the zoning classification change. ***See Exhibit 8***
20. On September 16, 2009, Lighthouse filed a request to appeal the Planning Commission's denial to the City Council. ***See Exhibit 9***
21. The Hattiesburg City Council affirmed the denial at its November 3, 2009 meeting. ***See Exhibit 10***

Request for a Use Permit

22. Prior to Lighthouse's purchase of the Property, the City of Hattiesburg granted a "Use Permit" to the Logos Missionary Baptist Church to allow it to use the Property for religious assembly and related purposes. ***See Exhibit 11***

23. With respect to this Property only, the City Attorney opined that the previously granted “Use Permit” expired once Logos Missionary Baptist Church left the Property. **See Exhibit 12**
24. On or about December 20, 2010, Lighthouse filed for a Use Permit with the City. **See Exhibit 13**
25. On February 2, 2011, the City’s Planning Commission recommended approval of the Use Permit to the City Council. However, the Planning Commission recommended that the Use Permit stipulate that no overnight stay could occur on the Property. **See Exhibit 14**
26. On March 22, 2011, the City Council approved the recommendation of the Planning Commission at its regularly scheduled meeting.
27. On March 24, 2011, the City notified Lighthouse that, although it was approving Lighthouse’s request for a special use permit to use the Property as a “church,” it was forbidding Lighthouse from using the Property for overnight stays. **See Exhibit 15**
28. Overnight stay is the single most important component of the religious ministry of Lighthouse Rescue Mission. Plaintiff Lighthouse has renovated its Property and proposed a ministry allowing twelve (12) women and their children to live in the former school building for a period of time up to sixteen (16) months to enable them to gain the life skills that will enable them to stay off of drugs and alcohol, receive essential life skills and rigorous religious training and without overnight stay, Plaintiff Lighthouse cannot effectively practice its religious mission.
29. The adjacent properties of single-family and multi-family allow for overnight stay.

30. The City's refusal to allow overnight stay at the Property has restricted Lighthouse from using the Property for one of the primary tenets of its ministry—sheltering the needy and less fortunate.

31. The needs and requirements of the Lighthouse ministry and of its participants require that Lighthouse immediately be granted the ability to use its Property as a house of worship and for overnight stays.

32. The City's Land Use Ordinance allows religious uses by permission only, also known as special land use permits, in the R-1A zoning designation.

Reasonable Accommodation Requested

33. On October 16, 2012, Plaintiff filed the instant action, alleging violations of the Fair Housing Act, 42 U.S.C. § 3604, RLUIPA, 42 U.S.C. § 2000cc *et seq.*, and the United States and Mississippi Constitutions. ***Dkt. 1***

34. On April 10, 2013, Plaintiff sent City Attorney Charles E. Lawrence, Jr. a letter requesting the City grant Lighthouse a reasonable accommodation pursuant to the Fair Housing Act. ***See Exhibit 16***

35. Defendant has not responded to the request for a reasonable accommodation under the Fair Housing Act.

COUNT I

Violation of the Fair Housing Act, 42 U.S.C. § 3604

36. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 35 as if fully rewritten herein.

37. The actions taken by the City violate the Fair Housing Act ("FHA") in that:

- a. Lighthouse, a religious entity, is a protected class under the FHA, 42 U.S.C. § 3604.

- b. The City's restrictions on Lighthouse's use of the Property are based upon religion, in violation of the FHA, 42 U.S.C. § 3604.
 - c. The City's restrictions forbid any person, who was at one time addicted to drugs or alcohol, from residing at or receiving any religious training at the Property, in violation of 42 U.S.C. § 3604(f)(1)(B).
 - d. The City has refused to make reasonable accommodation in rules, policies, practices, or services when such accommodation is necessary to afford the residents of Lighthouse the equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).
 - e. The City does not have a compelling state interest in precluding Lighthouse's use of the Property.
38. As a direct result of the City's discriminatory conduct and failure to reasonably accommodate Lighthouse, in violation of 42 U.S.C. § 3604, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to injunctive relief and to recover compensatory and nominal damages, costs and attorney fees.

COUNT II

Violation of the Religious Land Use and Institutionalized Persons Act Substantial Burden Claim - 42 U.S.C. § 2000cc(a)

39. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 38 as if fully rewritten herein.
40. The City's Land Use Code is a land use regulation or system of land use regulations under which the City makes, or has in place, formal or informal procedures or

practices that permit it to make individualized assessments of the proposed uses for property in its jurisdiction.

41. The intended future use of the Property for the purpose of Lighthouse's religious exercise including overnight stay is itself religious exercise by Lighthouse.
42. The City's denial of Lighthouse's proposed use of the Property for overnight stay, as alleged above, imposes a substantial burden on Lighthouse's religious exercise.
43. The substantial burden imposed on Lighthouse's religious exercise is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any compelling governmental interest.
44. Accordingly, the City through its denial of allowing overnight stay has violated Lighthouse's rights recognized under 42 U.S.C. § 2000cc(a) (substantial burden) of the Act.
45. As a direct result of the City's violation of Lighthouse's rights under 42 U.S.C. § 2000cc(a) of the Act, as alleged above, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to recover equitable relief, compensatory and nominal damages, costs and attorney fees.

