2006

Salt Lake City Mission, et. al. v. Salt Lake City Corporation, et. al. : Brief of Appellee

Utah Supreme Court

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IN THE UTAH SUPREME COURT

SALT LAKE CITY MISSION, et. al., Plaintiffs-Appellants, vs. SALT LAKE CITY CORPORATION, et. al., Defendants-Appellees.	**ADDENDUM TO BRIEF OF APPELLEE** Case No. 20060962

ADDENDUM

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY MISSION, et al.,	:	**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO**
Plaintiffs,	:	**SALT LAKE CITY'S MOTION FOR SUMMARY JUDGMENT**
SALT LAKE CITY, et al.,	:	(Oral Argument Requested)
Defendant.	:	
SALT LAKE REDEVELOPMENT AGENCY,	:	Civil No. 990908945
Third-Party Plaintiff,	:	Judge Joseph C. Fratto
vs.	:	
McDONALD BROTHERS INVESTMENTS, a Utah general partnership,	:	
Third-Party Defendant.	:	

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Plaintiffs Salt Lake City Mission and Wayne Wilson ("Mission") submit this Memorandum in opposition to the City's Summary Judgment in this case:

TABLE OF AUTHORITIES

Utah Cases

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Other Statutes

SUMMARY OF ARGUMENT

The Plaintiffs are not asserting the claims made in the fifth, sixth, and seventh causes against the city. These causes of action are specifically reserved against the RDA.

The Plaintiffs' claims from equitable relief arise from three sources. The Religious Land Use and Institutionalized Persons Act, 42 U.S.C.§ 2000 cc, ("RLUIPA") RLUIPA protects against governments from implementing a land use regulation that discriminates against any

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church on the basis of religion or religious denomination. Or unreasonably limits religious assemblies in a jurisdiction. Plaintiffs contend these provisions of RLUIPA impose liability without the need to have a particular piece of property at issue and that administrative remedies need not be followed when they have not been "available [to the Mission] without discrimination or unfair delay."

The Missions equitable claim under the Utah Constitution are properly before this court. Notwithstanding the Mission did not appeal the 1999 decision of the Planning and Zoning Commission and Board Adjustments, equitable relief remains appropriate on the grounds of (1) the Mission was not a party to the Board of Adjustments ruling, (2) thee Mission had already challenged on constitutional grounds with a motion for a preliminary injunction and temporary restraining order unconstitutional aspects of the conditional use process associated with the Mission, (3) futility, and (4) the occurrence of actionable events since 1999. The equal opportunity establishment clause analysis from *Snyder v. City of Murray* as well as the strict scrutiny analysis recently suggested in *dicta* by the Utah Supreme Court Customary practices of the City that are contrary to a facial reading of ordinances also merit injunctive relief.

Plaintiffs also have brought claims under 42 U.S.C. § 1983 raising a facial and as applied challenge to various City ordinances. Claims under § 1983 do not require exhaustion of administrative remedies. The City's definition of place of worship and "accessory use...for religious worship" requires excessive entanglement of the PZD of what constitutes religious worship. The use of definitions by Salt Lake County and Brigham City so as not to require this conflict demonstrates that the City has not used the least restrictive means to achieve its zoning

objectives. For similar reasons, the City's ordinances are void because they fail to give proper notice to its meaning and administrators differ as to their application. Furthermore, the zoning administrator is given "unbridled discretion" in determining what is a complete application for a conditional use permit.

The Plaintiffs base damage claims under § 1983 on the City's facially unconstitutional ordinances, implementation and interpretation of the same by policy makers, and the creation of customs upholding unlawful interpretations and applications to the Plaintiff. The City's of ordinances, in and of themselves, constitute policy for which a City maybe held liable when it does not conform with the requirements to the federal Constitution. Under City and State Law the City Attorney and Mayor are also policy makers for the City. The City Attorney, as the "chief legal officer" of the City and those who work under his direction establish policy through the criminal prosecution of Pastor Wilson, allowing and reviewing with approval decisions by the City Administrator, Board of Adjustments, and other related matters it has served to impede and limit the "religious worship" of the Mission and Pastor Wilson.

The Mayor, on the other hand, is "responsible" for supervising Administration and enforcement of all laws in the City....and administering and exercising control of all departments of the City. The City had a policy of discouraging concentration of services available to the homeless in one geographical area of the City. This policy, as applied, brought about a concerted effort to remove the Mission from its premises, favoring the "religious worship" of participating Churches working with Interfaith. Even with a reversal of this policy, the present

administration has not facilitated the location of the Mission outside a classification as a "homeless shelter".

Certain customs and policies were created and followed by the City Planning and Zoning Department ("PZD"), all in violation of the constitutional rights of the Mission. Issuing letters of administration interpretation were issued without following the mandatory requirements of the ordinance was used to the detriment of the Mission. PZD staff (1) failed to follow mandatory ordinances and provide the Mission with the documents from the Community Council to sign, and (2) used discretionary authority, allowed in the application for a conditional use permit and the Board of Adjustments appeal process to thwart rather than facilitate "religious worship" of the Mission, and (3) interpreted clear and vague ordinances to impede the religious worship of the Mission while favoring the "religious worship" of other entities than the Mission.

The ongoing facially invalid standards and previous unlawful conduct "applied" to the Mission have caused the Mission and Pastor Wilson to impose "self censorship" on various aspecs of their "religious worship" until these matters are clarified. To the degree the facial challenge to the City Ordinance on establishment clause or vagueness grounds are rejected in their facial "context", the same claims are also raised "as applied" context. As "applied" the City's practices with the Interfaith Church constitutes improper delegation of civic authority to a religious entity. This occurs when the City treats the Participating Church's service to the homeless as coming within the practice and policy of Interfaith without further inspection, and allowing the participating churches to circumvent the administrative interpretation or conditional

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use permit process because they are affiliated with Interfaith. This fails the third prong of the United States Supreme Court *Lemon* test.

In addition there has been objective favoring of other churches and religions when compared to how the City has treated the Mission. The Mission was subject to administration inspections while other participating Churches were not. The PZD did not require Zion's Lutheran Church to apply for or complete a substantial expansion of conditional use. None of the participating Churches were required to obtain a conditional use permit or at least an administrative ruling. The Mission was treated differently in terms of the City's presentation and procedures used in front of the Board of Adjustments, than was used at the Church of the Madeline or the Jewish Community Center. Finally, an administrative exception for the Summum religion was justified in part because of "free exercise of religion"; it was not apparent at anytime the Mission "free exercise of religion" was given equal consideration.

These examples of disparte treatment are considered together or individually of violation of establishment clause as been demonstrating, favoring one perspective of "worship" as an "accessory use" over other perspectives of other "religious worship" does not satisfy the perspective of the objective observer who is familiar with the historical context of the government action and the implementation of government conduct. Without question, any objective observer would understand the objections of the City actions, would to make "outsiders of non-adherents." While in practice the restraints imposed on the Mission may reflect a secular intent to reign "not in my backyard" syndrome ("NIMBY"). Referring or favoring one religion

or "the expression" of "religious worship" violates the establishment clause of the United States Constitution.

The validity of Plaintiff's as "applied" challenge on vagueness grounds to various aspects of the City's Ordinances can be shown by the City's interpretation of its own ordinances.. For example, inconsistent or incomplete applications of what a "homeless shelter" was vis-à-vis a "place of worship" occurred on December 24, 1996, December 26, 1996, May 22, 1997, April 20, 1999, July 2, 1999, September 8, 2003, and either June 21, 2004 or July ___, 2004. There was a significant difference in the perspective of different Zoning Administrators as to the application of various aspects of mandatory constraints on questions of administrative interpretation, what kind of "change" in "use" from a prior proposal justified reconsideration of a determination of a Board of Adjustments ruling. Certain words and phrases remain standardless or difficult for even zoning administrators to understand. The interplay between "accessory use of a place of worship" and a "homeless shelter" were confusing to Randy Taylor. He was confused how homeless services could be part of a church, the distinction between a Mission and a church, and a church and various social service organizations.

Because the City's conditional use ordinances have various aspects that provide zoning administrators with "unbridled discretion" and the City does not have time constraints for most of its conduct, the past customary actions of the City have established a "prior restraint" on the Mission's and Pastor Wilson's "free exercise of religion". Ordinances and customary practices that allowed for overt or disguised discrimination against the "religious worship" of the Mission had the effect of persecuting and oppressing the Mission and Pastor Wilson and their otherwise

lawful religious practices. All of the foregoing subjects the City ordinances, policies, practices, and customs to strict scrutiny, a standard the City cannot meet. The City's conduct cannot even meet a heightened equal protection standard applicable to regulation of more than economic interests.

Damages allowed under § 1983 against a City are either nominal or compensatory. John Ravarino's testimony was limited in scope and its duration. Nonetheless, compensatory damages for non-economic damages are recoverable for both the Mission and Pastor Wilson. Even if the Mission fails in its proof of recoverable damages, it would still be entitled to nominal damages.

Based on all of the foregoing, the City's motion for summary judgment should be denied.

I. DISPUTED AND OMITTED FACTS

Pursuant to UTAH R. CIV. P. 7(C)(3)(B), the Plaintiffs are choosing to contest various of the facts listed by the City as undisputed as well as providing a separate statement of additional facts in dispute that are not raised by the opposing party.

A. Disputed Facts Claimed By the City

1. Plaintiffs are persons affiliated with the Salt Lake City Mission (hereinafter "Plaintiffs" or the "Mission"), a nondenominational religious group who provide service primarily to the homeless and impoverished. (Deposition Exhibit 78; Appendix Exhibit 14; Salt Lake City Mission web page, Appendix Exhibit A.)

Disputed Fact #1: As a biblically based, Christian church, the Mission provides both "religious" and related "services" to the homeless and others in the City. (City's Answer to

Second Amended Complaint ¶ 9 at 2.) (Deposition of Wayne Wilson, 19:1-15, Appendix Exhibit 1.)

> The Church's religious ministries and services [provide hope] to the homeless and other persons in the City in need of the blessings and assurances available from the teachings of the gospel of Jesus Christ. The focal point of the church's ministries are suggested by the Biblical standard the "[e]ven as ye have done it unto the least of these my brethren, ye have done it unto me." The Church's mission of saving souls has allowed many who suffer life-controlling problems and overwhelming cares of the world to overcome these temporal challenges by relying on the spiritual strength available to those becoming a long-term disciple of Jesus Christ.[1]

The Mission is different from other organizations such as the United Way and the American Red Cross that also provide services to the needy but are neither biblically based nor founded on Christian principles. (Deposition of John Ravarino, 108:21-24, Appendix Exhibit 2) The Mission believes when it follows these principles it is acting for God. (Deposition of Wayne Wilson, 325: , Appendix Exhibit 1.)

7. The Mission filed a claim for relocation expenses against the RDA. The Mission never filed any claim for relocation expenses against the City. (Deposition Exhibits 19, 26.)

Disputed Fact #7: The Mission's claim for relocation expenses under the federal Uniform Relocation Assistance Act was justifiably filed with the City on April 9, 2001.

Notwithstanding the foregoing, the Mission is withdrawing its claim for relocation expenses under the federal URA against the City. All claims for the same are reserved as

[1] Verified Complaint. September 9th, 1999. Paragraph 8

against Defendant Salt Lake City Redevelopment Agency. Any damages regarding relocation are not waived as they pertain to the remaining constitutional claims.

The Mission also concedes that it filed no proof of claim under the Utah Governmental Immunity Act, U.C.A. § 63-30-11 (1999).

8. On several occasions, the Mission inquired about various possibilities for the relocation of its facility and was informed as to the process that would be required for such an application. (Deposition Exhibits 2 & 11.)

Disputed Fact #8: The Mission asserts it either was not properly informed or was informed of a process that, as applied, discriminated against the Mission. *See* Legal Analysis, Part III. B.2; and C, 80-82, *infra*, and attendant deposition " ".

9. The City also provided the Mission with blank application forms. (Deposition Exhibits 63 & 64.)

Disputed Fact #9: At no time did the City provide the document that the Community Council was to sign for the Mission to return to the PZD after the Community Council presentation was made. (Deposition of Wayne Wilson, 249:24-250:2, Appendix Exhibit 1.)

The impression given to Pastor Wilson that approval was required rather than merely presentation was never clarified by the PDZ. The appearance of representatives from the Mayor's office and police department at various Community Council meetings supported Pastor Wilson's understanding. (*See* Omitted Facts ##119, 122, 129,134, 135, *infra)*

10. On at least two occasions, pursuant to information provided by the Mission, the City has issued an administrative interpretation regarding the Mission's proposed activities. (Deposition Exhibits 2 & 28.)

Disputed Fact #10: The Mission admits two letters dated April 20, 1999, and September 14, 1999, labeled as an Administrative Interpretation that were issued to the Mission. The Mission denies that the letters were issued according to the requirements of City ordinances. (*See* Omitted Facts ## 81, 84, *infra*.)

11. The Mission proposed to move into a building located at 580 West 300 South. That building was located in zone D3. Based on the description of the uses of the building, the City determined that the Mission would be a Place of Worship, which was a permitted use in that zone, and a Homeless Shelter, which was a conditional use. (Deposition Exhibit 2.)

Disputed Fact #11: The April 20, 1999, letter speaks for itself. The factual and legal infirmities of that letter are detailed in (*See* Omitted Facts ## 90, 93, 94, 99, 100, 102, *infra*; Legal Analysis, Part, VI A. 8, page107, *infra*.)

13. A permitted use is one that is allowed merely by filing for a permit and meeting applicable City codes. (Affidavit of Cheri Coffey, ¶ 3)

Disputed Fact #13: The Mission was not allowed to secure a permit for a church in the D-3 Zone for the Cohen Building when it was entitled to one. (*See* Omitted Facts # 101, *infra*;) A conditional use is determined by the Planning Commission after consideration of an application, staff report, and after a public hearing where the applicant can speak and the community can speak.

> A conditional use is a use which has potential adverse impacts upon the immediate neighborhood and the city as a whole. It requires a careful review of its location, design, configuration and special impact to determine the desirability of allowing it on a particular site. Whether it is appropriate in a particular location requires a weighing, in each case, of the public need and benefit against the local impact, taking into account the applicant's proposals for ameliorating any adverse impacts through special site planning, development techniques and contributions to the provision of public improvements, rights of way and services.

Any applicant who seeks a conditional use permit must appear before the affected neighborhood's community council. (Affidavit of Cheri Coffey, ¶ 4)

Disputed Fact #14: The City's Planning and Zoning Department ("PZD") and the City Attorney's office applied this to the Mission as a pre-condition to accepting a conditional use application. (See Omitted Facts, # 116, *infra.*) This was applied differently to the Mission than in certain cases to other churches and applicants. (See Omitted Facts, # 118, *infra.*)

14. Pursuant to City ordinances, the Mission was required to present its proposal for a conditional use permit to the local Community Council to obtain non-binding input and recommendations. (Id. and Deposition Exhibit 76.)

Disputed Fact #15: The PZD and the City Attorney's office applied this to the Mission as a pre-condition to accepting a conditional use application. (See Omitted Facts ## 5, 7, 116, 122, *infra.*) This was applied differently to the Mission than in certain cases to other churches and applicants. (See Omitted Facts, # 118, *infra.*)

16. All other applicants for a place of worship have been required to comply with this process. (City Document 327, Appendix Exhibit H.)

Disputed Fact #16: Zion's Lutheran Church, the Salvation Army, and Participating Churches with the Salt Lake Interfaith Hospitality Network ("Interfaith") were not required to meet these requirements for conditional use permits. (See Omitted Facts ## 88, 118, 132, *infra*.)

19. Places of worship are allowed in Salt Lake City as a matter of right in the following zones: Commercial CB, CC, CS, CSHBD, CG; Downtown D-1, D-2, D-3, D-4; Gateway GMU; and Special Purpose RP, BP, I, UI, MU. These zones comprise approximately 10.8% of the area of Salt Lake City (without including the City Creek area). (Affidavit of Cheri Coffey, ¶ 6.)

Disputed Fact #19: The City needs to clarify what was applicable in 1999 and at present, 2006, and the percentage of areas of the City covered at each time.

20. Places of Worship are also allowed as a conditional use in all residential zones, in the Neighborhood Commercial zone (CN) and in the Light Industrial Zone (M-1). (Affidavit of Cheri Coffey, ¶ 7.)

Disputed Fact #20: The City needs to clarify what was applicable in 1999 and at present, 2006 and approximately the percentage of the area of Salt Lake City that this area comprises at each time.

21. Under Salt Lake City ordinances, a homeless shelter is classified as a building or portion thereof in which sleeping accommodations are provided on an emergency basis for the temporarily homeless. (Deposition of Randy Taylor, 8:12-23; 34:23-24.3. Appendix Exhibit 5.)

Disputed Fact #21: This is the definition of "homeless shelter" in the City Code that existed in 1999 and presently exists. As applied, however, alternate definitions have been used by reason of treating conduct that could be classified as a homeless shelter as an "accessory use ... for religious worship." (See Omitted Facts # 1, *infra*.)

22. Homeless Shelters are allowed as a conditional use in the D-3 and the CG zoning districts. Salt Lake City has not prohibited the location of homeless shelters in the City. The City has several operating homeless shelters. (Affidavit of Cheri Coffey, ¶ 8.)

Disputed Fact #22: The City needs to clarify that the City's classification of homeless shelters as a conditional use was in effect in 1999 and remains the same in 2006. (See Omitted Facts ## 1, 2, 12, *infra.)* The City claimed in its answer to Interrogatory # 8 (of the set answered October 7, 2005) that it did not "keep track of homeless shelters" (Appendix Exhibit 4.) (The intent of the request was to include, in part, the listing of all current locations classified as a "homeless shelter.") The City's designated witnesses not only had no knowledge of the identification of a homeless shelter by administrative rule from 1995-2005 (Deposition of Cheri Coffey 38:12-16, Appendix Exhibit 4), but only one, the Road Home, was identified. (Deposition of Brent Wilde 51:23-52:9, Appendix Exhibit 3.) Notwithstanding the foregoing, Paragraph 10 of the Affidavit of Cheri Coffey refers to City regulation of "all homeless shelters." The Mission's Final Set of Discovery to the City defined three "homeless shelters" as being the three entities identified in the RDA Depot District Development Plan, e.g. Travelers Aid Society (now, The Road Home), St. Vincent de Paul Center, and Salvation Army Thrift Shop and Kitchen. (Appendix Exhibit 17.) The City's response indicated there had been thirty thousand

(30,000) calls to the police or appearances made by the police at these three "homeless shelters" in the City. (Appendix Exhibit 8, at 4.) If the City regulates these three and/or others, the City should be required to identify the same.

23. At one time, City policy discouraged the concentration of homeless shelters, substance abuse treatment centers and similar uses in the Downtown and Gateway area (the so called "moratorium"). However, the policy did not forbid such uses, provided that an applicant or the Mission applied for a conditional use permit. (Deposition Exhibits 2, 49, 88, and Deposition of Randy Taylor, page 37.)

Disputed Fact #23: As to homeless shelters, the City had such a policy in place at least as early as 1997 (see Affidavit of Matthew Hilton, March 16, 2006, ¶ ___, Appendix Exhibit 11.) and independent of the 1999 moratorium. On January 12, 1999, and again on February 10, 1999, the City adopted moratoria that prohibited the expansion of various types of treatment facilities as a principal or accessory use in any commercial downtown or Gateway district. (Deposition Exhibit 88; Appendix Exhibit 18; Appendix Exhibit 19.) Even though the moratoria did not address homeless shelters as a separate classification, it was understood that the purpose of the moratoria was to stop the growth of homeless shelters. (Deposition of Randy Taylor, ___:__, Appendix Exhibit 5; Deposition of Brent Wilde __:__, Appendix Exhibit 3.) On April 29, 1999, the Mission had filed litigation challenging the reasons for the moratoria and asserted the violation of its own constitutional rights and those of others.[2] Because of pending litigation, the real purpose of the moratoria was not disclosed by the staff of the PZD to those citizens they

[2] See Salt Lake City's Memorandum to Dismiss Second Amended Complaint, dated _____, Appendix Exhibit 20.

worked with. (Deposition Exhibit # ; Appendix Exhibit 20; Deposition of Randy Taylor ____: ___; Appendix Exhibit 5.) On June ___, 1999, the City Council adopted Resolution _____ which made the provisions of the moratoria part of the City Code. (Deposition Exhibit 88, Appendix Exhibit 18.)

Before and after the adoption of the moratoria as City Code, the Cohen property that the Mission desired to locate on was in the D-3 zone and included in the area to which the moratoria applied. (Deposition of Brent Wilde, 47:24 – 50:21, Appendix Exhibit 3.) Had the Mission been understood to be only a church (or "place of worship") by the PZD, the Mission would have qualified for a building permit as a permitted use. (Deposition of Brent Wilde, __-__, Appendix Exhibit 3; Deposition of Randy Taylor, __ -___, Appendix Exhibit 5; Affidavit of Cheri Coffey, Appendix Exhibit 10.)

Nonetheless, on April 20, 1999, Randy Taylor issued an unrequested "administrative interpretation" letter that found the Mission's use at the Cohen location constituted permitted uses of a "place of worship," a "charity dining hall" and "social service organization," and conditional uses of a "homeless shelter" and two of several types of "treatment facilit[ies]," which required licensure by the state. (Deposition Exhibit 2; -___, Appendix Exhibit 15. See definitions beyond Exhibit 90, #1 Omitted facts)

On April 19, 1999, the State Department of Human Services, Division of Licensing, notified the Mission that it was not subject to licensure. (Deposition Exhibit ; Appendix Exhibit 16.) On April 21, 1999, the Mission sent by facsimile a copy of the letter from the Division of Licensing to the PDZ and Mayor Corradini. (Affidavit of Philip Arena, ¶ 9,

Appendix Exhibit 9.) Notwithstanding the foregoing, on April 21, 1999, Brent Wilde, Deputy Planning Director of the PZD, debated with Philip Arena of the Mission and claimed that all of the uses identified in the April 20, 1999, letter would be applicable to the Mission at the Cohen Property. (Deposition of Philip Arena __:__, Appendix Exhibit 6; Affidavit of Philip Arena ¶ 20; Appendix Exhibit 9.)

In the April 20, 1999, administrative interpretation letter, city policy favoring the decentralization of services for the homeless was used as a basis to notify the Mission that PDZ staff would not be able to make a positive recommendation were the Mission to submit an application for a conditional use permit regarding the Cohen property. (Deposition Exhibit 2; Appendix Exhibit 15.) Because the Planning Commission "usually" follows the recommendation of the staff, (Deposition of Cheri Coffey ____, Appendix Exhibit 4), or does so eighty-five to ninety percent (85% - 90%) of the time, (Deposition of Randy Taylor 44:3-10, Appendix Exhibit 5) the "unwritten" but implemented City policy, announced in advance, of decentralization of services to the homeless would guarantee a negative recommendation by the staff regarding the proposed conditional use and would also result in a rejection of the proposal by the Planning Commission. See Omitted Facts ##104, 147, *infra*. The Mission's limited budget and other time constraints would not allow investment in an effort to secure a building permit for a building for which the City had volunteered such an openly hostile assessment. (Affidavit of Wayne Wilson ¶¶ 26, 28, 34, Appendix Exhibit 12.) Indeed, the unsolicited and unexplained offer to provide assistance to the Mission to relocate in the County (instead of

remain in the City), Deposition of Randy Taylor , Deposition Exhibit 5) made the Mission's effort to stay seem futile from the outset. (Appendix Exhibit 15)

24. Salt Lake City has regulated all homeless shelters, regardless of their ownership or affiliation. (Affidavit of Cheri Coffey, ¶ 10.)

Disputed Fact #24: Salt Lake City has not regulated the Participating Churches whose conduct also meets the stated definition of homeless shelters as it has been applied to the Mission. See Omitted Facts ## 26–29, 34-42, 47, *infra*. Furthermore, the City has failed to disclose the location of the homeless shelters. See Disputed Fact # , *supra*.

25. The regulation of homeless shelters is motivated by wholly secular concerns, not religious concerns. (Deposition Exhibits 49, 88.)

Disputed Fact #25: The fact that the City has used "accessory use of ... religious worship" to allow Participating Churches to circumvent both the community council pre-application involvement, the conditional use application process, and administrative regulation issues associated with providing shelter or other care for the homeless, involves more than "wholly secular concerns." See Disputed Facts #_____ *infra*; Omitted Facts ##26–28, 34, 35, 41-43, *infra*.

28. In general Places of Worship inherently involve large numbers of people congregating together with the attendant noise and traffic. Such a use has the potential to have more negative impacts on residential neighborhoods and fewer impacts in the zones where Places of Worship are permitted as a matter of right. Thus, in many areas Places of Worship are

a conditional use to allow the specific fact based determination of whether they are appropriate for that area, particularly residential areas. (Affidavit of Cheri Coffey, ¶ 9)

Disputed Fact #28: This City ordinance was not in place prior to April 12, 1995, when the Participating Churches with Interfaith were originally built. See Omitted Facts #2, *infra*. Interfaith was not formally operating until 1997. *See* Omitted Facts #36, *infra*. Building permits have been issued to _____ of seven participating Interfaith churches for remodeling since 1995. (Affidavit of Matthew Hilton ¶ , Appendix Exhibit 11.) Issuance of a permit means the property and uses were in conformance with the City Code. (Deposition of Brent Wilde, __:__, Appendix 3.) Without an administrative ruling or securing a conditional use permit, the untracked and unacknowledged Participating Churches with Interfaith have received *sub silento* the benefit of a new (and surely not customary as to that church's pre-1995 conduct and worship, as required by the City Code's definition of "accessory use") "accessory use ... for religious worship" that expands a "grandfathered" conditional use without requiring the detailed requirements and procedures to which the Mission has been subject.

29. Plaintiffs applied for and were heard regarding a conditional use of the Rosewood Terrace property where they wished to locate their Place of Worship. (Deposition Exhibits 48, 84, and Affidavit of Cheri Coffey, ¶ 14 and the attachments thereto.)

Disputed Fact #29: The Mission was heard but in a manner that deprived it of due process of law and other concerns outlined in its Motion for a temporary restraining order, including (1) use of the vote taken by the State Fair Park Community Council, (2) comparison of police calls to other churches with that of the Mission, (3) use of present internet speech site to

define future conduct, contrary to the application (see Motion for a Temporary Restraining Order, October 6, 1999, page 2) and (4) requiring the appearance before the Commission when a secular boarding house would not have been required to appear. (Deposition Exhibit # 47; Appendix # 20; Deposition of Randy Taylor , Appendix 5; Affidavit of Matthew Hilton ¶ __, Appendix Exhibit 11.)

The discretionary failure to notify the Mission that the cancellation of the Fairpark Community Council meeting did not prevent the filing of and beginning the application process (Deposition Exhibit 51; Appendix Exhibit 21; Deposition of Cheri Coffey __:__, Appendix Exhibit 4) also damaged the Mission to the degree that the earlier initiation of the application process would have allowed both the PZD to take additional time to evaluate evidence it had received and allow time for the Mission to respond to and resolve with the City the pending legal and factual disputes regarding both the nature of the content of the staff report to the Commission as well as even the need to appear before the Commission. (Affidavit of Wayne Wilson ¶ 35, Appendix Exhibit 12.)

30. On October 7, 1999, the City Planning Commission denied the Mission's application for a conditional use permit to relocate its facility to the Rosewood Terrace Building. Plaintiffs were not granted a conditional use at Rosewood Terrace because of the impact on the neighborhood and the inability to mitigate that impact. The Planning Commission determined that the neighborhood was too fragile to support the activities proposed by the Mission. The Commission determined that there were likely to be heavy impacts on the neighborhood from this proposed use. The Mission plan was to have 25-30 residents on a semi-

permanent basis in a boarding house at the site as well as to bus in up to 200 of the "homeless-poor" at various times during the day for a variety of counseling, rehabilitation services, religious devotionals and chapel services. While it was felt that the Mission could control what went on in its building, it was determined that it likely would not be able to control what went on outside. This was based on objective evidence. In its prior location the Mission had a history of at least 58 police calls per year and as high as 122 calls per year. It was stated by plaintiffs that the Mission would be performing similar activities in the Rosewood Terrace location so it was rationally determined that the Mission would bring with it this higher need for police intervention. This was of particular concern to the neighborhood surrounding Rosewood Terrace because they were trying to recover from activities which had required police in the past. The neighborhood included the Guadalupe neighborhood and the Fairpark community. Both communities were working on reviving from previous times of drug houses and high crime. The goal was to establish safe, stable and cohesive neighborhoods for which progress was being made. It was determined that the impact of the Mission would reverse that progress. Thus, the Planning Commission concluded that the need for the conditional use did not outweigh the potential impact on the community and it would not be possible to mitigate the detrimental impact that the Mission would impose upon that fragile neighborhood. (Salt Lake City Planning Commission Staff Report attached to the Affidavit of Cheri Coffey, and Deposition Exhibits 79 & 84.)

Disputed Fact #30: The Mission does not dispute that the Planning Commission

denied the request. The minutes do not reflect the comments by counsel for the Mission objecting to being required to be there in the first place. (Affidavit of Matthew Hilton ¶ ___; Appendix Exhibit 11.) The Mission does dispute that the Planning Commission made findings of fact as required by City ordinance (Appendix Exhibit 23) or adopted the findings of the staff report (Deposition Exhibit 84, Appendix Exhibit 22). Based on the foregoing, while the City may point to what could have been "substantial evidence" in the record, the Commission failed to indicate it relied on the same.

31. In September 1999, the Community Council filed an appeal challenging the City's administrative classification of the Mission's proposed activities. (Deposition Exhibit 55.)

Disputed Fact #31: On October 4, 1999, the PZD assisted the Chairman of the Fairpark Community Council to file an appeal challenging the administrative classification of the Mission as a "place of worship." (See Deposition Exhibit 55; Appendix Exhibit 25; Omitted Facts ## , *infra*.)

32. In connection with that appeal, the Mission received notice of, had the opportunity and, in fact, did present evidence at the Board of Adjustment hearing. (Deposition Exhibits 81 & 42.)

Disputed Fact #32: As any other citizen, the Plaintiffs had the right to appear and present evidence for the Board's consideration. The Board of Adjustments also received irrelevant, negative information regarding the Mission at its Central Christian Church location,

evidence that was promoted by City employees. See Omitted Fact ##134-135, *infra*. Providing information is not outcome determinative.

The notice sent to the Mission regarding the Board of Adjustments hearing included notice of the hearing, but not the staff report prepared by the City's staff for the Board of Adjustments. (Deposition of Brent Wilde, 80:5-22, Appendix Exhibit 3.) The staff report by Merrill Nelson framed the issues for the defense of the appeal. (Deposition Exhibit ___; Appendix Exhibit 26) The framing of the issues raised with the Board of Adjustments after an appeal has been made that places the Zoning Administrator in the position of defending that position may or may not include consultation with the original entity or person who received the administrative decision. (Deposition of Brent Wilde, 23:4-23, Appendix Exhibit 3.) The Mission was not consulted by the PZD regarding the framing of the issues on the appeal. (Affidavit of Wayne Wilson ¶¶ 43-45, Appendix Exhibit 12).

How the City framed the issues for resolution by the Board of Adjustments could well have become outcome determinative of the result of the appeal. For example, the Board of Adjustments did not address Randy Taylor's classification of the Mission's proposed "missionary training program" use as a "boarding house." However, the Board did find that the previous non-conforming use of the property continued as a non-conforming use.

Furthermore, if the Mission was really not a church as the Fairpark Community Council claimed, then the portion of the application relevant to the non-conforming use would have been considered to be secular. If secular, a continuation of a non-conforming use

could be applied and a building permit issued to the Mission without a conditional use permit hearing.

In addition, the Board of Adjustments found the Mission to be a church or "place of worship." Had the City's practices regarding "accessory use" and the Participating Churches with Interfaith been disclosed to the Board by the City staff and/or counsel, an obvious exception in practice to what by ordinance was defined as "a homeless shelter" would have been evident. (Affidavit of Wayne Wilson ¶ 44, Appendix Exhibit 12). Considering the narrow limitations Randy Taylor had placed on the Church's protecting the "homeless" only overnight when in "life threatening" situations, and limiting the Mission's advertising of the new location, the Board of Adjustments could well have determined the proposed "use" similarly constituted an "accessory use" of a church rather than a "homeless shelter." See Omitted Facts ## , *infra.*

In addition, the City did not notify the Mission of (1) the appellant's October 27, 1999, request to postpone the November 15, 1999, hearing (City 434; Appendix Exhibit 27), nor (2) the option to appeal the Board of Adjustments ruling within thirty (30) days after the decision was made (Affidavit of Wayne Wilson, ¶ 43, Appendix Exhibit 12; Affidavit of Matthew Hilton ¶ , Appendix Exhibit 11; Deposition Exhibit # ___) In addition, counsel for the Mission received a copy of the minutes of the November 15, 1999, meeting after the time for appeal had run. (Affidavit of Matthew Hilton ¶ , Appendix Exhibit 11.)

As to why the Mission was not a party to the appeal, see Legal Analysis, Part III A2, in*fra.*

33. In November 1999, the Board of Adjustment held that the Mission's proposed activities constituted a place of worship and a homeless shelter. (Deposition Exhibit 42.)

Disputed Fact #33: The Mission disputes that it was a party to the appeal or bound by the ruling. See Legal Analysis Part III A 2, *infra.* Because the City failed to follow its own mandatory ordinances regarding the issuance of an administrative interpretation, the letter issued September 14, 1999, was void as a denial of due process, leaving the Board without jurisdiction to hear the appeal.

34. Plaintiffs did not timely appeal the Planning Commission's denial of the conditional use for the Rosewood Terrace location although they could have by appealing to the Land Use Appeals Board. After that the matter could have been appealed to the courts. (Affidavit of Cheri Coffey, ¶ 11.)

Disputed Fact #34: The Mission admits it did not appeal to the Land Use Appeals Board. To have done so would have been futile for reasons cited in Legal Analysis, part III A 2 b, *infra.* Exhaustion of remedies is not required by 42 U.S.C. § 1983. The Mission does not concede that it did not timely raise issues regarding the staff report of the Commission in state district court under 42 U.S.C. § 1983 before the Commission hearing on October 7, 1999.

35. The Mission did not file a timely appeal of the decision of the Planning Commission or the Board of Adjustment. (Affidavit of Cheri Coffey, ¶ 11)

Disputed Fact #35: The Mission admits it did not appeal the decision of the Planning Commission to the Land Use Appeals Board. This is not relevant under 42 U.S.C.

§ 1983. The Mission does not concede that it did not timely raise issues regarding the same in state district court under 42 U.S.C. § 1983.

36. Plaintiffs had notice of and could have used the conditional use process for other locations. Although the Mission made several inquiries to the City, it only filed one application with the City, seeking to relocate its facilities to the Rosewood Terrace Building located at 158 North 600 West. (Deposition Exhibits 63, 64, Affidavit of Cheri Coffey, ¶ 15.)

Disputed Fact #36: Plaintiffs contest the adequacy of the notice they received regarding the conditional use process, *see* Omitted Facts # _____, *infra*; Legal Analysis, Part __, pages ___ - ___, *infra*, as well as its application to the Mission in an unlawful manner, *see* Omitted Facts # _____, *infra*; Legal Analysis, Part __, pages ___ - ___, *infra*.

38. Plaintiffs have not been flagged in Salt Lake City computers as being targeted for extra scrutiny, it is not possible to flag persons or associations, only properties can be flagged. (Deposition of Randy Taylor, 18:18-19:2; Deposition of Roger Evans, 7:13-8:1, Appendix Exhibits D and E.)

Disputed Fact #38: City staff gave instructions to flag the computer. (See Deposition Exhibit 22; Appendix Exhibit) While witnesses may not recall the breadth of the "flag" written relative to the Mission's inquiry about the Andrews Avenue property, arising after October 26, 1998, staff at the permit counter knew on June 25, 1999, that the Mission could not obtain a permit on the Cohen property without clearance from Randy Taylor, Zoning Administrator. (See Deposition Exhibit _____; Deposition of Randy Taylor 18:15-20:4, Appendix Exhibit 5.)

39. Plaintiffs' proposal for the Rosewood Terrace building was, in part, a Place of Worship for people who did not live in that neighborhood, plaintiffs stated that they would be busing in most of the users of the building. (Deposition Exhibit 78.)

Disputed Fact #39: The City ordinances do not restrict members of a congregation from only being within a certain radius of the church. Plaintiffs do not know what is meant by a "user" of the building but do not dispute homeless persons would be bused in for meals and/or religious counseling.

40. Ultimately, Plaintiffs relocated their Place of Worship, and carried out their proposed activities in conformity with their religious beliefs, in the Central Christian Church located at 370 East 300 South in Salt Lake City. (Deposition of Wayne Wilson, page 267, Appendix Exhibit 1.)

Disputed Fact #40: The Mission was unable to carry on its own worship services at the new location. (Deposition of Wayne Wilson, 170:20-25; 175:5, 6, Appendix Exhibit 1). Notably, however, the Mission, staff, and volunteers were able to provide emergency overnight temporary housing for the homeless at the Central Christian Church at this site. (See Omitted Fact # _____; Affidavit of Wayne Wilson ¶ 48, Appendix Exhibit 12; Affidavit of Phil Arena ¶ , Appendix Exhibit 9.)

41. The zoning ordinances and their regulation of temporary housing for the homeless have a secular purpose, to limit the impact on neighborhoods to a reasonable level. (Affidavit of Cheri Coffey, ¶ 12.)

Disputed Fact #41: The Plaintiffs challenge this statement in that (1) the City has failed to keep track of (much less regulate) the Participating Churches with Interfaith (Deposition Exhibit, Appendix Exhibit ____ and (2) whether or not allowing as applied use through the City's definition of "accessory use ... of religious worship" qualifies as a secular purpose. See Legal Analysis, part _____, *infra.*

42. Several Salt Lake area churches participate in the Interfaith Hospitality Network. (Deposition Exhibit 32.)

Disputed Fact #42: For a listing of those that host families, see Omitted Fact # ___ *infra.* Other churches in Salt Lake City also participate. (See _____; Appendix Exhibit 28.)

43. Those Interfaith Hospitality churches operate within certain guidelines. Pursuant to those guidelines, each church may house a maximum of 4-6 homeless families (a maximum of 16-20 persons) for one week, four or five times a year on a rotating schedule. (Id.)

Disputed Fact #43: The Mission acknowledges that this is the standard recited by Interfaith as existing in 2003. It is not obvious that the same standard has always existed, e.g. six (6) churches rotating thirty-six (36) families during 1997 would have required more than four or five times a year. (Deposition Exhibit 32; Appendix Exhibit 29.) The Mission also observes that there are no inspection enforcement records from the City/County Health Department or the City that shows any inspection or confirmation of the stated levels of temporary service were not exceeded or that the safety of the churches for overnight guests is maintained. (Affidavit of Matthew Hilton ¶ __ , Appendix Exhibit 11.)

44. The City is willing to allow the Mission or any other church to operate according to these same Interfaith Hospitality guidelines. (City Response to Request for Admission No. 9, Appendix Exhibit 6.)

Disputed Fact #44: The City's belated proffer of pseudo-equality is objectionable for several reasons.

First, The Mission believes that being required to restrict and redefine its religious mission to fit within secular categories of "use" that do not reflect its biblically based Mission is an affront to God. (Deposition of Wayne Wilson, 325: Appendix Exhibit 1)

Second, the City is willing to offer a standard to the Mission if the Mission will apply for it with the City when no Participating Church with Interfaith either (1) has been required to individually apply for the same, or (2) be subject to City regulation regarding the same. (Appendix Exhibit 8, Answers to Interrogatories , at .)

Third, while perhaps based on "logical" assumptions, (Deposition of Brent Wilde _____, Appendix Exhibit 3.) the City's *ad hoc* determinations of what constitutes acceptable amounts of the "religious worship" of a church by offering to allow the Mission to conform to the Interfaith "standard" ignores key aspects of the perspective as to their missions as a function of "religious worship" that address issues beyond numbers of people assisted and duration of stay.

Interfaith and its Participating Churches serving the homeless "share our faith by action, not by words, bringing hope to those without." (Deposition Exhibit 32, Appendix Exhibit 1) The Mission's religious convictions also illustrate that "faith without works is dead," (James 2:17), and offers a different perspective on what it means to "feed Jesus [and] clothe Jesus,"

(Deposition of Wayne Wilson, 292:12-15; 294:3-11; 303:23-225; 304:8-13, Appendix Exhibit 1), believing "[e]ven as ye have done it unto the least of these my brethren, ye have done it unto me." (See Matthew 25: 40.)[3]

The Interfaith guidelines operate not only in terms of numbers of homeless sheltered, and the duration of the stay, but also as to who is served. Interfaith only serves single or two-parent families with children. The Mission serves families and individuals. Interfaith will not serve those with addictions; the Mission will. Interfaith implicitly is understood to work only with residents of the City and Salt Lake Valley. (Deposition Exhibit 32; Appendix Exhibit). The Mission serves local residents and those who are transient; taking the biblical injunction "least of these, my brethren" quite literally. The Mission will not turn away a homeless person in a life-threatening position (twenty degrees (20°) or below outside) when there are no other available options in the City; Interfaith has no provision for such assistance.