COUNT III

Violation of the Religious Land Use and Institutionalized Persons Act

Unreasonable Limitations Claim - 42 U.S.C. § 2000cc(b)(3)

46. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 45 as if fully rewritten herein.
47. Lighthouse desires and intends to engage in religious assembly on the Property and use the same for overnight stay, and has purchased the Property for that religious purpose.

48. The City, refusing to permit overnight stay on the Property, has imposed and continues to impose a land use regulation in a manner that unreasonably limits religious assemblies or institutions, including Lighthouse, within its jurisdiction.

49. Accordingly, the City has violated Lighthouse's rights recognized under federal law as contained in 42 U.S.C. § 2000cc(b)(3) (unreasonable limitation) of the Act.

50. As a direct result of the City's violation of Lighthouse's rights under 42 U.S.C. § 2000cc(b)(3), as alleged above, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to recover injunctive, compensatory and nominal damages, costs and attorney fees.

COUNT IV

Violation of the Rights to Freedom of Speech and Assembly as Guaranteed by the First Amendment to the United States Constitution (42 U.S.C. § 1983)

51. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 50 as if fully rewritten herein.

52. All acts alleged herein of the City were done and are continuing to be done under the color of state law.

53. In circumstances in which religious and non-religious assembly uses are operationally similar (from the perspective of the proper purposes and objectives of government zoning authority), the City nonetheless treats differently religious and non-religious assemblies.

54. The City differentiates religious uses with overnight stay from other uses, by means of analysis of the content of the speech of those who would use the property for assembling, and assigns discriminatory burdens to those users whose speech is religious.

55. The City's discriminatory treatment of religious land uses constitutes a content-based and viewpoint-based restriction on speech.
56. The content- and viewpoint-based decision and restrictions of the City precluding Plaintiff Lighthouse from using its property for overnight stay are not supported by a compelling governmental interest and are not narrowly tailored to accomplish the compelling governmental interest.
57. The City's decision to preclude Plaintiff's religious use from overnight stay is not a legitimate time, place, or manner regulation, as it does not serve a significant government interest, and does not leave open ample alternative channels for communication.
58. The Land Use Code, to the extent it requires Lighthouse to obtain special dispensation from the City to use land for overnight stay, religious assembly and for religious purposes, affords the City unfettered discretion to decide whether to allow religious speech, and does not contain in that process the procedural safeguards necessary for a speech-related permit scheme, constitutes a prior restraint on Plaintiff Lighthouse's speech in violation of the First Amendment to the United States Constitution.
59. By discriminating against Plaintiff Lighthouse by precluding overnight stay for religious purposes, the City has violated and continues to violate Lighthouse's right to the freedom of speech under the First Amendment and right to assemble and associate for the purpose of engaging in activities protected by the First Amendment.

60. As a direct result of the City's violation of Lighthouse's First Amendment rights to the freedom of speech and assembly, as alleged above, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to recover injunctive relief, compensatory and nominal damages, costs and attorney fees.

COUNT V

***Violation of the Right to Free Exercise of Religion
Guaranteed by the First Amendment to the United States Constitution (42 U.S.C. § 1983)***

61. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 60 as if fully rewritten herein.
62. The City's application of its Land Use Code burdens Lighthouse's exercise of religion and is not neutral or of general application.
63. The text and application of the Land Use Code by the City, through its denial of overnight stay for religious assembly, impose a substantial burden on the religious exercise of Lighthouse in general and discriminate against its use by permitting operationally similar non-religious overnight stay to be free of such burdens, and the City hereby has unjustifiably violated Lighthouse's right to the free exercise of religion under the First Amendment.
64. The City's decision to preclude overnight stay for Lighthouse results in a substantial burden on and discrimination against religious exercise and is not justified by or narrowly tailored to further any compelling governmental interest.
65. As a direct result of the City's violation of Lighthouse's right to the free exercise of religion, as alleged above, Lighthouse is suffering irreparable harm for which there

COUNT VI
Violation of Article 3, Section 11 of the Mississippi Constitution
Free Assembly

66. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 65 as if fully rewritten herein.
67. The decision of the City to deny overnight stay limits the ability of Lighthouse's members to assemble for purposes of its religious activities—including providing shelter to the poor and less fortunate while ministering to these individuals through religious instruction, life skills training, and job skills training—by prohibiting or severely impeding Lighthouse from operating a group care facility that permits overnight stay at the Property.
68. The decision of the City to deny overnight stay has substantially burdened the ability of Lighthouse to associate in furtherance of its mission to provide safe and secure housing for the participants in its religious program while working to rehabilitate the participants.
69. The burden resulting from the City denying overnight stay to associate for religious purposes is not necessary to serve any compelling governmental interest.
70. Accordingly, the City has violated Lighthouse's right to the freedom of assembly under the Mississippi Constitution.
71. As a direct result of the City's violation of Lighthouse's rights under Article 3, Section 11 of the Mississippi Constitution, as alleged above, Lighthouse is suffering

irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to injunctive relief.