In addition, the Mission also has strongly resisted efforts to use government funding for social service providers. (Affidavit of Wayne Wilson ¶ 54, Appendix Exhibit 12.) Pastor Wilson is of the understanding that Interfaith accepts government funding to assist it in fulfilling its commendable efforts with the homeless. To imply or require affiliation with an entity that serves God and the homeless with Caesar rather than separating the two is not part of the Christian mission of the Mission. (Affidavit of Wayne Wilson ¶ 54, Appendix Exhibit 12.)

[3] Verified Complaint, September 8, 1999, ¶ 8.

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The Mission does not facially object to operating within limits declared applicable to certain uses and properties by fire, health, and related authorities as well as objective, definitive criteria articulated in City zoning regulations that are equally applied. (Deposition of Wayne Wilson, 482:21-24; Appendix Exhibit 1.)

45. The Mission has acknowledged that it does not intend to operate its activities within those Interfaith Hospitality guidelines. (Deposition of Wayne Wilson, pp. 390-95; Appendix Exhibit .)

Disputed Fact #45: The Interfaith guidelines regulate far more than objective criteria as to the number of overnight homeless sheltered, the duration of the assistance, and who are "acceptable" homeless. See and incorporate response as Disputed Fact # 43, *supra.*

47. Virtually all of the events described in the Mission's Second Amended Complaint occurred before September 2000. (Second Amended Complaint, ¶¶ 9-88.)

Disputed Fact #47: Many of the challenges confronting the Mission have been ongoing. See Mission's Answers to Interrogatories, Deposition Exhibit _____, Appendix Exhibit __. The challenges faced by the Mission during Mayor Corradini's administration have resurfaced and remain unresolved during Mayor Rocky Anderson's administration after the Mission left the Central Christian Church in June 30, 2002, through the present.

Contrary to the City's claims in Interrogatory responses, meetings and interchanges with City staff including Mayor Anderson occurred on May 3, 2001, June 23, 2003, June 21, 2004, and July 19, 2004. Meetings with counsel and/or ranking staff of the PZD attended as

noted in 2003 and 2004 as well as occurred on September 8, 2003. (Affidavit of Wayne Wilson ¶¶ 56, 69, Appendix Exhibit 12.)

48. Plaintiffs have designated accountant John Ravarino as their spokesman on damages. (Deposition of John Ravarino, 209:16-210:8, Appendix Exhibit 2.)

Disputed Fact #48: John Ravarino was designated as an expert witness for the Plaintiffs.[4] In the Mission's response to discovery from the RDA, dated April 8, 2005, the testimony of John Ravarino was explained as "will testify regarding his knowledge of the Mission, its relocation, and impact of the relocation on the Mission." (Appendix Exhibit at 2.) In response to the City's discovery request, his testimony was listed as "the same subject matter as Wayne Wilson and as outlined in the RDA discovery." (Appendix Exhibit at 4.) Wayne Wilson was designated as testifying regarding "his knowledge of the Mission and interaction with the City, community councils, efforts to relocate after 1999, its impact on the Mission, and factual claims not admitted by the City or RDA in the pleadings." (Appendix Exhibit at 3.) Nowhere does it state that John Ravarino is the sole witness for damages for the Mission.

Furthermore, the terminology "special damages" was defined by counsel for the City as "hard economic damages." (Deposition of John Ravarino 210:24-25, Appendix Exhibit 2.) Damages for constitutional violations can be nominal or compensatory, the latter being hard to measure. (See Legal Analysis, part ___, *infra.*) When asked whether he was designated as the damage expert or the person with the relevant information on hard economic damages, accountant John Ravarino replied that he had not been designated as such, (Deposition of John

[4] See Plaintiffs' Designation of Expert Witness,

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Ravarino, 209:19-21, Appendix Exhibit 2.) and indicated he was not aware of damages since the end of 2002. (*Id.* at 211:1-5.) Specific reference was made to non-economic damages claimed in interrogatories as part of the record as well and counsel for the City indicated he understood. (*Id.* at 212:11-21.)

49. Plaintiffs have submitted special damage claims for the time period of October 1999 when they moved out of their long time location through 2001 when they were relocated at the Central Christian Church, 370 East 300 South, Salt Lake City, Utah. (Deposition Exhibit 19.)

Disputed Fact #49: These damages were submitted for relocation compensation under the federal Uniform Relocation Assistance Act and are not claimed under that Act as against the City.

Plaintiffs have also submitted through response to Interrogatories and depositions claims for the following damages:

Preparation of preparing plans and loss of deposits	$ 20,000.00
Loss of congregation	$ 50,000.00
Loss of sanctuary	$ 50,000.00
Wayne Wilson personally	$ 10,000.00

(Deposition Exhibit # ___; Appendix Exhibit .)

50. Plaintiffs' claim for special damages consists of expenses involved in moving, abandonment of improvements to their prior location, loss of property in the move, lost contributions and improvements to its new building. (Id.)

Disputed Fact #50: See Response to Disputed Fact # 48.

56. Ravarino did testify, somewhat inexactly, that the expense figures for the time period for which damages were being claimed did not include some items appearing to total $45,456. (Ravarino Deposition, page 198 line 24-page 203 line 12, and Exhibit 19.)

Disputed Fact #56. After explaining whether an entry is listed as an expense or on the balance sheet, Mr. Ravarino went on to explain line-by-line which items were not included in the 1999-2000 expense total. (Deposition of John Ravarino, 199:2–23, Appendix Exhibit 2.) The following items are capitalized, and not expensed (Deposition of John Ravarino, 200:19-23; 201: 12; 202:14-15; 204:18-20; Appendix Exhibit 2.):

RDA 00794 – Direct Costs for Disconnecting, Dismantling, Removals, Reassembling, Reinstalling Relocated Personal Property	$ 5,017
RDA 00798 – Fair Market Value (Depreciated Value) of Leasehold Improvements left behind	$ 4,318
RDA 00802 – Actual Direct Loss of Tangible Property	$ 1,200
RDA 00804 – Purchase of Substitute Property	$17,908
	$ 3,418
TOTAL	$31,861

B. Omitted Facts

Documents referred to and relied upon are either already in the court files or are attached as Exhibits to the Appendix filed with this Memorandum in Opposition. By this reference, they are included in this Memorandum where referenced.

Ordinances

1. From April 12, 1995, through the present, the City has had ordinances providing mandatory definitions to be used in the City ordinances. Three definitions that will be focused on in this memorandum include the following:

> "Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.
>
> "Accessory use" means a use that:
>
> (A) Is subordinate in area, extent and purpose to, and serves a principal use;
>
> (B) Is customarily found as an incident to such principal use;
>
> (C) Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;
>
> (D) Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and
>
> (E) Is under the same ownership or control as the principal use.
>
> "Homeless shelter" means a building or portion thereof in which sleeping accommodations are provided on an emergency basis for the temporarily homeless.

(SLC City Code §§ 21A.62.040) (Deposition Exhibit # 90; Appendix Exhibit # ___.)

2. On April 12, 1995, a comprehensive set of zoning revisions were adopted by Salt Lake City. Churches were required to obtain conditional use permits in a residential zone. Homeless shelters were continued to be defined and limited to the D-3 and CG zones. (See Deposition of Brent Wilde. Appendix Exhibit 3.)

3. From at least April 12, 1995 through the present, the City mandatory requirements necessary to invoke an administrative interpretation by the Zoning Administrator. (See Deposition Exhibit 94; Appendix Exhibit # .)

4 From at least April 12, 1995, the city has had mandatory ordinances providing requirements that are applicable to public procedures. (See Deposition Exhibit 54; Appendix Exhibit # .)

5. In 1999, the City had mandatory ordinances regarding conditional use applications and the processing of the same. (See Appendix Exhibit #).

6. The City ordinances applicable during 2003-2006 regarding requirements for conditional use applications and the processing of the same have changed from those in 1999. (See Deposition Exhibit 93; Appendix Exhibit 5).

7. The City ordinances defining the Community Council notice and reporting process have been in place from April 12, 1995, through the present. (Appendix Exhibit 6).

8. In 1999 the City had mandatory ordinances governing the City's Board of Adjustments. (Appendix Exhibit 7).

9. In 1999, the City had mandatory ordinances governing the Land Use Appeals Board. (Appendix Exhibit 8).

10. The applicable statutes and ordinances from 2003-2006 governing the City's Board of Adjustments and district court review of the same on appeal are attached hereto. (Appendix Exhibit 9).

11. From at least April 12, 1995, the City has had in City ordinances, a mandatory requirement that homeless shelters constituted conditional uses in the CG and D-3 zones. The Mission was notified of the same by City Deputy Attorney Lynn Pace on August ____, 1997. (Appendix Exhibit 8).

12. The applicable mandatory definitions from the Salt Lake County Code define as follows the words "Church" and "accessory use":

19.04.120 Church.

> "Church" means a building, together with its accessory buildings and uses, where persons regularly assemble for religious *worship*, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public *worship*. ((Part) of Ord. passed 8/7/80: prior code § 22-1-6 (part))

19.04.550 Use, accessory.

> "Accessory use" means a subordinate use customarily incidental to and located upon the same lot occupied by a main use. (Prior code § 22-1-6(68))

There is no definition for a homeless shelter. (Appendix Exhibit ___)

13. The applicable mandatory definitions from the Brigham City Code define as follows the words "Accessory Use or Building," "Church," "Homeless Shelter," and "Transitional Housing Authority":

> Accessory Use or Building. A use or building on the same lot with, and of a nature customarily incidental and subordinate to, the principle use or building.
>
> "Church" A building, together with its accessory buildings and uses, maintained and controlled by a dully-recognized religious organization where persons regularly assemble for worship.
>
> "Homeless Shelter" Charitable lodging or sleeping rooms provided on a daily or other temporary basis to persons lacking other safe, sanitary or affordable shelter. May also include a kitchen and cafeteria.
>
> "Transitional Housing Facility" A facility owned, operated or contracted by a governmental entity or a charitable, nonprofit organization which provides free temporary housing to homeless persons for at least thirty (30) days while they obtain work, job skills, or otherwise take steps to stabilize their circumstances. A transitional housing facility does not include:
>
> A. A homeless shelter;
> B. A dwelling unit provided to a family for its exclusive use as part of a transitional housing program for more than thirty (30) days; or
> C. A residential facility for persons with a disability.

(Affidavit of Matthew Hilton ¶ _____Appendix Exhibit 11.)

Mission

14. On April 16, 1986, the Spectacular Ministries of the Lord's Servants, filed Articles of Incorporation with the State of Utah, as a non-profit religious organization.

15. On July 26, 1988, the Utah State Tax Commission granted exemption from franchise tax to the Mission. (Affidavit of Wayne Wilson ¶ 3, Appendix Exhibit 12.)

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16. Upon inquiry, the Internal Revenue Service notified the Mission that it is their practice to not require churches to apply for tax-exempt status because it is automatically granted. (Deposition of Wayne Wilson ____; Appendix Exhibit 1; Affidavit of Wayne Wilson ¶ Appendix Exhibit 12.)

17. On May 23, 1997, the Spectacular Ministries of the Lord's Servants filed a dba with the State of Utah, using 'Salt Lake City Mission' as its name. (Deposition of Wayne Wilson, 8:20-9:4, Appendix Exhibit 1; Affidavit of Wayne Wilson ¶ 17, Appendix Exhibit 12.)

18. On July 18, 1997, the Utah State Tax Commission granted the Mission a sales tax exemption number because it qualified as a religious or charitable institution. (558 MIS) (Affidavit of Wayne Wilson ¶ 18, Appendix Exhibit 12.)

19. On August 12, 1997, the United States Post Office granted the Mission postal privileges as a non-profit organization. (561 MIS) (Affidavit of Wayne Wilson ¶ 19, Appendix Exhibit 12.)

20. The religious ministries of the Mission have been able to provide the following:

Category	1999	2000	2001	2002
Converts to Christ	245	300	300	500
Long-Term Recovery	10	15	12	20
Pantry food distributed to needy families	200	250	300	700
Goods provided for needy families	1500 people, 20,000 pieces	1500 people, 20,000 pieces	1700 people, 25,000 pieces	5,000 people, 40,000 pieces
Holiday and other meals provided.	250 volunteers; Thanksgiving dinners combined	300 volunteers; Thanksgiving dinners combined	300 volunteers; Thanksgiving dinners combined	500 volunteers; Thanksgiving dinners combined

	3,000 Christmas dinners combined 3,000 Wrapped presents for various families 900	3,000; Christmas dinners combined 3,000; Wrapped presents for various families 900;	3,100; Christmas dinners combined 3,000; Wrapped presents for various families 1000;	6,000; Christmas dinners combined 5,000; Wrapped presents for various families 1,500;
Bible studies and other group sessions	500	600	600	650
Daily meals served	600 meals a day.	600 meals a day.	600 meals a day.	1500 meals a day
Shelter Provided	Yes	Yes	Yes	Yes/No

Category	2003	2004	2005	2006 (Projected)
Converts to Christ	200	250	300	500
Long-Term Recovery	12	15	20	20
Pantry food distributed to needy families	100	50	50	500
Goods provided for needy people	500 people; 8,000 pieces	200 people; 4,000 pieces	200 people; 4,000 pieces	500 people; 5,000 pieces
Holiday and other meals provided.	400 volunteers; Thanksgiving meals combined 2,500; Christmas dinners combined 2,000; Wrapped presents for various families 1,000;	500 volunteers; Thanksgiving dinners combined 4,000; Christmas dinners combined 3,000; Wrapped presents for various families 1,200;	500 volunteers; Thanksgiving dinners combined 4,700; Christmas dinners combined 3,000; Wrapped presents for various families 1,500;	500 volunteers; Thanksgiving dinners combined 4,700; Christmas dinners combined 4,800; Wrapped presents for various families 1,700;
Bible studies and other group sessions	400	400	400	1,000
Daily meals served	100	100	100	100
Shelter Provided	No	No	No	No

(Affidavit of Philip Arena ¶ 21, Appendix Exhibit 9.)

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Salt Lake City

21. Defendant Salt Lake City is a municipality organized under the laws of the State of Utah. (See Plaintiffs' Third Request for Judicial Notice ____, March 20, 2006.)

22. Deedee Corradini was mayor of Salt Lake City from January 1992 to January 2000. (See Plaintiffs' Third Request for Judicial Notice ____, March 20, 2006.)

23. Current Mayor Rocky Anderson has been mayor of Salt Lake City from January 2000, through the present. (See Plaintiffs' Third Request for Judicial Notice ____, March 20, 2006.)

Interfaith Participating Churches

24. "In 1994 a team of 12 concerned advocates for homeless families began meeting monthly to see if a national organization's program was possible for this valley, National IHN [Interfaith Hospitality Network] Founder, Karen Olsen came to Utah to meet with us. Providing a safe, temporary home to those without, was very important to us. We received National IHN information in regards to working with city and county officials to temporarily house homeless families." (Deposition Exhibit 32) (Appendix Exhibit # .)

25. On or about March 23, 1995, Salt Lake County responded to Our Savior's Lutheran Church regarding providing IHN temporary assistance to homeless families as an "accessory use" under the county ordinances. The Salt Lake County Zoning Department responded as follows:

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> The proposal is considered to be within the range of "accessory uses." If the activity extends beyond the church boundary to the extent as to cause complaints or interferes with neighborhood lifestyles, the church activity would be reviewed on a case by case basis to resolve problems. Care should be taken to assure that each building is approved for life-safety issues with the Fire Department and the building code officials.

(Deposition Exhibit ___: Appendix Exhibit # . 214 MIS)

26. On April 27, 1995, Keith McDonald (a County inspector) established rules for Our Savior's Lutheran Church to provide IHN services for the homeless. (223 MIS) (Appendix Exhibit # .)

27. On May 8, 1995, Ted Black (of the County Fire Department) inspected Our Savior's Lutheran Church for providing IHN services for the homeless. (224-225 MIS) (Appendix Exhibit # .)

28. On September 19, 1995, Salt Lake Interfaith Hospitality Network ("Interfaith") was established as a non-profit corporation by the State of Utah. The Interfaith Mission statement is as follows: "Salt Lake Interfaith Hospitality Network is a non-profit organization dedicated to supporting families during transitional times in order to ease the individual family and community concerns and challenges of homelessness." (Deposition Exhibit 32; Appendix Exhibit .) "[Interfaith] serves families with children. This can be single or two parent families." (*Id.*)

29. During 1995, Interfaith obtained IRS recognition of its 501(c) (3) tax exempt status. (*Id.*)

30. During Mayor Corradini's administration, Roger Evans, head of the Enforcement Division of the Planning and Zoning Department ("the PZD"), investigated the practices of Interfaith in Salt Lake County and IHN in Clark County, Nevada. (Deposition of Roger Evans, 13:6-14:14; Appendix Exhibit 7.)

31. On or about December 26, 1996, Mayor Deedee Corradini "pledged support of the interfaith network churches." (Answer of Salt Lake City to Plaintiffs' Second Amended Complaint, ¶ 24 at 4.)

32. Interfaith came to the PZD to obtain approval for a Participating Church on the east side of Salt Lake City. (Deposition of Brent Wilde, 11:22-13:1; Appendix Exhibit 3.)

33. Arrangements were made through the City Attorney, the Planning Director, and Head of the Enforcement Division to allow churches in Salt Lake City to participate in the Interfaith network of churches and provide overnight services to the homeless as an "accessory use" of the participating churches. "There was a determination about where would the 'accessory use' – what would be a logical 'accessory use' threshold for that type of an 'accessory or incidental use' of a church." (Deposition of Brent Wilde, 20:21-25; Appendix Exhibit 3.) The participating churches were not classified as "homeless shelters" restricted to conditional uses in the D-3 and CG zones. (Deposition of Roger Evans, 15:14-18:18, Appendix Exhibit 7; Deposition of Brent Wilde, 10:20–13:1, and 13:12–14: 23, Appendix Exhibit 3; Deposition of Cheri Coffey, 37:20-38:7, Appendix Exhibit 4; Deposition of Wayne Mills, 15:16-23, Appendix Exhibit 8.)

34. There were discussions in staff meetings of the PZD that focused on the classification of those Participating Churches as "accessory uses" the overnight services provided by participating churches with Interfaith rather than homeless shelters. The practice and policy apparently were not written down. (See Deposition of Brent Wilde, 20:19-21:6, Appendix Exhibit 3; Deposition of Cheri Coffey, 34:24-35:6, Appendix Exhibit 4.) It was unknown how or to what extent this definition of "accessory use" was conveyed to others in the City.

35. On January 1, 1997, Interfaith began providing overnight services to the homeless with six hosting churches. That year, thirty-six (36) families were assisted. See Deposition Exhibit #31: (Appendix Exhibit # .).

36. September 29, 1998, Mayor Corradini wrote Interfaith regarding service providers for the homeless located in the same area as the Mission. She wished Vickie Newmann and the Interfaith Hospitality Network "continued success," observing the "service you provide is invaluable in assisting homeless families regain stability and return as productive members of *our community.*" (See Deposition Exhibit #__: Appendix Exhibit # .)

37. At least as early as 1998, the City was aware of the practices of the Participating Churches as outlined in City documents 252 and 253 (See Deposition Exhibit #__: Appendix Exhibit # .) (SLC Response to Plaintiffs' Final Set of Written Discovery, Request for Admission #7, page 3, Appendix Exhibit __)

38. At least eight churches within City limits were identified as participating with Interfaith: St. Paul's Episcopal Church, First United Methodist Church, First Christian Reformed

Church, First Baptist, Saint Catherine's of Siena Newman Center, Wasatch Hills Seventh-Day Adventist Church, Wasatch Presbyterian, and Zion Evangelical Lutheran Church, ("Participating Churches") *Id.*

39. The Participating Churches were in existence at their present locations prior to 1995. *Id.*

40. None of the Participating Churches are located in the D-3 or CG zones where homeless shelters are allowed as a conditional use. (Deposition of Brent Wilde, 9:17-10:13, Appendix Exhibit 3.)

41. The Participating Churches were not individually evaluated by the City regarding their housing of homeless people, nor was an administrative opinion issued regarding the practices of Participating Churches with Interfaith to house homeless people. (Deposition of Randy Taylor, 36:24-37:2, Appendix Exhibit 5.)

42. No City documentation was provided regarding an administrative interpretation regarding any Participating Church's worship as reflected in their involvement with Interfaith as an accessory use. (Affidavit of Matthew Hilton, ¶, Appendix Exhibit 11.)

43. On either March 12, 1999, or March 15, 1999, Vickie Neumann, Executive Director of Interfaith, and Phil Arena of the Mission met with Randy Taylor, Zoning Administrator of the PZD. (See Deposition Exhibit 92, Appendix Exhibit __.)

44. No City documentation was provided that demonstrated any submission to the City of information regarding the organization or governance of the Participating Churches. (Affidavit of Matthew Hilton, ¶__, Appendix Exhibit 11.)

45. Notice of an administrative interpretation regarding a Participating Church's involvement with Interfaith as an accessory use would have been sent to the respective community council where the Church was located. (Appendix Exhibit __.)

46. The City "does not track or maintain separate files for accessory uses for places of worship." (City's Response to Request for Documents, #5, October 7, 2005, at page 10.) (Appendix Exhibit __) "The City does not know how many may exist or where they may be located." (City's Response to First Set of Interrogatories, Interrogatory #6, page 4, Appendix Exhibit __.)

47. When the staff report was prepared regarding the Mission's conditional use application on the Rosewood Terrace property, staff was aware of the Interfaith Participating Churches. (Deposition of Cheri Coffey, 34:10-17, Appendix Exhibit 4.)

48. The City is not sure that the policy regarding Participating Churches would allow an accessory use in the Downtown and Gateway area of secular buildings assisting no more than twenty individuals at one time on a life-threatening basis. (Deposition of Brent Wilde, 59:4-9, Appendix Exhibit 3.)

Homeless Shelters

49. Undated and unacknowledged building requirements regarding homeless shelters were in the files of the PZD and included the following:

a. Conditional use in a D-3 or a CG Zoning District. The applicant must apply for and receive approval from the Planning Commission. As part of the approval process, the application is required to go through a notification process which includes the applicant meeting with the community council in the district.

b. A fire sprinkler system is required when sleeping 20 or more persons.

c. Two (2) exits are required when sleeping ten (10) or more persons.

d. Toilets and sinks are required on a ratio of 1 per 8 occupants.

e. Exit signs are required when two (2) or more exits are required.

f. Hard wired smoke detectors with a battery backup and interconnected are required with a maximum spacing of 30 feet in all rooms used for sleeping purposes.

g. Natural or mechanical ventilation is required for all sleeping areas. If the ventilation is natural it must be equal to 1/20 of the floor area. If the ventilation is mechanical it must provide two (2) air changes per hour.

(Deposition Exhibit 51; Deposition of Roger Evans, 18:16-18, 19:7-12, Appendix Exhibit 7; Deposition of Randy Taylor 35:18-36:13, Appendix Exhibit 5; Deposition of Brent Wilde, 41:1-8, Appendix Exhibit 3.)

50. The City imposed a moratorium because it was concerned about the concentration and impact of certain types of activities and facilities. "... there was concern about concentration [of homeless shelters, transitional treatment centers, drug --- substance abuse and so on] and impact and so on and the city council wanted to take some time to review that." (Deposition of Randy Taylor, 37:16-23, Appendix Exhibit 5.)

51. The April 20, 1999, classification of the Mission as a homeless shelter, rather than as a permitted use only, required that a hearing be held before the community council. (Deposition of Randy Taylor, 36:9-13, Appendix Exhibit 5.)

52. Randy Taylor was unclear, as it related to a conditional use request, of how an adverse impact on a neighborhood versus the city as a whole could be distinguished under the

current criteria. "I just --- I guess that the neighborhood, being part of the city as a whole, is ... how I would respond to that." (Deposition of Randy Taylor, 43:11-19, Appendix Exhibit 5.)

53. According to Randy Taylor, the recommendation of planning staff would change if the City changed its policy and decided to concentrate services to the homeless, substance abuse treatment centers, transitional homes, and the like. (Deposition of Randy Taylor, 38:19-24, Appendix Exhibit 5.) Likewise, if the City changed its policy to encourage the concentration of homeless shelters, substance abuse centers, et cetera, et cetera, in the downtown and Gateway are, the planning staff would find that it was compatible and did not have a material net cumulative adverse impact under this ordinance. "Well, likely it would cause the staff to find that it was compatible, perhaps, and did not have a material net cumulative adverse impact." A change in city policy could drive the finding of fact that it was compatible and not adverse. (Deposition of Randy Taylor, 41:13-42:2, Appendix Exhibit 5.)

Board of Adjustment Process and Actions

54. From January 14 – September 21, 1998, the Cathedral of the Madeline was allowed to continue non-conforming use and request review by the Board of Adjustments until an amended variance was granted by the Board of Adjustments conforming with the Church's use beyond that which had been established as an approved use. The process was "fairly normal .. in complicated cases." (Deposition Exhibit 107; Deposition of Randy Taylor, 51:8-52:10, Appendix Exhibit 5.)

55. After an administrative ruling regarding an accessory use of the Jewish Community Center was appealed by an objecting party, the City Planning and Zoning

Department worked with both the Center and objecting party during the pendency of the appeal. (City 45-51; Deposition of Randy Taylor, 25:8–27:17, Appendix Exhibit 5.)

56. On December 20, 1999, Randy Taylor, Zoning Administrator, suggested to the Board of Adjustment that if the determination of accessory use at the Jewish Community Center needed revision, the Board of Adjustment was free to do so. (Deposition of Randy Taylor, 75:7-13, Appendix Exhibit 5.)

57. No church, except for the Mission, was classified as a homeless shelter, from 1995 through the present. (Deposition of Brent Wilde, 15:5-16:6, Appendix Exhibit 3; Deposition of Randy Taylor, 36:15-19, Appendix Exhibit 5.)

58. There was no discussion by the PZD before the November 15, 1999, Board of Adjustments meeting about the possibility of the Board setting limits on church-related homeless accommodations. (Deposition of Randy Taylor, 75:2-14, Appendix Exhibit 5.)

59. The City has not given a reason why the practice of 'accessory use' for the homeless shelter limit was not disclosed to the Board of Adjustments. (Deposition of Brent Wilde, 23:24- 24:5, Appendix Exhibit 3.)

60. The City has taken the position in various situations that the Mission is bound by the November 15, 1999, classification of the Board of Adjustments, that it was a homeless shelter and a church. (Deposition of Brent Wilde. 29:11-30:13, Appendix Exhibit 3; Deposition Exhibit 59)

Enforcement Action Vis-à-vis the Mission as a Church at 466-468 W 200 S

61. On May 3, 1994, an amended three day-notice to quit was served on the Church. The stated bias for the eviction was that the church was:

> causing or suffering premises to be used as residence in violation of zoning laws; causing or suffering excess numbers of persons to occupy the premises; causing or suffering tenant's customers/invitees to : loiter about premises and sidewalk outside premises, engage in illegal drug use and/or transactions on or about the premises, invade other tenants' leaseholds and intimidate other tenants and their customers/invitees, litter sidewalk outside premises and in front of other tenants' leaseholds and other tenants' leaseholds with trash and urine, and intimidate governmental inspectors always from doing inspections of premises; and serve food or about the premises without proper licenses.[5]

62. A trial was held on the amended notice to quit on May 16, 1994, before the Honorable Michael L Hutchings.

> During the trial witness from the City, including police officers and staff of the Zoning Department, sought to demonstrate to the court that it was illegal for the [Church] to remain in their [building] and to care for the homeless at their present location under the rules of the Salt Lake City zoning and related matters... [G]enerally the court found and the parties' stipulated that the [Church] could continue what it was doing as a church, and continue caring for the homeless provided certain matters were improved as outlined in the written order of the court. Further, the court found that the contract (lease) allowing them to remain at the premises and conduct their business as a church was a legal contract.[6]

63. On July 19, 1994, Judge Michael Hutchings issued an order in an unlawful detainer action brought against the Mission indicating that the Mission could remain in its premises on the MBI and continue to provide services to the homeless. (Deposition Exhibit ____.)

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[5] Verified Complaint. September 8, 1999. Paragraph 17.

64. On December 24, 1996, Sherie Reich, an enforcement officer of the PZD, received a complaint from police regarding the Mission operating an illegal homeless shelter. After speaking with a supervisor, she went to the Mission and gave Pastor Wilson a notice to cease and desist that stated the following: "This structure is only to be used as a church- no sleeping at any spot on premises day or night. This is a violation of the SLC zoning ordinance, please cease and desist or a citation will be issued." (Deposition Exhibit 20, Appendix Exhibit __.) In addition to the issues inherent in addressing the nature and uses of the church, this cease and desist order was different than the norm because there was no time frame provided to cure the deficiency. "[T]ypically, when there's a violation known, that the city in a lot of cases will issue a notice and order noticing what remedies need to take place and order that work be accomplished and done in a certain time frame ... we would contact them if it was failure to comply, and at that point we would typically issue some kind of a criminal misdemeanor citation ticket or we would – along with voiding out the permit, is typically what we would do." (Deposition of Roger Evans 31:13 – 32:4, Appendix Exhibit 7.)

65. On December 26, 1996, a criminal citation was issued to Pastor Wilson for violating zoning laws. (Affidavit of Wayne Wilson ¶ 13, Appendix Exhibit 12.)

66. On December 27, 1996, zoning enforcement staff consisting of Sherie Reich, Harvey Boyd, Scott Mikelson, and police visited the Mission premises and again told the Mission to shut down its "homeless shelter." (City 336, 342; Affidavit of Matthew Hilton ¶__.)

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[6] Verified Complaint. September 8, 1999. Paragraph 19.

67. On January 13, 1997, B.L. Smith of the City Police Department made a complaint regarding the Mission to the City/County Health Department. (512-513 MIS; Affidavit of Matthew Hilton ¶__.)

68. On January 13, 1997, Diane Keay of the City/County Division of Environmental Health and Dan White of the City/County Health Department visited the Mission. (370-371 MIS: 514 MIS; Affidavit of Matthew Hilton ¶__.)

69. On January 14, 1997, Diane Keay and Dan White gave written reports of areas for improvement to the Mission. (370-371 MIS; 514 MIS) Diane Keay's report stated:

> There is a sign posted on the south wall that says the facility is open 24 hours a day. Pastor Wilson said that they are open 24 hours a day for the winter. I do not believe that 'winter' is an emergency and the shelter is not operating only as an 'emergency' shelter. To my knowledge, a clear definition of 'emergency' does not exist at this time in environmental health regulations. According to Salt lake City-County Health Department Regulation #3 Housing, emergency housing is defined as 'structures utilized for occupancy in an emergency that are designated by governmental authority as emergency housing.'

(370-371 MIS, Affidavit of Matthew Hilton ¶__.)

70. On November 4, 1997, Roger Evans, Director of Building Services and Licensing, notified the Mission that it wanted to make an administrative inspection on November 4, 1997. (349 MIS) (Deposition Exhibit 115) (Affidavit of Matthew Hilton ¶__.)

71. On January 13, 1998, the City Attorney's Office requested that inspection be allowed "to insure that certain life/safety measures are observed so that those individuals who stay at the church will not be in danger." (344 MIS) (Deposition Exhibit 116) (Affidavit of Matthew Hilton ¶__.)

72. On April 3, 1998, Sherie Reich inspected the Mission premises. (City 330; Affidavit of Matthew Hilton ¶__.)

Non-Enforcement Action Against a Tongan Church in 1997

73. On August 6, 1997, a Tongan Church that was illegally situated before April 12, 1995, was encouraged to work out options with the neighborhood, acquire more land so as to not be a non-conforming use. It was not evident a referral was made referring the case to enforcement. (Deposition of Randy Taylor, 22:12-23, Appendix Exhibit 5.)

Administrative Inspection at the Mission as a Church at 370 East 400 S

74. On October 14, 1999, Mission counsel confirmed with City Counsel that without "missionary" overnight status, churches are allowed in commercial zone without conditional use permits. At the same time, a request was made that the Mission could relocate to specific zones within City boundaries without any further "conditional use permits, neighborhood hearings, or other such delays." (Ex. #83)(422-23 MIS) Affidavit of Matthew Hilton ¶__.)

75. On October 30, 1999, Cheri Coffey alerted Craig Spangberg regarding enforcement issues at the Mission located at Central Christian Church. (Deposition Exhibit #56; Cherie Coffey Deposition __;___, Appendix # .)

76. On January 6, 2000, the Salt Lake City-County Health Department grants the Mission ninety (90) days to rectify its listed items of correction. (644 MIS; Affidavit of Matthew Hilton ¶__.)

77. On January 21, 2000, R. Stanley of the City Fire Department. provides thirty (30) days' notice to Central Christian Church to correct violations or hazardous conditions. (337-338 MIS; Affidavit of Matthew Hilton ¶__.)

78. On April 7, 2000, Salt Lake City-County Health Department issued a permit to Mission at Central Christian Church (339 MIS; Affidavit of Matthew Hilton ¶__.)

Administrative Interpretation

79. Randy Taylor served as Zoning Administrator from 1994-2000. (Deposition of Randy Taylor 6:18-25, Appendix Exhibit 5.)

80. City ordinances required that certain procedures be followed when issuing an administrative opinion, including that the opinion be requested by an applicant, based on certain written, submitted facts as applied to specific property, and a fee paid. (Deposition Exhibit # 94; Randy Taylor Deposition _____, Appendix Exhibit # 5.)

81. Randy Taylor did not recall whether the City PZD had a form to complete for requesting an administrative interpretation. (Deposition of Randy Taylor, 23:23-24:5, Appendix Exhibit 5.)

82. At no time was the Mission asked by the City PZD to follow the requirements in the City ordinances to obtain an administrative interpretation. (Affidavit of Wayne Wilson, ¶ 58, Appendix Exhibit 12.)

83. The Mission did not file a request for an administrative interpretation regarding the Cohen property in 1999, or the Rosewood Terrace property in 1999, 2003, or 2004.

(Affidavit of Wayne Wilson, ¶ 59, Appendix Exhibit 12; Deposition of Wayne Mills 31:2-13, Appendix Exhibit 8.)

84. The Zoning Administrator typically takes one to three weeks to clarify what an applicant's uses are; "two to three weeks probably is fairly routine." (Deposition of Brent Wilde, 46:3–15, Appendix Exhibit 3.)

85. Typically, before issuing the classification, if there is a question regarding state licensure, the City would write a letter requesting a determination, generally obtaining one within two to three weeks. The PZD would typically "want to see what the State had to say first," before they issued a classification as to use. (Deposition of Brent Wilde, 47:12-23, Appendix Exhibit 3.)

86. A letter dated May 27, 1998, to Rabbi Zippel of the CHABAD LUBAVITCH OF UTAH was considered to be an administrative interpretation. (Deposition of Randy Taylor 13:3-12, Appendix Exhibit 5.) No notification was given to the community nor was notification given of any aggrieved party's right to appeal. (Deposition Exhibit 96.) Then Zoning Administrator Randy Taylor did not recall whether or not Rabbi Zippel completed an application form for an administrative interpretation. (Deposition of Randy Taylor, 23:23–24:6, Appendix Exhibit 5.) Brent Wilde was consulted regarding this letter. (Deposition of Randy Taylor, 21:17-22:8, Appendix Exhibit 5.)

87. A letter dated July 6, 1998, to Zion's Lutheran Church was labeled as an administrative interpretation and was considered to be such. (Deposition Exhibit # 97; Deposition of Randy Taylor, 13:13-20, Appendix Exhibit 5.) No notification was given that any

aggrieved party could appeal. (Deposition Exhibit # 97.) The City did not identify "a particular reason" why this was not language was not included. (Deposition of Randy Taylor, 13:20 – 14:1, Appendix Exhibit 5.) Then Zoning Administrator Randy Taylor did not recall whether or not the Church completed an application form for an administrative interpretation. (Deposition of Randy Taylor, 15:9-17, Appendix Exhibit 5.) No community council meeting was held. (Deposition Exhibit 97.) Brent Wilde was consulted regarding this letter. (Deposition of Randy Taylor, 21:17-22:8, Appendix Exhibit 5.)

88. Pastor Wilson or some of his staff talked with Randy Taylor about the Mission being a church, with part of its mission being to feed and clothe the needy because to do so is feeding and clothing Jesus, and, thereby, is an integral part of religious worship. (Deposition of Randy Taylor, 29:25-30:5, Appendix Exhibit 5.)

89. Brent Wilde and Bill Wright, of the PZD, and Lynn Pace, of the City Attorney's office, reviewed the administrative interpretation letter of April 20, 1999, before it was sent to the Mission. (Deposition of Randy Taylor, 45:8-11, Appendix Exhibit 5.)

90. Randy Taylor perceived the Mission's case as being complicated because of "Well, the level --- I don't --- you know, the level of services and so on to homeless and to --- and the substance abuse and all being considered conditional uses in most locations. So that's what made it complicated to me." (Deposition of Randy Taylor, 60:10-14, Appendix Exhibit 5.) In addition, "... to the extent that --- that as a church activities like substance abuse and homeless services of various kinds would be considered allowed uses under the umbrella, if you will, of

the church, that part of it was complicated to me." (Deposition of Randy Taylor, 61:2-6, Appendix Exhibit 5.)

91. There was a question in Randy Taylor's mind about the Mission's "religious worship" because he distinguished between practices of a church and social service aspects of the Mission. To Taylor, some aspects of the Mission clearly appeared to be church and/or worship activities; whereas, counseling, referrals, providing meals, and other social aspects could be classified as activities in which a "mission" would engage – related, but distinctly separate from worship.

> Well, yes, there was some question in my mind. There was quite a bit of discussion about mission versus church. And I didn't pretend to understand fully what a mission is, but I had an idea. But they certainly sounded like a church in many, many, many ways and did church-related things...what I thought a mission was was a --- you, know, the kinds of things that they do. They provide services of various kinds to folks who need them, a lunch, a --- some counseling, some --- some referral to help of various kinds...I viewed it probably more as a --- you know, you've got your church and the worship services, and then you've got the social aspects on the side or along with that. And I viewed them as different things, related but different.

(Deposition of Randy Taylor, 75:21-76:20, Appendix Exhibit 5.)

92. On April 20, 1999, the City issued to the Mission a letter labeled Administrative Interpretation that addressed the classification of the uses as the City understood them for the Cohen property. Four days before the letter was issued, April 16, 1999, drafts of the same appear to have been written by Bill Wright, Planning Director. (Deposition Exhibits 101 and 100; Deposition of Randy Taylor, 20:6 – 21:22, Appendix Exhibit 5.) As Zoning Administrator, Randy Taylor was responsible for producing, signing, and sending letters; however, fairly often

Mr. Taylor involved Mr. Wright in review, correction, and clarification. (Deposition Exhibits 101 and 100; Deposition of Randy Taylor, 21:9–22, Appendix Exhibit 5.)

93. A draft of the April 20, 1999, administrative interpretation letter from Randy Taylor (# 2) was edited by Bill Wright, Planning Director (Deposition of Randy Taylor, 20:6-14, Appendix Exhibit 5.) The draft was dated April 16, 1999, and was prepared under the name of Bill Wright. (Deposition Exhibit 101)

94. A subsequent typewritten copy of the corrections made by pen contained the same April 16, 1999, date but Bill Wright's identification as the signer was stricken. (Deposition Exhibit 100; Deposition of Randy Taylor, 20:21-23:8, Appendix Exhibit 5.)

95. The use of specific facts protects an applicant both from the City using extrinsic evidence to evaluate their proposal as well as being assured of the factual basis upon which an appeal to the Board of Adjustments may need to be made.

96. Randy Taylor did consider whether or not the sheltering of the homeless overnight in an emergency situation could be "an accessory use" of the Mission's place of worship. His decision was based on the "magnitude of activity that seemed to be going on" without distinguishing between day and night activities. "I mean I don't know that much about what they were doing other than it was characterized as quite a bit of activity." (Deposition of Randy Taylor 34:5-19, Appendix Exhibit 5.) He relied on "the descriptions given me in writing and the discussions that he held, that he had." (Deposition of Randy Taylor 36:20-23. Appendix Exhibit 5.) While he met with Philip Arena and his superiors Brent Wilde or Bill Wright,

(Deposition of Philip Arena, 15:16-16:4, Appendix Exhibit 6.), he did not recall ever discussing with them how one would determine whether or not "providing shelter to the homeless on an emergency basis could be an accessory use of the church." (Deposition of Randy Taylor, 35:13-17, Appendix Exhibit 5.)