COUNT VII
Violation of Article 3, Section 13 of the Mississippi Constitution
Free Speech

72. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 71 as if fully rewritten herein.

73. The City's decision to deny Lighthouse the ability to have overnight stay limits its ability to exercise its free speech rights by prohibiting or severely impeding Lighthouse from operating a group care facility that permits overnight stay at the Property. Moreover, the Land Use Code prevents Lighthouse from fully and effectively expressing its religious message and ministry to the Hattiesburg community.

74. The City's decision to deny overnight stay does not serve any compelling governmental interest, and is not narrowly tailored to serve any such interest.

75. Accordingly, the decision to deny overnight stay by the City violates Article 3, Section 13 of the Mississippi Constitution.

76. As a direct result of the City's violation of Lighthouse's right to freedom of speech under Article 3, Section 13 of the Mississippi Constitution, as alleged above, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to injunctive relief.

COUNT VIII

***Violation of Article 3, Section 18 of the Mississippi Constitution
Free Exercise of Religion***

77. Plaintiff, Lighthouse Rescue Mission, restates the allegations in paragraphs 1 through 76 as if fully rewritten herein.
78. Article 3, Section 18 of the Mississippi Constitution provides that “No religious test as a qualification for office shall be required; *and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred.* The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.” (Emphasis added.)
79. The City’s decision to deny overnight stay imposes a substantial burden on Lighthouse’s religious exercise under Article 3, Section 18 of the Mississippi Constitution.
80. The City, by denying overnight stay, has imposed and continues to implement a land use regulation that discriminates against assemblies or institutions, including Lighthouse, on the basis of religion.
81. The decision of the City to deny overnight stay to Lighthouse threatens and substantially burdens Lighthouse’s free exercise of religion and that burden is imminent.
82. The decision to deny overnight stay is a substantial burden imposed on religious exercise, is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any compelling governmental interest.

83. Accordingly, as set forth herein, the City has violated Lighthouse's rights recognized under the Mississippi Constitution and as a direct result of the City's violation of Lighthouse's right to the free exercise of religion under Article 3, Section 18 of the Mississippi Constitution, as alleged above, Lighthouse is suffering irreparable harm for which there is no adequate remedy at law and Lighthouse is entitled to injunctive relief.

Relief Requested

WHEREFORE, Plaintiff Lighthouse Rescue Mission prays for a judgment against Defendant City of Hattiesburg and that this Honorable Court:

- a. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declaration shall have the force and effect of final judgment and that the Court retains jurisdiction of this matter for the purpose of enforcing the Court's Order;
- b. Pursuant to 28 U.S.C. § 2201, declare the decision by the City to deny overnight stay to be in violation of the Fair Housing Act, the Religious Land Use and Institutionalized Persons Act, the Free Speech, Assembly, and Exercise Clause of the First Amendment and the parallel clauses to the Mississippi Constitution, and further declare that Plaintiff is permitted as of right to use the Property as a religious organization for all of its intended and stated purposes;
- c. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 64, 42 U.S.C. § 1983, 42 U.S.C. § 2000cc-4 and 71 P.S. § 2401, permanently enjoin Defendant from denying Plaintiff the right to use its Property for overnight stay, and (ii) preliminarily and permanently enjoin Defendant from enforcing its Land Use Code, Building Code or any other code to prevent Plaintiff from using the Property as a Church with religious assembly for overnight stay and to process and issue all permits and grant all other rights and privileges to Plaintiff to use the Property as a "Church" with overnight stay;
- d. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. Pro. 65, 42 U.S.C. § 1983, and 42 U.S.C. § 1988, 42 U.S.C. § 2000cc-4, award Plaintiff compensatory and nominal damages;
- e. Pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 2000cc-4(d), Fed. R. Civ. Pro. 54(d), and other applicable law, award Plaintiff its reasonable attorney fees,

costs; and

- f. Grant such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,
Dalton & Tomich plc

/s Daniel P. Dalton

By: Daniel P. Dalton
Lead Attorney for Plaintiff – *Pro Hac Vice*
41000 Woodward Ave., Suite 345 East
Bloomfield Hills, MI 48304
Tel. (248) 971-2400
Fax 248-971-1906
ddalton@daltontomich.com

The Holmes Law Firm, P.A.

/s Margaret Holmes

By: Margaret Holmes
Attorney for Plaintiff
601 East Central Avenue
Petal, Mississippi 39465
(601) 450 4074
Holmeslawfirm5@aol.com

Reliance on Jury Demand

The Plaintiff herein relies upon the jury demand filed in this cause of action.

Respectfully submitted,

/s Daniel P. Dalton

By: Daniel P. Dalton
Lead Attorney for Plaintiff – *Pro Hac Vice*

Dated: May 3, 2013