97. The request in the letter to have the Mission determine if it required licensure by the State would not have made any difference in the "classification of the use" but it would have made it easier to "determine those uses" of the Mission. (Deposition of Randy Taylor, 49:2-50:5, Appendix Exhibit 5.)

98. The April 20, 1999, letter contained a classification of proposed uses of the Mission as a treatment shelter, which classification required state licensing. (See Omitted Fact # 1.) .

99. The April 20, 1999, letter contained a classification of the Mission as a homeless shelter, based on "the descriptions given to me in writing and the discussions that I held --- that I had." (Deposition of Randy Taylor, 36:20-23, Appendix Exhibit 5.)

100. Had the April 20, 1999, administrative interpretation not classified the Mission as a homeless shelter or substance abuse treatment home the Mission would have been able to obtain a building permit for the Cohen building. (Deposition of Randy Taylor 33:12-34:5, Appendix Exhibit 5.)

101. The Mission was advised to refer to the City Attorney's to resolve unstated legal questions. (Appendix Exhibit .)

102. The City also indicated it "would be willing to assist you in the location of a more suitable site that is consistent with the city's preference for smaller facilities in decentralized locations throughout the county." (Deposition Exhibit). Other than to "broaden the base, the geography," Randy Taylor did not know why the offer was made "throughout the county" rather than "throughout the city." (Deposition of Randy Taylor, 44:11-45:11, Appendix Exhibit 5.)

103. The April 20, 1999, classification of the Mission as a homeless shelter, rather than as a permitted use only, required that a hearing be held before the community council as to its proposed use. (Deposition of Randy Taylor, 36:9-13, Appendix Exhibit 5.)

104. The September 14, 1999, administrative interpretation letter was issued in conjunction with the Mission's conditional use permit application. That was "not common ... but in complicated matters certainly it would be and could be done and was done." (Deposition of Randy Taylor, 59:20-60:8, Appendix Exhibit 5.)

105. On September 10, 1999, three drafts of a letter regarding the potential use of the Mission at the Rosewood Terrace Building (167 North 600 West) were prepared for Randy Taylor's signature. One provided the Mission was a church, one provided the Mission was a church and boardinghouse, and one provided the Mission was a church, boardinghouse, and homeless shelter. (Deposition Exhibit 106) These letters were the results of discussions with Brent Wilde, Bill Wright, and Lynn Pace. (Deposition of Randy Taylor, 61:15-62:5, Appendix Exhibit 5.) "To the best of [Randy Taylor's] knowledge, [the draft letters] seem to represent

how the Mission could have been classified at that time. (Deposition of Randy Taylor, 62:6-14, Appendix Exhibit 5.)

106. "[M]ost" of the "information from [Mission's counsel's] various correspondence" sent to Randy Taylor was the "factual criteria" relied upon by the decision makers to produce the September 14, 1999, letter. (Deposition of Randy Taylor, 62:15-20, Appendix Exhibit 5.)

107. The September 14, 1999, letter indicated that beyond the thirty people living on the premises, there would be no other individuals living or sleeping at the Mission except in emergency or life-threatening instances. (Deposition Exhibit 2) Randy Taylor did not know why this potential occurrence of providing help had not been sufficient to classify the Mission as a homeless shelter. (Deposition of Randy Taylor, 65:6-10, Appendix Exhibit 5.)

> I don't know. It was going --- it was heading into a conditional use process and --- and --- and obviously that service is an important one, and so I don't know why it didn't trigger. It was stated there because it was stated in the information given to me, and so it didn't cause me to just automatically call it a homeless shelter. On a real dire emergency situation when someone was going to stay out and freeze and they were going to ... help them out, then, you know, that's why it got stated in there.

(Deposition of Randy Taylor, 65:10-21, Appendix Exhibit 5.)

108. The September 14, 1999, administrative interpretation also indicated that having a homeless shelter, or any other residential activity requiring licensure from the State of Utah, was forbidden. No "advertising regarding any of these prohibited uses is allowed. Then if any of the above are engaged in or advertised for, the City will initiate revocation of the conditional use permit or any other permits issued and take enforcement action." (Deposition Exhibit 28)

109. This advertising prohibition was "not really common...but that kind of thing can be added...to reviews." (Deposition of Randy Taylor, 68:25-69:13, Appendix Exhibit 5.) Randy Taylor did not intend to "restrict advertising of the church but to restrict advertising that would have impacted [on] having people stay overnight on an emergency basis." (Deposition of Randy Taylor, 69:21-71:3, Appendix Exhibit 5.)

> I was simply trying to indicate, I believe, that --- that any reasonable person would recognize that if someone shows up at 10:30 at night on the doorstep of a church and is going to freeze to death if they're not given some kind of help that -- that they ought to be helped and --- but that would be --- but that would be an emergency kind of a thing and a --- you know, not an every night, by the hoards kind of a thing.

(Deposition of Randy Taylor, 70-12-20, Appendix Exhibit 5.) Randy Taylor "was simply saying that that circumstance ought to be discussed [by the planning commission and the review body of this application] with respect to their kind of services." Id. 70:6-11

110. Randy Taylor understood that had the Mission been a 501(c)(3) charitable institution, rather than a church, and was going to maintain a boardinghouse or equivalent nonconforming use of the Rosewood Terrace Building, that there would have been no requirement that a conditional use permit be obtained. The reason a conditional use permit was required was because the Mission was a church and the nonconforming use was in a residential zone. (Deposition of Randy Taylor, 66:9-67:20, Appendix Exhibit 5.) (Deposition of Brent Wilde 68:1-12. Appendix Exhibit 3.)

Permit Department

111. A church must be in compliance with all City ordinances if a building permit is to be issued to remodel or make other changes to a church. (Deposition of Brent Wilde, 63:12-16, Appendix Exhibit 3.)

112. On October 26, 1998, Pastor Wilson appeared at the Permits & Licensing counter and submitted a letter for 399 West Andrews Avenue as he understood Randy Taylor to have requested the letter. (Deposition of Wayne Wilson, 234:22-237:3, Appendix Exhibit 1.) Staff brought in Randy Taylor who told Pastor Wilson that he had to meet with the People's Freeway Community Council (City 013, Deposition Exhibit 22), and "submit another letter spelling out how the use would be operated and managed. [Taylor] then told [Wilson] we would then make a determination as to what category his use would fit into and refer him to the appropriate process." (Deposition Exhibit # 22, City 11.) [Taylor] asked [Wilson] to revise the letter he had and be more descriptive as to his activities and use." (City 0391.)

113. On June 25, 1999, Phil Arena and other individuals from the Mission went to the permit counter and asked if a church was a permitted use in a D-3 Zone. Paul Doer told them it was and a set of plans were produced. The Mission was told it was a homeless shelter and not a church; the Mission stated that it was a church. Doer told the Mission representatives that "in order to receive a building permit [they] would have to provide documentation authorizing use approval from the Zoning Administrator's office" and instructed them where the office was. (Deposition Exhibit 108.) Randy Taylor recalls receiving the written memorandum reciting the foregoing. (Deposition of Randy Taylor, 53:4-14, Appendix Exhibit 5.) He does not recall

giving that kind of directive to Paul Doer. (Deposition of Randy Taylor, 52:14-25, Appendix Exhibit 5.) No follow up was done with the Mission or anyone else to clarify the practice. (Deposition of Randy Taylor, 53:18-21, Appendix Exhibit 5.)

Involvement With Community Councils

114. Applicable city ordinances stated the following regarding "Consultation with Neighborhood Organizations."

> In order for an application for a Conditional Use Permit to be determined complete, the applicant must include, when required by the Recognized or Registered Organization Notification Procedures, Title 2, Chapter 2.62 of the Salt Lake City Code, a signed statement from the appropriate neighborhood organization that the applicant has met with that organization and explained the development proposal for which approval is being sought. The signed statement shall be on a form provided by the zoning administrator. (Per 21A.10.010(B))

115. At no time did the zoning administrator provide the Mission with the form to be signed verifying that the presentation had been made. (Deposition of Wayne Wilson , Appendix Exhibit 1.) The PZD did not have such a form from 1999 – 2004. (Deposition of Cheri Coffey 6:8-12; 17:8-17, Appendix Exhibit 4.)

116. Notwithstanding the foregoing, the Zoning Administrator was given the discretionary authority to not require the submission of: "A complete application"....(8) A signed statement that the applicant has met with and explained the proposed use to the appropriate neighborhood organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of the Salt Lake City Code." (Appendix Exhibit).

117. Before 1999, the Mission wanted to move to the Sutherland Building located at 405 South Redwood Road. Pastor Wilson made a presentation at the Poplar Grove Community

Council. A uniformed police officer appeared at the meeting and spoke against the Mission. After the presentation, chair indicated that the Mission would receive a letter of determination in about a week; thereafter, however, he refused to send the Mission a letter. In the absence of the same, staff at PZD refused to allow Mission to file an application for a conditional use permit. (Affidavit of Wayne Wilson ¶ 23; Appendix Exhibit 12.)

118. Before 1999, the Mission wanted to move to 1515 South 400 West (formerly, Travelers Aid Society; now, The Road Home). Pastor Wilson made a presentation at the People's Freeway Community Council. The Community Council offered to assist the Mission to locate outside of their Community Council area, but would not approve the requested location. One of the police officers who had come to the Mission offices and told the Mission that the Mayor's Office wanted it shut down, appeared at the meeting and spoke against the Mission. The Community Council never sent verification of the presentation or its decision to the Mission. Despite having made the presentation; thereafter, staff at PZD twice refused to allow the Mission to file an application. (See Affidavit of Wayne Wilson ¶ 24, Appendix Exhibit 12.)(Affidavit of Monica Wilson ¶ 6-8, Appendix Exhibit 13.)

119. Before 1999, the Mission wanted to relocate at 850 West 1600 North (at the Superfund site). PZD staff refused to notify Capital Hill Community Council that the Mission needed to be on their agenda to make a presentation, thereby justifying the Mission's belief that the preparing of an application would also be futile. (See Deposition Exhibit at _____.)

120. In the early part of 1999, the Mission determined it would like to acquire the Cohen Building located at 580 West 300 South. At the time of the inquiry, a Church was a

permitted use in the D-3 zone where the property was located. A building permit was requested. Notwithstanding the foregoing, Randy Taylor, Zoning Administrator, encouraged the Mission to make a presentation to the Rio Grande Community Council. (See Deposition Exhibit at ____) Phil Arena of the Mission made the presentation. The presentation was disrupted by Marge Harvey of the Mayor's Office who spoke out against the Mission. Uniformed police officers in attendance spoke out against the Mission as well. The Mission was asked to make another presentation at the next meeting on April 21, 1999.

121. On April 20, 1999, the Mission again presented at the Rio Grande Community Council. Brent Wilde of the PZD was in attendance and disputed if not debated the Mission's claim it was only a church rather than all of the use classifications contained in the April 20, 1999, letter that were contrary to the use classifications explained by the Mission. (Deposition of Philip Arena, 16:25-17:5, Appendix Exhibit 6.)

122. Occasionally, an applicant may be directed to appear before a community council a second time.

> On occasion a conditional use request will go to a community council, but there may be additional questions or information that was not available that the community council may have requested additional information *before they make a decision.* So it's on occasion we will have an applicant go back a second time.

(Deposition of Brent Wilde, 42:12–18, Appendix Exhibit 3.) (emphasis added)

123. Mr. Wilde was unable to provide the number of times in the last ten years that an applicant has returned to the community council a second time. "I can't give you a number. We have a few planned developments that have gone back more than once. I could find that

information but I just can't tell you." (Deposition of Brent Wilde, 42:19-25, Appendix Exhibit 3.)

124. On April 22, 1999, the Mission obtained a listing of all Community Council and their respective chairpersons from the Mayor's Office. (Affidavit of Wayne Wilson ¶ 30 Appendix Exhibit 12.)

125. During the middle of the summer, the Mission determined it would try to relocate in the Rosewood Terrace Building located at 168 North 600 West. The Mission was unable to reach the Chairman of the Fairpark Community Council during early August 1999 because he had gone of vacation. Unbeknown to the Mission, the Fairpark Community Council meeting for August 1999 had been cancelled because of vacation schedules. The Mission notified the PZD and City Attorney's Office of their inability to meet with the Fairpark Community Council and the urgent need to begin processing their application for a conditional use regarding Rosewood Terrace properties. (Deposition Exhibit)

1. Requirement to Present Before Application Accepted

126. According to the ordinance, a conditional use applicant was required to go to the Community Council prior to submitting an application to the PZD. (Deposition of Brent Wilde, 41:3-6 Appendix Exhibit 3.) Notwithstanding this requirement, the Zoning Administrator has discretionary flexibility regarding the application process.

> There has been some flexibility in terms of when an applicant might go, or if a community council chooses not to schedule a particular request they don't go. But if the community councils are contacted prior to a conditional use going to the planning commission, and if the community council desires to have them on an agenda for discussion, we require that they go ... The ordinance requires pre application. There has been some flexibility in that, given the circumstances.

> Sometimes there have been cases where we received an application and do not send them.

(Deposition of Brent Wilde, 41:9–24, Appendix Exhibit 3.)

127. On August 31, 1999, the City Attorney's Office notified the Mission that appearing before the community council was required before an application would be accepted. (Appendix Exhibit).

128. There have been times when an application has been prepared and the community council could not meet within a 'reasonable schedule' because of summer vacations or holidays. When this occurs, the PZD will accept an application with the understanding that the applicant will follow up with the community council at its next scheduled meeting.

> There have been an occasion where, if --- if an applicant has --- has their application ready, a community council cannot meet within what would be considered a --- a reasonable schedule; we have received an application and scheduled with the community council after. Occasionally during the summer or during the holidays the community council may not meet, so we have no meetings, so we get it in with the understanding they'll follow up and get to it in the next meeting.

(Deposition of Brent Wilde, 43:9-21, Appendix Exhibit 3.)

A 'reasonable time' is generally considered to be within a month. (Deposition of Brent Wilde, 43:22–44:5, Appendix Exhibit 3.) There is no set rule regarding community councils, but applicants must notify the community council that they should be put on the meeting agenda, which is generally prepared one or two weeks prior to the scheduled meeting.

> Generally they meet once a month, and they'll prepare their agenda. They all vary a bit but they'll prepare their agenda one or two weeks in advance...No set rule with community councils.

(Deposition of Brent Wilde, 44:3-7, Appendix Exhibit 3.)

129. "Sometimes [PZD] would accept an application [for a conditional use permit] if we knew the applicant had been scheduled or was working to be scheduled on a community council agenda." (Deposition of Cheri Coffey, 25:17-23, Appendix Exhibit 4.)

130. On June 6, 1998, and April 2, 2003, the PZD used administrative discretion to eliminate the need for a church to appear before a community council or participate in the conditional use process. (See Omitted Facts # # , *supra*.) When these specific cases were excluded, in addition to those Participating Churches with Interfaith that were "excused" under the "accessory use" doctrine, the City could then claim that every case sent to the Commission for a conditional use review, had been heard by the community council or it was returned by the Planning Commission to do the same. (Affidavit of Cheri Coffey 56:20-25, Appendix Exhibit 10.)

2. Nature of Presentation

131. The obligation of the applicant is "simply to appear at the Community Council and make a presentation." (Deposition of Brent Wilde, 44:11, Appendix Exhibit 3.)

132. The Mission's presentations at various community councils before 1999 (see Omitted Facts ## 119, 120, s*supra*,) were opposed by members of the Mayor's office and uniformed members of the police department. (Affidavit of Wayne Wilson ¶ 22, Appendix Exhibit 12.)

133. The Mission's presentation at the Rio Grande Community Council on March 17, 1999, regarding the Cohen Property was opposed by members of the police department and a

representative from the Mayor's Office, Marge Harvey. (Deposition of Philip Arena, 19:19-20:12, Appendix Exhibit 6.)

134. The Mission's presentation at the Rio Grande Community Council on April 21, 1999, regarding the Cohen Property turned into a debate with Brent Wilde of the PZD over the nature of the Mission. (Deposition of Philip Arena, 16:25-17:5, Appendix Exhibit 6.)

Verification of Presentation

135. PZD staff report a variety of means used to verify an applicant's presentation at the community council meeting. "In most cases, but not always, a staff planner will attend that meeting. (Deposition of Brent Wilde, 44:14-15, Appendix Exhibit 3.)

> On the occasion, where [staff doesn't attend], community councils will give some written response with a community council recommendation that provides documentation....[T]here's nothing set or formal. On occasion, a staff member may have to call the community council to get documentation the applicant was there." (Deposition of Brent Wilde, 44:12-22, Appendix Exhibit 3.)

136. "Occasionally, if it's fairly routine [a community council] will not have an applicant come in. That, however, is the exception. The majority of the time, the community council will want to see the applicant, they would attend, and we look for documentation they've been there." (Deposition of Brent Wilde, 44:25 – 45:6, Appendix Exhibit 3.)

Use of Vote of Community Council

137. On September 14, 1999, the Mission was notified by the Fairpark Community Council that a vote would be taken of those attending the Community Council meeting scheduled for September 23, 1999, to determine whether or not the Community Council would be in favor of the Mission's presentation. No form from the Zoning Administrator or PZD, acknowledging

that the Mission had made a presentation regarding the proposal, was disclosed to or provided to the Mission for the City Chair to complete. (Affidavit of Wayne Wilson, ¶ 37, Appendix Exhibit 12.)

138. On September 23, 1999, the Mission made its presentation regarding the Rosewood Terrace Property. A vote was taken of persons in attendance and of those who were residents of the Fairpark Community, one hundred sixty-eight (168) opposed the Mission's proposed Rosewood Terrace property relocation; four (4) were in favor. (Deposition Exhibits).

139. City staff from Planning and Zoning attended the meeting and took notes that included the vote totals. (Deposition Exhibit ____) The Chair of the Community Council subsequently notified the City Planning and Zoning Department of the vote. (City ___.)

140. The totals were included in the PZD staff report to the Planning Commission. (Affidavit of Cheri Coffey, Appendix Exhibit 10.)

141. Nonetheless City ordinances mandate that if a Community Council issues a report to the PZD the vote must be provided. Nonetheless, the City's Answer stated that "[c}ity ordinances do not require a community council vote on the proposal." (See City's Answer ¶ 39 at 7.)

142. Staff reports have not been consistent in reporting to the Planning Commission the vote of the Community Council when recording various church's conditional use permit applications. (Affidavit of Matthew Hilton ¶ Appendix Exhibit 11.)

143 The City opposed the Mission's noticed, and counsel attended TRO request to delete the reference in the staff report to the Planning Commission to the (1) use of the vote of those attending the Community Council meeting September 23, 1999, taken by the Fairpark Community Council, (2) comparison of police calls to other churches with that of the Mission, (3) use of present internet speech site to define future conduct and, and (4) failure to produce the backup information for the listing by the police of the numerous telephone calls from the Mission. (Appendix Exhibit).

Discouragement Given To Mission and

Encouragement Given to Other Churches to Remain in City

144. On January 30, 1997, Pastor Wilson received a written response from the staff of the City Counsel regarding his request for assistance in finding a place for relocation. He was referred to the PZD. Alice Steiner, Executive Director of the RDA, and Marge Harvey of the Mayor's Office, were copied on the January 30, 1997, letter. (Wayne Wilson Deposition _____)

145. The April 20, 1998, Administration Interpretation letter stated, "We would also be willing to assist you in the location of a more suitable site that is consistent with the city's preference for smaller facilities in decentralized locations throughout the county."[7] Years later, Randy Taylor confirmed the offer to assist the Mission in its relocation in decentralized locations throughout the 'county,' (rather than the 'city') was an attempt to broaden the potential geographic base that would be more suitable for those providing services to the homeless. (Deposition of Randy Taylor, 44:15-45:7, Appendix Exhibit 5.) The Mission understood the

[7] Salt Lake City Deposition Exhibit #2.

146. unsolicited response to mean that so long as the City's policy favoring decentralization of services for the homeless was in place, no matter what the Mission proposed as part of a conditional use permit application, staff of PDZ would determine it had a "negative impact" on the City because it was in the geographic area of the other service providers.

147. On June 30, 2005, City issued an administrative determination allowing the Summum religion accessory use request, justifying the same, in part, by allowing the religion "free exercise of religion." (City 33)

148. On December 8, 2005, the Commission approved a conditional use permit for a church known to be affiliated with Interfaith to allow overnight stay (in the priest's residence area) and move the location of the foodbank. There was neither mention of, nor analysis, in the staff report or the minutes of the Commission of either accessory use of the Church.

LEGAL ANALYSIS

II. Clarifying Final Claims Against the City

The Plaintiffs are not pursuing relocation and participation claims against the City as identified in the Fifth and Sixth Cause of Action. Plaintiffs are not pursuing against the City any claim of entitlement to relocation assistance under the federal statutes and regulations outlined in the Seventh Cause of Action.

III. Plaintiffs' Constitutional Claims and RLUIPA Claim Are Properly Before the Court

The City has claimed that all of Plaintiffs' claims should be dismissed on ripeness grounds because Plaintiffs (1) have failed to obtain a final, definitive, decision from Salt Lake

City officials, and (2) have not exhausted the administrative procedures. Under the facts of this case at this juncture, these arguments are invalid.

A. Claims for Equitable Relief

The Plaintiffs' claims for equitable relief arise from three sources: RLUIPA, the Utah Constitution, and the United States Constitution. "As applied" claims under RLUIPA and the United States Constitution are also asserted. Claims for violation of federal constitutional rights are asserted for declaratory relief and damages under 42 U.S.C. § 1983.

1. The Mission's Claims under RLUIPA are Properly Before the Court

RLUIPA provides an independent basis for jurisdiction under 42 U.S.C. § 2000 cc. The Act was not available to the Mission during its 1999 efforts to relocate prior to moving to the Central Christian Church. Nonetheless, the Mission raises the equality portion of the statute to the present challenges faced by the Mission as it relates to present treatment of Participating Churches with Interfaith vis-à-vis the Mission.

The policies, practices, and customs of the City have interfered with the ability of transient homeless to receive intervention in emergency, life-threatening situations in Salt Lake City. The present inability of the Mission to relocate under lawful regulation has impacted its ability to engage in religious worship, "feed and clothe Jesus" by serving meals and caring spiritually for the homeless and poor, which in turn has resulted in a decrease of purchase or acquisition of food stuffs and clothing by the Mission in Salt Lake City (see Omitted Facts #21, *supra*). In the meantime, these results, and the pressure to conform and become as a Participating Church with Interfaith, the loss of a meeting place and congregation, and major

disruption of its ability to feed, clothe and shelter the poor and needy have constituted a substantial burden on the religious mission of the Mission and the religious practices of Pastor Wilson. All of the foregoing has had a direct impact on interstate commerce.[8] Based on the foregoing, the jurisdictional authority for Congress to act has been satisfied.

Notwithstanding the foregoing, neither the Mission nor Pastor Wilson can satisfy the jurisdictional requirements to invoke the protections of 42 U.S.C. § 2000 cc (a). Under these provisions, the City

> shall [not] impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution – (A) in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling interest."

However, a "land use regulation" is defined so that a challenge to government action must be based on its impact of a "zoning or landmarking law" that limits how a claimant uses or develops property in which the claimant has an interest.[9] Because the Mission's present facilities are not the subject of challenge (because they are inadequate in terms of a sanctuary for worship services and shelter accommodations), the Mission is not able to challenge the City's ongoing conduct under 42 U.S.C. § 2000cc(a).

Nonetheless, the Court of Appeals for the Eleventh Circuit has left open the opportunity of not so restricting a claimants jurisdictional ability to claim discriminatory interference.[10]

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[8] 42 U.S.C. § 2000 cc (a) and (g).

[9] See 42 U.S.C. 2000cc-5(5); *Prater v. City of Burnside, Kentucky*, 289 F.3d 417, 433-434 (6th Cir. 2002).

[10] *Midrash Sherardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1229-30 (2004) *cert. denied* 543 U.S. 1146, 125 S.Ct. 1295, 161 L.Ed.2d 106 (2005).

Furthermore, subsequent precedent allowed evidence of the *risk* of discriminatory enforcement as being sufficient to deny granting a City summary judgment dismissing a RLUIPA claim vis-à-vis an ordinance that had already been applied to a plaintiff.[11]

RLUIPA provides that "[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." (42 U.S.C. § 2000cc (b)(2).) For reasons cited above, the City has discriminated against the Mission in its implementation of its land use regulations vis-à-vis the Participating Churches with Interfaith. .

Furthermore, "[n]o government shall impose or implement a land use regulation that ... unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." (42 U.S.C. § 2000cc (b)(3)(B). Requiring the Mission, as a church, to incur the expenses of finding, locating, and tentatively securing a location as a pre-requisite to applying for an administrative interpretation to clarify vague ordinances and customary unlawful City practices to determine what (1) are the limits of permissible "accessory uses ... for religious worship" and (2) whether or not that use is a "custom[ary]" aspect of "religious worship" is both an "unreasonable" and substantial burden on the Mission.

Based on the foregoing, Plaintiffs' case does state a claim under RLUIPA because "restrictions or distinctions are []related to the religious characterization."[12] Indeed, the legislative history of RLUIPA suggests that the Mission may properly cease applying until the past discriminatory acts and unfair delay regarding the Mission is resolved. "This Act does not

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[11] *Konikov v. Orange County Florida*, 410 F.3d 1317, 1330-1331 (11th Cir. 2005).

provide religious institutions with immunity from land use regulations, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay." As applied, the Mission has demonstrated "discrimination or unfair delay."[13]

Having shown standing to *not apply* prior to challenging City ordinances facially under RLUIPA based on discrimination, the facial claims raised as a matter of the establishment clause as well as vagueness, *infra*, are incorporated herein by this reference.

2. The Mission's Equitable Claims under the State Constitution are Properly Before the Court

Plaintiffs agree that they do not have a claim against the City for damages under the Utah Constitution. (See City Memorandum at 27-28.) While interpretations of the Utah Constitution are usually dependent on an exhaustion of administrative remedies, [14] the Mission is entitled to equitable relief under the same even though appeals were not taken from the Planning Commission's decision of October 7, 1999, or the Board of Adjustments decision of November 15, 1999, on the grounds of (1) irreparable harm, (2) futility, and (3) the occurrence of actionable events since that date.

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[12] *Midrash Sherardi, Inc. v. Town of Surfside,* supra, 366 F.3d at 1235 n. 17.

a. Irreparable Harm

The United States Supreme Court has stated that as against government actions, "loss of First Amendment rights, even for limited periods of time, constitute irreparable harm."[15] As against individuals, the Utah Supreme Court has found the harm required for injunctive relief is appropriate for the " 'purpose of protecting [others'] right to religious worship'"[16] and "freedom of religion in being permitted to worship in peace and good order."[17]

A challenge to completed City conduct under both the free exercise and establishment clauses of Utah's constitution was allowed by the 2003 Utah Supreme Court opinion in *Snyder v. Murray City Corporation.*[18] In 1994, the City of Murray did not have formal policies governing guidelines or restrictions on prayers in City Council meeting. On request, the City Attorney outlined them by letter. In response, Tom Snyder submitted a written prayer and asked to give it at the next scheduled City Council meeting. The City Attorney responded by letter and rejected the prayer because it failed to meet the previously provided guidelines.

Not long after the request was denied, Snyder filed a civil rights complaint in federal court against the City. On September 13, 1995, the federal district court granted the City summary judgment on the federal and state claims. On October 27, 1998, the *en banc* Court of Appeals for the Tenth Circuit affirmed judgment on the federal claims and dismissed state

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[13] 146 CONG. REC. S7774-01, *S7776 (2000) (joint statement of Sens. Hatch and Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000).
[14] See *Patterson v. American Fork City, supra,* 2003 UT at ¶¶18-20; 69 P.3d at 472-73.
[15] *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)
[16] See *Corporation of the President of the Church of Jesus Christ of Latter-day Saints v. Wallace*, 573 P.2d 1285, 1287 (Utah 1978) (citation omitted.)
[17] *Corporation of the President of the Church of Jesus Christ of Latter-day Saints v. Wallace*, 590 P.2d 343, 345 (1979).

constitutional law claims without prejudice. On March 29, 1999, the United States Supreme Court denied appellate review. On August 3, 1999, Snyder filed for relief in state district court under the Utah Constitution. Notwithstanding the delay, the Utah Supreme Court determined in 2003 that the following equitable relief was appropriate:

> If Murray City chooses to continue to open its city council meetings with prayer, it must strictly adhere to the neutrality requirements set forth herein and in *Society of Separationists*. Under those neutrality requirements, Snyder should be allowed to offer his prayer.[19]

Like Snyder, the Mission and Pastor Wilson are entitled to pursue their claims for equitable relief under the Utah Constitution. (The Plaintiffs, however, do not waive an as applied claim for declaratory and equitable relief under the Utah Constitution as well.) Allowing such claims to proceed forward when a majority of the Utah Supreme Court recently has indicated a willingness to entertain free exercise claims under the Utah Constitution in a manner that comports with the pre-1990 *Smith* federal rejection of the compelling governmental interest and strict scrutiny analysis.[20]

b. Futility

If the Mission was unable to secure the needed approvals from Salt Lake City, the Mission's lease with the Rosewood Terrace Building expired October 15, 1999. (See Affidavit of Wayne Wilson, ¶ , Appendix Exhibit 12, Omitted Facts # 112, 127, *supra*.) As such, any appeal of the October 21, 1999, written ruling of the City's Planning and Zoning Commission, or the November 15, 1999, Board of Adjustments decision, in terms of seeking reversal of the same

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[18] 2003 UT 13, 73 P.3d 325.

[19] *Snyder v. Murray City Corporation, supra*, 2003 UT ¶ 31, 73 P.3d at 332.

(as distinct from a damage claim) would have been moot, and futile, either on administrative appeal or in district court. The fact that the exception of "capable of repetition but evading review" doctrine could have been invoked as a discretionary matter by the district court does not establish that the administrative bodies (Land Use Appeals Board or Board of Adjustments) could or would have done so.

In addition, the Mission was already in court having challenged certain aspects of the staff report being submitted to the Planning Commission; having continued the challenge, *infra*, there is no basis to require administrative exhaustion of remedies.

c. Future Events Are the Basis for Equitable Relief

Various completed events demonstrate the need for equitable relief under the Utah Constitution to prohibit their continued practice use. These unlawful practices include the following: (1) using the administrative interpretation process without complying with the mandatory requirements by ordinance that protect an applicant authorizing to invoke the same (see Omitted Facts #3, 4, 81, 83, 106, *supra*); (2) failing to follow the mandatory ordinance to provide the Mission with the required form the community council was to sign (see Omitted Facts ## 82, 117, 139, *supra*); (3) failing to use discretionary authority in the City ordinances to facilitate the Mission's application for a conditional use permit or building permit when the authority was used to facilitate the application of other churches and non-churches (see Omitted Facts ## 118, 128, *supra*); (4) using lawful authority to single out the Mission for enforcement

[20] See *State v Green*, 2004 UT 76 PP 63 (Justices Durham and Nehring) 65-73 (Justice Durrant and Wilkins) 98 P.3d

when other churches and non-churches were not treated the same (see Omitted Facts #62-74, *supra*); (5) using the Board of Adjustment appeals process to thwart rather than facilitate the "religious worship" of the Mission as was done for other churches or entities (see Omitted Facts #9, 10, 56, 87, 88, 96, *supra*); and (6) interpreting facially clear or vague provisions of City ordinances to thwart the "religious worship" of the Mission, which interpretation were contrary to the interpretations provided to other religions or entities.

3. Mission's Claims under 42 U.S.C. § 1983 are Properly Before the Court

Salt Lake City is a "person" against whom a claim for relief under 42 U.S.C. § 1983 may be brought. A claim under § 1983 can include injunctive, declaratory and monetary relief. A "final, definitive decision from Salt Lake City officials" has occurred because the Mission is able to establish a "prima facie" case showing violations of the United States Constitution based on City's previous, definite, completed actions to which the Mission had no right of appeal or was not a party. Injunctive relief and damages can be awarded based on the Mission's presentation of "prima facie" constitutional violations by completed City administrative conduct as to the Mission, other religions or religious entities, and relevant secular entities or persons.

The Mission is unwilling to apply to have the City determine what its "use" is for a particular area because of the ongoing facially invalid standards and previous past unlawful "as applied" challenges imposed on the Mission. Having been previously criminally prosecuted, Pastor Wilson similarly has imposed "self-censorship" on various aspects of his "religious

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820, 834-837.

worship" until these matters are clarified. (See Affidavit of Wayne Wilson ¶ 49, Appendix Exhibit 12.)

IV. Jurisdictional Basis for Damage Claim Against the City's Unlawful Ordinances, Policies, and Customs

Under 42 U.S.C. § 1983, the City is liable for facially unconstitutional ordinances, implementation and interpretation of the same by policymakers, and the creation of customs upholding unlawful interpretations and applications to Plaintiffs.

A. Adopting Ordinances Creates Policies

The United States Supreme Court has stated that

> it is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances. No one has ever doubted, for instance, that a municipality may be liable under § 1983 for a single decision by its properly constituted legislative body—whether or not that body had taken similar action in the past or intended to do so in the future—because even a single decision by such a body unquestionably constitutes an act of official government policy.[21]

The City's adoption of definitions of "religious worship" and "accessory use" that allow the government to define what is an "accessory use ... for religious worship" and allow what is "customary" religious worship (City Code §§ 21A.62.040) facially violates the Establishment Clause and are unconstitutionally vague. Even though an "applied" prior restraint on free exercise of religion is required when challenging city ordinances that regulate matters normally not associated with expression, as the success of the challenge presupposes the ordinances as adopted provided excessive discretion to decisionmakers and failed to impose time constraints on

decision makers, it is proper to subject the City to liability for the effects caused by excessively discretionary ordinances.

B. Binding Nature of Decisions of Policymakers

Actions taken by the Mayor and the City Attorney (and their respective offices) as policymakers of the City as well as custom and practice of City dep7artments bind the City as the responsible party for the Mission's "as applied" claims under the establishment clause, free exercise clause, equal protection, and due process clause. The Court of Appeals for the Tenth Circuit has stated:

> Where a city official 'responsible for establishing final policy with respect to the subject matter in question' makes a deliberate choice to follow a course of action ... from among various alternatives,' municipal liability attaches to the decision. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986). Municipal liability arises even if the official's decision is specific to a particular situation.[22]

A city official may be a policymaker for the City "in a particular area, or on a particular issue."[23] Whether a city official has "final policymaking authority" is a question of state law.[24] There are three elements to determine whether an official is a "final policymaker":

> (1) whether the official is meaningfully constrained 'by policies not of that official's own making;' (2) whether the official's decisions are final-i.e. are they subject to any meaningful review; and (3) whether the policy decision purportedly made by the official is within the grant of authority.[25]

Under this standard, the Mayor and City Attorney all have been policymakers for the City as to certain aspects of this case. Unlike the City Council whose policy decisions expressed as

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[21] *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S.Ct. 1292, 1298, 89 L.Ed.2d 452 (1986).
[22] *Dill v. City of Edmond*, 155 F.3d 1193, 1121 (10th Cir. 1998)
[23] *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 785, 117 S.Ct. 1734, 1737, 138 L.Ed.2d 1 (1997).
[24] *City of St. Louis v. Paprotnik*, 485 U.S. 112, 124, 108 S.Ct. 915, 924, 99 L.Ed.2d 107 (1988).

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ordinances may be facially challenged, the actions of the City Attorney, Mayor, and those to whom authority has been delegated, are normally challenged for reason of their application of the ordinances in question.

1. City Attorney and Office as Policymakers for the City

Under state law, a City Attorney "may prosecute violation of city ordinances" and "shall represent the interests of the ... municipality in the appeal of any matter prosecuted in any trial court by the City Attorney."[26] A city attorney "has the same powers in respect to violations as are exercised by a county or district attorney" except as to certain matters of transactional immunity.[27] The Court of Appeals for the Tenth Circuit has already recognized that both the City Attorney and the County Attorney are binding policy-making decision-makers as it relates to criminal prosecutions for their respective governments.[28] Thus, the decision to prosecute Pastor Wilson in 1996 was made by a policymaker for the City.

The same discretionary policy making authority of a deputy County Attorney in Washington County relative to Fourth Amendment options chosen to follow in a civil proceeding was also recognized as being clearly sufficient to establish his actions as a policymaker for the County.[29] Just as a deputy County Attorney can be a policymaker in a County Attorney's Office through delegation, likewise, a deputy City Attorney can be a policymaker through delegation.

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[25] *Randle v. City of Aurora*, 69 F.3d 441, 448 (10th Cir. 1995).
[26] U.C.A. § 10-3-928(1) and (4).
[27] U.C.A. § 10-3-928(3); see also U.C.A. § 17-18-1.
[28] See *D.L.S. v. Utah*, 374 F.3d 971, 974-975 (10th Cir, 2004) ("It follows that a plaintiff can not show a real threat of prosecution in the face of assurances [by affidavits of city prosecutor and county attorney] of non-prosecution from the government merely by pointing to a single past prosecution of a different person for different conduct.")
[29] See *J.B. v. Washington County*, 127 F.3d 919, 924 (10th Cir. 1997)

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The determination that the City Attorney is an autonomous policymaker as it relates to choosing between lawful and unlawful positions is in accord with the City ordinance that provides that the City Attorney "shall be the chief legal officer of the City," being "responsible to the mayor and city council for the proper administration of the legal affairs of the executive and legislative branches of city government," with the "responsibility ... to administer the office of the City Attorney in a manner that will enable the mayor and the city council to fulfill their respective duties in a timely fashion." (City Ordinances § 2.08.040 A 1 and A 2.) The fact that neither the Mayor nor City Council are prohibited from using City funds to retain "separate counsel" enhances the understanding that while they may or may not agree with the advice and actions taken, they do not have the authority to override the decisions of the City Attorney (or delegated by him to those of his office) as policymakers for the City..

In addition to the criminal prosecution of Pastor Wilson, the City Attorney and his office developed, was aware of, and/or approved of the following: (1) the creation and application of the Interfaith church policies (see Omitted Facts # , *supra*); (2) the insistence on administrative enforcement investigations to be brought against the Mission (see Omitted Facts # , *supra*); (3) the creation and issuance of the April 20, 1999, letter labeled as an administrative interpretation letter (see Omitted Facts # , *supra*); (4) the creation and issuance of the July 2, 1999, letter regarding what the Mission potentially was to be classified as (see Omitted Facts # , *supra*); (5) the creation and the issuance of the August 31, 1999, letter continuing to mandate pre-application presentation to a community council meeting before being allowed to submit a conditional use application (see Omitted Facts # , *supra*); (6) the creation and issuance of the

September 14, 1999 letter labeled as an administrative interpretation letter (see Omitted Facts # , supra); (7) opposing the Mission's efforts to remove from the staff report the (a) the community council vote; (b) comparison of the Mission to other churches; and (c) relying on past truthful statements and lawful conduct of the Mission to denigrate future statements and religious practices to engage in "religious worship" within agreed upon conditions which restricted both speech and advertising (see Omitted Facts # , *supra*); (8) defining the issues for review before the November 15, 1999, Board of Adjustments (see Omitted Facts # , *supra*); (9) interpreting the factual "change" necessary to justify reconsideration of the Mission's 1999 application for the Rosewood Terrace Building (see Omitted Facts # , *supra*); (10) interpreting the Mission's status at the Central Christian Church (see Omitted Facts # , *supra*); (11) using the 1999 Board of Adjustment ruling to continue classifying the Mission as a homeless shelter for purposes of re-submission of a request to use the Rosewood Terrace Building (see Omitted Facts # , *supra*); and (12) refusing to identify the reasons that justified the City's different treatment of the Interfaith churches (see Omitted Facts # , *supra*).

2. The Mayor as a Policymaker for the City

For the same reasons, the Mayor of Salt Lake City is a policymaker for the City as well.

> The mayor shall be responsible for the proper administration of all affairs of the city with which the office is charged. The mayor's powers and duties include, but are not limited to ... [s]upervising the administration and enforcement of all laws and ordinances of the city ... and [a]dministering and exercising control of all departments of the city."

(City Ordinances 2.04.010 A & B, Appendix Exhibit)

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The adoption of a City policy to discourage concentration of transient homeless in the downtown area was in place and was functioning vis-à-vis the Mission as early as 1994 and carried through all of the Corradini administration. Although the Anderson administration stated the City policy regarding the concentration of the homeless services in the City has changed (see Omitted Facts # , *supra*), the result of the actions of that administration had the same effect as it related to the Mission fulfilling its religious mission as had the action taken by the Corradini administration.

The City Mayor and her or his offices developed, were aware of, and/or approved of the following: (1) a concerted effort to displace the Mission from its premises in 1994 (see Omitted Facts # , *supra*); (2) adoption of a process allowing Participating Churches and Interfaith to circumvent the administrative interpretation and conditional use permit process and an omission of administrative inspections of these "accessory use" homeless shelters (see Omitted Facts # , *supra*); (3) the favoring of the "religious worship" of Interfaith and the Participating Churches working with families living in Salt Lake City that were temporarily homeless over the "religious worship" of the Mission that also included single persons, those with addictions, or in need of shelter to protect themselves against life-threatening weather conditions (see Omitted Facts # , *supra*); (4) the promotion of moratoria designed to thwart the Mission's relocation in the first half of 1999 in the Downtown or Gateway district (see Omitted Facts # , *supra*); and (5) the continued notification to the Mission that its location based on use was restricted to the D-3 and CG zones when no such restriction had not been placed on the Mission during its stay at the Central Christian Church.

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C. The Customary Practices of the Planning and Zoning Department Are Policies of the City

The United States Supreme Court has stated:

> Section 1983 also refers to deprivations under color of a state 'custom or usage' and the Court in *Monell* noted accordingly that 'local governments, like every other § 1983 'person.' ... may be sued for constitutional deprivation visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision making channels.' 436 U.S. at 690-691, 98 S.Ct. at 2036. A § 1983 plaintiff may be able to recover from a municipality without adducing evidence of an affirmative decision by policymakers if able to prove that the challenged action was pursuant to a state 'custom or usage.'[30]

Of course,

> [i]n the same way that a law whose source is a town ordinance can offend the Fourteenth Amendment even though it has less than state application, so too can a custom with the force of law in a political subdivision of a State offend the Fourteenth Amendment even though it lacks state-wide application.[31]

Other courts have articulated when a de facto custom of a City is sufficient to establish municipal liability.

> Unlike a 'policy', which comes into existence because of the top-down affirmative decision of a policymaker, a custom develops from the bottom-up. Thus, the liability of the municipality for customary constitutional violations derives not from the creation of the custom, but from its toleration or acquiescence in it.[32]

"It is not necessary that [the governmental entity have] endorsed these policies or customs through legislative action for it to carry its imprimatur."[33] A "custom or usage" is attributable to the governmental body when the "duration and frequency of practice warrants a finding of either

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[30] *Pembaur v. City of Cincinnati*, 475 U.S. 469, 461 n. 10, 106 S.Ct. 1292, 1299 n. 10, 89 L.Ed.2d 452 (1986).
[31] *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 173, 90 S.Ct. 1598, 1616-1617, 26 L.Ed.2d 142 (1970).
[32] *Britton v. Maloney*, 901 F. Supp. 444, 450 (D. Mass. 1995).
[33] *Alkire v. Irving*, 330 F.3d 802, 815 (6th Cir. 2003).

actual or constructive knowledge by ... the governing body [or policymaker with responsibility for oversight and supervision] that the practices have become customary among its employees."[34] When the departments or officials in question repeatedly act beyond their authorized scope of authority, resulting in a constitutional violation, the governmental entity has shown "deliberate indifference ... even if unaware of the unlawfulness of the action."[35]

The following customs or policies were followed by the City's Planning and Zoning Department ("PZD"), all in violation of the constitutional rights of the Mission: (1) use of the administrative interpretation process without complying with the mandatory requirements by ordinance to invoke the same (see Omitted Facts # , *supra*); (2) failure to follow the mandatory ordinance to provide the Mission with the required form the community council was to sign (see Omitted Facts # , *supra*); (3) failure to use discretionary authority to facilitate the Mission's application for a conditional use permit or building permit when the authority was used to facilitate the application of other churches and non-churches (see Omitted Facts # , *supra*); (4) use of lawful authority to single out the Mission for enforcement when other churches and non-churches were not treated the same (see Omitted Facts # , *supra*); (5) use of the Board of Adjustment appeals process to thwart rather than facilitate the "religious worship" of the Mission as was done for other churches or entities (see Omitted Facts # , *supra*); and (6) interpreting facially clear or vague provisions of City ordinances to thwart the "religious worship" of the Mission, which interpretation was contrary to the interpretations provided to other religions or entities.

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[34] *Spell v. McDaniel*, 824 F.2d 1380, 1387 (4th Cir. 1987).

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V. Facial Challenges to City Ordinances

The Plaintiffs challenge the City's ordinances on facial grounds under the Establishment Clause as well as the Due Process Clause on vagueness grounds.

A. Facial Violation of the Establishment Clause

The City's ordinances must satisfy three requirements under the Establishment Clause of the United States Constitution.

> First, the statute must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally, the statute must not foster an excessive entanglement with religion.[36]

On the face, the text of the ordinance violates the third prong of the *Lemon* test by excessively entangling the City in determining what constitutes "religious worship," an "accessory use ... of religious worship," and whether that accessory use is "customary" for that religious worship.

On their face, the City ordinances defining a church and accessory use require the unconstitutional entanglement of the City's secular perspective as to what constitutes "religious worship."

> "Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.
>
> "Accessory use" means a use that:
>
> (A) Is subordinate in area, extent and purpose to, and serves a principal use;
> (B) Is customarily found as an incident to such principal use;

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[35] *Foust v. McNeil*, 310 F.3d 849, 862 (5th Cir. 2002).
[36] *Lemon v. Kurtzman*, 403 U.S. 602, 612-613, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) (quotations and citations omitted.)

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(C) Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;

(D) Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and

(E) Is under the same ownership or control as the principal use.

(City Code §§ 21A.62.040) As written, the "place of worship" can be interpreted as including "any accessory use," "any accessory use ... for religious worship," or "any accessory use ... used for religious worship." All three interpretations violate the third prong of the *Lemon* test.

As written, the ordinances, require excessive entanglement insofar as the PDZ is required to determine these uses, especially when the ordinance fails to define when, and by whom, a "customary" use is allowed to change. Thus any church introducing any new aspect of "religious worship" (apart from doctrine) that included conduct, even if it were all confined to the existing premises, would be at risk. Letting government define the allowed parameters of "religious worship" with ill-defined criteria requires excessive entanglement of the City in the affairs of the church, in violation of both the state and federal establishment clauses. Consequently, Salt Lake City's use of these definitions is facially both "unreasonable and irrational" and subject to a strict scrutiny under "substantive due process" analysis.[37]

[37] *Smith Investment Company v. Sandy City*, 958 P.2d 245, 252-253 (Utah Ct. App. 1998).

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The use of alternate definitions – such as those used by Salt Lake County or Brigham City – demonstrate the City cannot show it has used the least restrictive means to achieve its express or implied planning and zoning objectives (see Omitted Facts # , *supra*).

In 1980, the Court of Appeals for the Tenth Circuit reviewed an ordinance that exempted religious solicitations solely for "evangelical, missionary or religious but not secular purposes." Secular solicitations were defined as "not spiritual or ecclesiastical, but rather relating to affairs of the present world, such as providing food, clothing and counseling." The Seventh-day Adventist Church challenged the regulation after being told it had to register to solicit because some of the monies being solicited would be "used for the purchase of food, clothing and shelter for those in need." Without registering, the Church raised an "as applied" challenge to the City's notification to the Church that the registration requirement applied to its solicitation efforts.

> The setting up of a city agency to make distinctions as to that which is religious and that which is secular so as to subject the latter regulation is necessarily a suspect effort. It may be that applied to an organization which can be shown to commit atrocities in the name of religion or with a religious cloak would present a different problem. We do not, however, have this condition here. The conception of religion entertained by the City in this very case was that it had to be purely spiritual or evangelical. Thus, the charitable activity of the church having to do with the feeding of the hungry or the offer of clothing and shelter to the poor was deemed to be subject to regulation. This broad definition of secular is part of the problem. Whether a less vigorous construction would result in a different conclusion is not, of course, before us and is not a proper subject for us to consider. Inasmuch, however, that the challenge is to the ordinance as applied we must conclude that the present effort is an invalid interference.....Regulation which burdens the free exercise of religion and poses a threat of entanglement between the affairs of Church and State must be justified by a compelling state interest, *Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2a 965*

> *(1963),* and there must not exist less restrictive and entangling alternatives. *Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L. Ed. 2d 697 (1970).*[38]

Even though this decision was pre-*Smith*, the City's ordinance would be subject to a strict scrutiny analysis because the challenged ordinances are determined and applied on a "case-by-case" basis, (see Affidavit of Cheri Coffey, Appendix Exhibit 10.) or as applied to Interfaith's Participating Churches, there is an exclusive "group" determination of appropriateness as to prior and future "accessory use" related to the "place of worship."

1. Facial Violation of Prohibition on Vagueness

Plaintiffs challenge the ordinances of the City ordinances on grounds of vagueness. .

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* basis and subjective basis, with the attendant danger of arbitrary and discriminatory application.[39]

"A regulation is void on its face if it is vague that persons 'of common intelligence must necessarily guess as to its meaning and differ as to its application.' *Connally v. Gen. Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed 322 (1926).*"[40] For the reasons noted above under the establishment clause claim, the City's ordinances are also unconstitutionally vague.

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[38] *Espinosa v. Rusk,* 634 F.2d 477, 481-82 (10th Cir. 1980).
[39] *Flipside, supra*, 455 U.S. at 498; 102 S. Ct. at 1193.
[40] *Konikov v. Orange County Florida*, 410 F.3d 1317, 1329 (5th Cir. 2005).

Notwithstanding the stated requirement to present to a community council before a conditional use permit may be accepted, Salt Lake City has allowed the zoning administrator to have unbridled discretion in determining whether to waive that requirement.

> A complete application shall contain at least the following information submitted by the applicant, unless certain information is determined by the zoning administrator to be inapplicable or unnecessary to appropriately evaluate the application: ... (11) such further information or documentation as the zoning administrator may deem to be necessary for a full and proper consideration and disposition of the particular application.[41]

As used in the licensing context, similar language has been found to violate "unbridled discretion" prior restraint requirements.[42] In addition, because of its inherent contradictory nature with the opening authority of waiver, it fails to give notice of what waiver can be sought for by an applicant.

VI. "As Applied" Challenges to the City Ordinances Brought by the Plaintiffs

Based on the foregoing conduct authorized by or known to policymakers of the City, or established customs, the Plaintiffs bring "as applied" challenges on grounds of violations of the establishment clause, vagueness based on the due process clause, "prior restraint" of free exercise of religion, free exercise of religion, denial of due process regarding the Board of Adjustment ruling on November 15, 1999, and equal protection.

The Mission is unwilling to apply to have the City determine what its "use" is for a

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[41] SLC City Code § 21A 54.060 8, 11.

[42] See *American Target Advertising, Inc.*, 199 F.3d 1241, 1251-1254 (10th Cir.) *cert. denied* 531 U.S. 811, 121 S.Ct. 34, 148 L.Ed.2d 14 (2000).

particular area because of the ongoing facially invalid standards and previous past unlawful "as applied" challenges imposed on the Mission. Having been previously criminally prosecuted, Pastor Wilson similarly has imposed "self-censorship" on various aspects of his "religious worship" until these matters are clarified. (See Affidavit of Wayne Wilson ¶ 49, Appendix Exhibit 12.)

A. Establishment Clause Violations

To the degree the facial challenge raised as a violation of the Establishment Clause is facially rejected, the same claims are also raised in as applied context.

The City's ordinances, practices and customs must satisfy three requirements under the Establishment Clause of the United States Constitution.

> First, the statute must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion ...; finally, the statute must not foster an excessive entanglement with religion.[43]

As administered, the City delegated governmental functions to a religious association in violation of the second and third prong of the *Lemon* test. As administered, the City has favored certain religions or religious entities over the Mission, thus violating the Establishment Clause.

1. Improper Delegation of Civic Authority to a Religious Entity

In 1989, the United States Supreme Court observed that

> [i]n the course of adjudicating specific cases, this Court has come to understand the Establishment Clause to mean that government ... may not discriminate among persons on the basis of their religious beliefs and practices [and] may not delegate a governmental power to a religious institution[.][44]

[43] *Lemon v. Kurtzman*, 403 U.S. 602, 612-613, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) (quotations and citations omitted.)

[44] *County of Allegheny v, American Civil Liberties Union*, 492 U.S. 573, 590-91, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989) (footnotes containing citations omitted.)

The City's practice of (1) treating the services to the homeless provided by the Participating Churches as coming within the practices and policies of the Interfaith without further inspection and (2) allowing the Participating Churches to circumvent the administrative interpretation or process of acquiring a conditional use permit based on representations of Interfaith violates these constitutional requirements.

> We can assume that [Interfaith] would act in good faith in their exercise of the [delegated] power, yet [the City's practice] does not by its terms require that the [Interfaith's] power be used in a religiously neutral way. The potential for conflict inheres in the situation, and [the City has] not suggested any effective means of guaranteeing that the delegated power will be used exclusively for secular, neutral, and nonidelogical purposes. In addition, the mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred. It does not strain our prior holdings to say that the [practice] can be seen as having a "primary" and "principal" effect of advancing religion.[45]

Furthermore, relying on Interfaith's representations as being sufficient to allow uninvestigated conduct of member churches that on the face could merit enforcement of zoning requirements mandating relocation of Participating Churches to other zones of the City, violates the third prong of the *Lemon* test.

> [The City's practice] emmeshes churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause; 'the objective is to prevent, as far as possible, the intrusion of either [Church or State] into the precincts of the other.' *Lemon v. Kurtzman, ...* We went on in that case to state:
>
> > Under our system the choice has been made has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that

[45] *Larkin v. Grendel's Den*, 459 U.S. 116, 125-126, 103 S.Ct. 505, 74 L.Ed.2d 297 (1982) (citations and quotations omitted.)

> religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

Our contemporary views do no more than reflect views approved by the Court more than a century ago:

> The structure of government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority.

As these and other cases make clear, the core rationale underlying the Establishment Clause is preventing 'a fusion of governmental and religious functions.' The Framers did not set up a system of government in which important, discretionary governmental powers would be delegated to or shared with religious institutions.

> [The City's de facto delegation of authority to Interfaith] substitutes the unilateral and absolute power of a church[-related entity] for the reasoned decisionmaking of a public legislative [and administrative] body acting on evidence and guided by standards, on issues with significant economic and political implications. The challenged [practice] thus enmeshes [affiliated] churches in the processes of government and creates danger of '[p]olitical fragmentation and divisiveness along religious lines,' *Lemon v. Kurtzman*, ... Ordinary human experience and a long line of cases teach that few entanglements could be more offensive to the spirit of the Constitution.[46]

Thus, the City's reliance on Interfaith's representations both as to what services are provided to the homeless of Participating Churches and over time the safety of the environment in which they are provided fails the third prong of the *Lemon* test.

2. Objective Favoring of Other Churches and Religions Over the Mission

In addition to the conduct of the City with Interfaith recited above, the factual basis for several of the Mission's claims includes the following conduct of the City vis-à-vis other churches as compared to actions taken by the City regarding the Mission.

a. Disparate Enforcement of Code

While functioning as a church and fulfilling its ministry to the homeless, the Mission was subject to administrative inspections while other Participating Churches were not (see Omitted Facts # , *supra*).

b. Disparate Enforcement of Conditional Use Process

Without administrative authority to do so, the City's PZD did not require the Zion's Lutheran Church to apply for and complete the conditional use process for a substantial expansion of a conditional use. Furthermore, none of the Participating Churches were required to obtain a conditional use permit either for an expansion of a pre-existing conditional use (through a new "accessory use ... for religious worship") or at least an administrative ruling (with notice to the community council) that the involvement with a facially applicable "homeless shelter" definition was to be subsumed as an "accessory use." The Mission was never allowed any of these options.

c. Disparate Use of Board of Adjustment Process

The PZD treated the Mission differently in terms of presentation and procedure to the Board of Adjustments than that used with the Church of the Madeline and the Jewish Community Center. The appeals focused on the religious related entities' "secular" activities, e.g. a school at Church of the Madeline and a day care center at the Jewish Community Center. For these two entities, the PZD and Board of Adjustments encouraged and allowed (1) delays to obtain a clarifying legal opinion or modify an earlier ruling of the Board, as

[46] *Larkin v. Grendel's Den, supra,* 459 U.S. at 126-127 (quotations, citations, and footnote omitted.)

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well as (2) a request made, after disclosure, for a Board of Adjustment decision regarding what was considered to be an "accessory" use of the Jewish Community Center if it disagreed with the assessment of Randy Taylor. In the Mission's case, the City would not delay the hearing even though the appellant requested that the Board do so. In addition, the Board of Adjustments was not notified by the City of the practice of considering the providing overnight accommodations on a temporary basis for families by Participating Churches with Interfaith to be an "accessory use" to their "place or worship" and not requiring a conditional use permit.

d. Disparate Recognition of Value of Free Exercise of Religion

On June 30, 2005, a request for an administrative exception was granted to the Summum religion. One of the reasons relied upon to grant the same was to allow the church the "free exercise of religion". (City 33) It is not apparent that at any time the Mission's "free exercise of religion" was factored into the City's dealing with the Mission.

3. Violation of United States Establishment Clause

In addition to the violation of the third prong of the *Lemon* test noted under the facial challenge, when these examples of disparate treatment are taken together or individually, a violation of Establishment Clause has been demonstrated. As applied to the Mission, such conduct violates the first and second prong of the *Lemon* test.

a. Abandonment of Secular Purpose

As noted above, the City's ordinances have been interpreted as favoring one perspective of "religious worship" as an "accessory use" over other perspectives that are also understood to

be "religious worship." While the use is claimed to be secular in purpose by the City, the continuation of the Interfaith favoring practice without amending the ordinances to clarify the allowable parameters places in question the purpose of the application of the City ordinances.

The proffered "purpose" of the legislation is evaluated by an objective observer who is presumed to know the (1) "history and context of the community," (2) "historical context of the [government action]", (3) "specific sequence of events leading to its passage", and (4) "implementation" of government action.[47] " '[T]he question is what viewers may fairly understand to be the purpose of the [action]' "[48] and whether it ""makes outsiders of non-adherents."[49] Based on the history of the City's interaction with Interfaith and the Mission, one could surmise that there has been an abandonment of a "true" secular purpose: "religious worship" involving the poor and the needy is acceptable if it meets specific criteria, a dominant one of which is that the persons come from the local community (and not be transient), be an intact family, and have no addictions. While such restraints may keep the "not in my backyard" syndrome ("NIMBY") to a minimum while simultaneously reaping the benefit of private charity assisting the homeless rather than government, when implemented in a way that favors such ""religious worship," and no clear demarcation as to what is favored and unfavored secular conduct, the original secular "purpose" of the ordinance is disclosed in advance by ordinance, policy or rule, the real purpose of the application of the terms is, at best, suspect.

> Lemon's "purpose" requirement aims at preventing the relevant governmental decisionmaker—in this case, Congress—from abandoning neutrality and acting

[47] *McCreary County, Kentucky v. American Civil Liberties Union of Kentucky*, 125 S.Ct. 2722, 2737 (2005). (quotation omitted.)
[48] *Id* at 2738 (quotation omitted.)
[49] *Id.* at 2735.

> with the intent of promoting a particular point of view in religious matters...[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission. [50]

Both the Mission and Pastor Wilson seek clarification of the City's requirements before proceeding forward.

b. Favoring One Religion Over Another

"[T]he 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal government ... can pass laws which ... prefer one religion over another."[51] The "First Amendment mandates neutrality between religion and religion"[52] " "Lemon's" purpose requirement aims at preventing [government] from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters."[53] Favoring one religion over another, undermines the "understanding, reached ... after decades of religious war, that liberty and social stability demand a religious tolerance that respects the views of all citizens. ..."[54] The express acts of the City favoring of the Interfaith's view of "religious worship" over that of Plaintiffs violates the second prong of the *Lemon* test.

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[50] *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335-336, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987).
[51] *Everson v. Board of Education of Ewing Tp.*, 330 U.S. 1, 15, 67 S.Ct. 504, 511, 91 L.Ed. 711 (1947) *rehearing denied* 330 U.S. 855, 67 S.Ct. 962 (1947).
[52] *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968).
[53] *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335, 107 S.Ct. 2683, 97 L.Ed.2d 273 (1987).
[54] *Zelman v. Simmons-Haeris*, 536 U.S. 639, 718, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002).

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B. Due Process Vagueness Challenge

By showing the following six "vagueness" applications of the City ordinances to the Mission, Plaintiffs demonstrate the validity of the Plaintiffs' "as applied" challenge.

First, in September 14, 1999, Randy Taylor originally found that the Mission's practice of providing emergency shelter in life-threatening circumstances would constitute an accessory use to the primary uses of a place of worship and a boarding house. He later reflected that "any reasonable person" would have interpreted the ordinances that way so long as those in need did not come in "hordes". (Deposition of Randy Taylor ____Appendix Exhibit 5.) On the other hand, on September 8, 2003, the Mission was advised that the emergency overnight stay of a single homeless person would qualify the Mission as a homeless shelter. see Omitted Facts # , *supra*). It remains unknown whether or not the sleeping of persons at the Mission during Christmas Eve 1996 would be a violation as defined September 8, 2003.

Second, there was a significant difference in perspective as to what was required to issue and administrative interpretation. This is significant because Randy Taylor insisted that he followed the requirements of City ordinances regarding the submission of Administrative Interpretations. (Deposition of Randy Taylor ____, Appendix Exhibit 5.) Nonetheless, there was no evidence that the mandatory, limiting application procedures were followed when issuing what he considered to be administrative interpretations (see Omitted Facts # , *supra.)* Wayne Mills, on the other hand, would not characterize his June 21, 2004 letter as being and administrative interpretation because, in part, Pastor Wilson never filled out the form or paid the fee. (Deposition of Wayne Mills 31:2-13, Appendix Exhibit 8.)

Third, the impact of the change in city policy was viewed differently by different zoning administrators. And again in 1999, the existing city policy regarding the decentralization of services for homeless people was specifically relied upon as a basis to notify the Mission that its proposal would not receive a positive recommendation. Later, under Mayor Anderson's administration, the City changed its policy to reflect centralization of services for homeless people. This is fraught with the potential to facilitate or frustrate the "religious worship" of the Mission under one situation, the Mission's factual submissions from their 1999 request for a conditional use permit could be revaluated and considered again in 2003. In another, the Board of Adjustments ruling would effectively bar any application submitted by the Mission without a change in what it intended to do at the Rosewood Terrace facility. Randy Taylor, zoning administrator through 2000, testified that such a change in policy would provide the factual basis necessary to allow for a re-evaluation of the Board of Adjustments determination in 1999 that classified the Mission's proposed use at the Rosewood Terrace Building as a homeless shelter. (Deposition of Randy Taylor, 38:12-24; 41:13-42:2 Appendix Exhibit 5). On the other hand, even on June 21, 2004, Wayne Mills, acting Zoning Administrator, issued an informal letter to the Mission indicating that because their was an absence of a "factual" change in the proposal of the Mission, precluded reconsideration of the Mission's prior submission on the Rosewood Terrace Building. (Deposition Exhibit # ____; Deposition of Wayne Mills, Appendix Exhibit 8).

Fourth, on September 10, 1999, three drafts of a letter regarding the potential use of the Mission at the Rosewood Terrace Building (167 North 600 West) were prepared for Randy

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Taylor's signature. One provided the Mission was a church, one provided the Mission was a church and boardinghouse, and one provided the Mission was a church, boardinghouse, and homeless shelter. These letters were the results of discussions with Brent Wilde, Bill Wright, and Lynn Pace. "To the best of [Randy Taylor's] knowledge, [the draft letters] seem to represent how the Mission could have been classified at that time. (See Omitted Fact ___, *supra*.)

Fifth, certain words and phrases remained standardless or difficult to understand even for Zoning Administrators. For example, Wayne Mills indicated he could make a "new" review of the classification of the Mission as a "homeless shelter" by the Board of Adjustment at the Rosewood Terrace Building if the Mission would submit a "new proposal" regarding the property showed there was a "change" from the previous submission. The criteria to determine if there was a "change" could be "anything".

Q What type – what criteria do you use to determine if there's been a change?
A It could be anything, I would have to see the proposal.
Q Tell me what you mean by anything.
A It depends upon what is being proposed.

(Deposition of Wayne Mills 20:13-18. Appendix Exhibit 8.) Randy Taylor also struggled to provide definite criteria to explain the meaning of an aspect of the City Code that had been quoted in the April 20, 1999, administrative interpretation letter to the Mission. When asked how a "negative impact" on the neighborhood was distinguished from the same impact on "the city as a whole," he stated: "I just --- I guess that the neighborhood, being part of the city as a whole, is ... how I would respond to that." (Deposition of Randy Taylor, 43:11-19, Appendix Exhibit 5.)

Sixth, equally critical to this case was that neither the interplay between an "accessory use" of a church and a "homeless shelter," nor the difference between the Mission's church functions, "religious worship," and services to the homeless, were understood by Randy Taylor after months of review[55]. Randy Taylor perceived the "use" classification in the Mission's case as being complicated because of "the level of services and so on to homeless and to --- and the substance abuse and all being considered conditional uses in most locations." (Deposition of Randy Taylor, 60:10-14 Appendix Exhibit 5.) Pastor Wilson or some of his staff talked with Randy Taylor about the Mission being a church, with part of its mission being to feed and clothe the needy because to do so is feeding and clothing Jesus, and, thereby, is an integral part of their religious worship. (Deposition of Randy Taylor, 29:25-30:5 Appendix Exhibit 5.) As the Zoning Administrator, "to the extent that --- that as a church activities like substance abuse and homeless services of various kinds would be considered allowed uses under the umbrella, if you will, of the church, that part of it was complicated to me." (Deposition of Randy Taylor, 61:2-6 Appendix Exhibit 5.) The complicating lack of clarity was exacerbated by the question in Randy Taylor's mind about the distinction between a mission and a church. Some aspects of the Mission clearly appeared to be church and/or worship activities; whereas, counseling, referrals, providing meals, and other social aspects would be classified by Mr. Taylor to be activities in which a mission would engage – related, but distinctly separate from worship.

> Well, yes, there was some question in my mind. There was quite a bit of discussion about mission versus church. And I didn't pretend to understand fully what a mission is, but I had an idea. But they certainly sounded like a church in many, many, many ways and did church-related things...what I thought a mission

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> was was a --- you, know, the kinds of things that they do. They provide services of various kinds to folks who need them, a lunch, a --- some counseling, some --- some referral to help of various kinds...I viewed it probably more as a --- you know, you've got your church and the worship services, and then you've got the social aspects on the side or along with that. And I viewed them as different things, related but different.

(Deposition of Randy Taylor, 75:21-76:20 Appendix Exhibit 5.)

Conflicting interpretations among those charged with enforcing zoning laws that impact First Amendment freedom of religion is sufficient to establish a violation of RLUIPA and related constitutional doctrines of vagueness and unbridled discretion that accompanies prior restraints.[56]

> When a[n] [ordinance] implicates First Amendment rights, we may consider the *risk* of arbitrary enforcement—the possibility the statute will chill expression. ... [Konikov] presented evidence that tends to show that the law does delegate too much authority to those charged with enforcing it. Two members of the Code Enforcement division differed in their opinion of what frequency would trigger a violation. According to Officer Caneda, two meetings per week would not trigger a violation, but three probably would. George LaPorte, the manager of the division, on the other hand, opined that even one meeting per week could constitute a violation. Although the officers do not make a final determination of violation, they have discretion to initiate an investigation into a possible violation, which can lead to discriminatory enforcement. Because Konikov has produced evidence that the Code has an inherent risk of discriminatory enforcement, he has established the vagueness of the Code. For this reason, we reverse the district court's grant of summary judgment on this claim.[57]

As in this case the Mission has shown not a risk of arbitrary enforcement but actual, discriminatory enforcement *a fortiori* the City's motion for summary judgment should be denied.

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[56] The Tenth Circuit Court of Appeals has found that when "unbridled discretion" is shown as a matter of prior restraint analysis, then facial unconstitutionality on grounds of vagueness as it relates to arbitrary enforcement has been established. See ACORN etc. v. Tulsa.

[57] *Konikov v. Orange County Florida*, 410 F.3d 1317, 1330-1331 (11th Cir. 2005).

C. "Prior Restraint" of Free Exercise of Religion Challenge

In 1940, a unanimous United States Supreme Court held as unconstitutional a state statute that required obtaining a certificate from a government official prior to soliciting for a religious cause.

> It will be noted, however, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine if the cause is a religious one, and the issue of a certificate depends upon his affirmative action. If he finds the cause is not that of religion, to solicit for it becomes a crime. He is not to issue it as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth...[58]

(A 1975 Court opinion found that "[t]he elements of a prior restraint were clearly set forth" by the foregoing language.[59]) The 1940 Court continued:

> The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statue authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action...[60]
>
> [T]o condition the solicitation of aid for the perpetuation of religious views of systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the constitution...[61]

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[58] *Cantwell v. State of Connecticut*, 310 U.S. 296, 305, 60 S.Ct. 900, 84 L.Ed. 213 (1940).
[59] *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 554, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).
[60] *Cantwell v. State of Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 84 L.Ed. 213 (1940).
[61] *Cantwell v. State of Connecticut*, 310 U.S. 296, 307. 60 S.Ct. 900, 84 L.Ed. 213 (1940).

A 1980 Court opinion characterized the 1940 opinion as holding the statute unconstitutional as an "invalid prior restraint on the free exercise of religion."[62] In 1990, the Court recognized the 1940 opinion as an example of a hybrid claim of freedoms of speech and religion that merited protection under a "licensing system ... under which an administrator had discretion to deny a license to any cause he deemed nonreligious."[63]

However, laws dealing with zoning and the issuance of permits (as distinct from licensing religious speech) require an "as applied" situation to bring the claim because they are presumed to be removed from the regulation of First Amendment expression.

> For example, a law requiring building permits is rarely effective as a means of censorship. To be sure, on rare occasion an opportunity for censorship will exist, such as when an unpopular newspaper seeks to build a new plant. But such laws provide too blunt a censorship instrument to warrant judicial intervention prior to an allegation of actual misuse. And if such charges are made, the general application of the statute to areas unrelated to expression will provide the courts a yardstick with which to measure the licensor's occasional speech-related decision.[64]

Fear of prosecution if religious beliefs were exercised and subsequently determined to not be an "accessory use ... for religious worship" has limited the religious practice of the Mission and Pastor Wilson. Refusal of the City to publicly define what the "accessory use" standards are as compared with those of a "homeless shelter" only has exacerbated the problem. (Affidavit of Wayne Wilson, ¶ 44, Appendix Exhibit 12).

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[62] *Village of Schaumberg v. Citizens for A Better Environment*, 444 U.S. 620, 629, 100 S.Ct. 826, 63 L.Ed.2d 73 (1980)

[63] *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 881, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990).

1. Unbridled Discretion

The previous facial and six examples of "as applied" vagueness as it relates to notice and standard of enforcement noted above are incorporated herein by this reference. This is in accordance with existing precedent establishing that the "vagueness" and "unbridled discretion" under a prior restraint challenge are interchangeable.[65]

2. No Time Constraint for Pre-judicial Review

The City does not have any time constraints under which it must issue an informal or formal administrative ruling regarding a particular use on specific property. The City has taken longer to classify the Mission vis-à-vis the secular categories used to determine applicable "use" than other entities. For example, while it normally takes two to three weeks to determine a use, see Omitted Facts # , *supra*, the incomplete classification of the use of the Mission in 1999 took at least five weeks (March 12, 1999, through April 20, 1999). The informal request for classification as a church took at least thirteen weeks (July 1, 1999, through September 14, 1999) to receive an answer. Using the second request in 2004 for an informal request for classification as a church, it took over seven weeks (May 3, 2004, through June 21, 2004) to receive a response. The 1998 by Randy Taylor request for more information regarding the Andrews Avenue location was accompanied by an open ended with no time constraint on when a use would be determined.

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[64] *The Tool Box, Inc. v. City of Ogden*, 355 F. 3d 1236, 1242 (10th Cir. 2004) quoting *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 761, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988).

[65] See *ACORN v. City of Tulsa*, 835 F.2d 735, 741 n.1 (10th Cir. 1987).

The City never provided the Mission with the document to be signed by the neighborhood council as part of the pre-application process (see Omitted Facts # , *supra*.) There is no time constraint as to when the Zoning Administrator is to provide this document.

The Mission was required to re-present to the Rio Grande Community Council in April of 1999 as well as delay its filing of an application in August of 1999 because of the failure of the Fairpark Community Council to meet that month (see Omitted Facts # , *supra*.) There are no time nor procedural constraints in the City ordinances addressing how these delays are to be treated so as not to burden the religiously based applicant.

Pre-1999, the Mission was impeded in its efforts to apply for approval when community councils were either not scheduled (by PZD) or refused to issue verification of a presentation (see Omitted Facts # , *supra*.) On the face, there is no time constraint as to when the neighborhood council or other entity must (1) hear the presentation of the church, (2) or act on the church's explanation.

Based on the foregoing, the Mission may bring an action seeking relief against the City for imposing a "prior restraint on free exercise of religion".

D. Violation of Free Exercise of Religion

In 1993, the United States Supreme Court made the following statement:

> The Free Exercise Clause commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrusts of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures. Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to

> persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.[66]

As applied to the Mission, the Mission was impeded in its religious mission by the following conduct approved by City policymakers: (1) the City followed the "unusual" practice of having a landlord seek to evict the Mission in 1994 as a nuisance in violation of zoning laws instead of doing it themselves as was normally done (see Omitted Facts # , *supra*); (2) the City had staff oppose or debate with the Mission during its presentation at every community council meeting (see Omitted Facts # , *supra*); (3) the City took very extended periods of time to determine the Mission's use classification (see Part VI(B), *supra);* (4) the City imposed the conditional use permit burdens on the Mission regarding the Rosewood Terrace Building. When had the Mission only applied as a secular boardinghouse, it would never have had to go through the conditional use process (See Omitted Fact # , *supra*); and (5) the City used a non-applicable determination by the Board of Adjustments to determine where to send the Mission for relocation purposes (see Omitted Facts # , *supra*).

E. Denial of Equal Protection

While equal protection claims under zoning provisions are normally evaluated on a rational basis test, the

> 'rationality' in the law of equal protection is not in fact a single standard, though the courts have been coy about admitting this. *City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 105 S.Ct. 332349, 87 L.Ed.2d 313 (1985)*, like this a zoning case, and decisions following it ... identify a category of sensitive uses or activities, where judges are to be more alert for unjustifiable discrimination than in the usual case in which government regulations are

[66] *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547, 113 S.Ct. 2217, 124 L.Ed.2d 471 (1993).

> challenged on equal protection grounds. ...Previous decisions of this court and other courts of appeals have recognized that the *Cleburne* line of cases expands the boundaries of "rationality" review. ... Churches are no less sensitive a land use than homes for the mentally retarded ... .[67]

The reasons reviewed above establish a violation of equal protection under the Fourteenth Amendment and that of the Utah Constitution whose protections may be greater than the federal.[68]

F. Denial of Due Process By Subsequent Application of the November 19, 1999, Board of Adjustment Hearing Against the Mission

After the Mission's departure from the Central Christian Church, it initiated dialogue with the City both as to re-consideration of its request to use the Rosewood Terrace Building and what "use" the Mission would be classified as. On June 23, 2003, the Mission met with Mayor Anderson and the Planning Director Luis Zunguze. On June 24, 2003, Phil Arena submitted additional information regarding the Mission to Director Zunguze.

After the owners of the Rosewood Terrace Building confirmed in writing to the Mission a willingness to complete the transaction proposed in 1999, the Mission met with PZD staff and counsel on November 8, 2003. While the City's policy on concentrating services for the homeless had changed, counsel for the City informed the Mission that if its uses at the Rosewood Terrace Building had not changed, the Mission would remain classified as a homeless shelter and unable to qualify for the S-1 Zone. The Mission requirements and change in the City ordinance to reflect current practices regarding homeless.

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[67] *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 768 (2003) (Posner, J., dissenting.)
[68] See *Blue Cross Blue Shield v. State*, 779 P.2d 634 (Utah 1989).

In response to the Mission's second request to the City to be considered as a church, on June 21, 2004, Zoning Administrator Wayne Mills informally notified the Mission that without showing a change in use, the Board of Adjustments classification would stand and preclude any relocation at the Rosewood Terrace Building because of the previous classification of the Mission's proposal as a homeless shelter. On June 21, 2004, the Mission and Attorney Michael Hutchings met with Mayor Anderson, City counsel, and the Planning Director in an effort to address relocation efforts. After the meeting, in response to the Mission's discussion of City practices with Interfaith churches, on June 24, 2004, Vickie Neumann, Executive Director of Interfaith, met with Wayne Mills, and on June 29, 2004, provided him with additional information. On July 19, 2004, the Mission and Attorney Michael Hutchings met again with Mayor Anderson, City counsel, and the PZD, but they were unable to resolve the impact of the Board of Adjustment ruling classifying the Mission as a "homeless shelter."

After either the June 21, 2004, or July 19, 2004, with Mayor Anderson, at his direction, the City PZD staff provided the Mission with a map of the zones of the City where the Mission could look to relocate. The map was restricted to the D-3 and CG zones of the City where "homeless shelters" are a conditional use. At no time has the City ever notified the Mission it could locate in all of the areas where churches are a permitted use or conditional use. (See City's Memorandum at 19-20; Affidavit of Cheri Coffey, ¶¶ 6, 7.) The Rosewood Terrace Building was subsequently purchased by another party and the Mission lost the donation.

The City's use of the Board of Adjustment proceedings against the Mission is a denial of due process.

In 2005, the Utah Supreme Court re-affirmed that the legal doctrine of res judicata refers to the overall doctrine of the preclusive effects to be given to judgments. ... '[R]es judicata has two branches: claim preclusion and issue preclusion.'[69] As principles of claim preclusion and issue preclusion apply to administrative hearings,[70] Whether the impediment of res judicata is considered as a matter of claim preclusion or issue preclusion as to fact or law, as a matter of Utah law, the Mission is bound by neither as it relates to the Board of Adjustment ruling.

"Claim preclusion involves the same parties or their privies and the same cause of action."[71] Collateral estoppel, on the other hand, "'prevents parties or their privies from relitigating [factual or legal] issues which were once adjudicated on the merits and have resulted in a final judgment These doctrines do not apply because the Mission was not in privity with the City.

Neither the Mission nor the then property owner requested or paid for an administrative interpretation as required City Ordinance.

> The Zoning Administrator, subject to the procedures, standards and limitations of this Chapter, may render interpretations, including use interpretations, of the provisions of this Title ... Applications for interpretations may be filed only by a property having need for an interpretation or by the property owner's agent.

(Salt Lake City Code §§ 21A.12.020, 21A.12.030) Contrary to the assertions of Randy Taylor, as a matter of law, he was unauthorized to issue either "administrative letter" of April 20, 1999, or September 14, 1999. Without the authority the City's continued use of the same to

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[69] *Brigham Young University v. Tremco Consultants, Inc.*,110 P.3d 678,686, 2005 UT 19 P 25 (citations omitted.)
[70] *Career Service Review Board v. Utah Department of Corrections*, 942 P.2d 933, 938 (Utah 1997).
[71] *Buckner v. Kennard*, 99 P.3d 842, 846, 2004 UT 78 ¶ 12.

justify the action is void. " 'If a judgment is void, it is open to collateral attack'. ... [T]he portion of the [civil] decree that was void is not res judicata."[72]

As a practical matter, the City not only failed to involve the Mission in the preparation of evidence to present to the Board of Adjustment, but it also chose to frame the legal issues in such a way that both the hearing and any subsequent appeal would be outcome determinative against the Mission. For example, the Board of Adjustment did not address Randy Taylor's classification of the Mission use as a "boarding house." However, the Board did find that the previous non-conforming use of the property continued as a non-conforming use. If the Mission was really not a church, as the Fairpark Community Council claimed, then the portion of the application relevant to the non-conforming use would have been considered to be secular. If secular, a continuation of a non-conforming use could be applied and a building permit issued to the Mission without a conditional use permit hearing.

In addition, had the City's practices regarding "accessory use" that were being applied to the Participating Churches with Interfaith been disclosed to the Board by either the City staff or counsel, an obvious exception in practice to what by ordinance was defined as "a homeless shelter" would have been evident. Considering the narrow limitations Randy Taylor had placed on the Church's protecting the "homeless" only overnight when in "life threatening" situations, and limiting the Mission's advertising of the homeless shelter availability at the location, the Board of Adjustments could well have determined the

[72] *Farley v. Farley*, 19 Utah2d 301, 307, 309, 431 P.2d 133, 137, 139 (1967).

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proposed "use" similarly constituted an "accessory use" of a church rather than a "homeless shelter". See Omitted Facts ## , *infra*.

VII. DAMAGES

The arguments of the City that the Mission's has no claims for damages misstates the nature of damages that can be awarded for injuries caused by a violation of constitutional rights. Damages against the City can be nominal or compensatory.

First, deprivation of any constitutional right merits an award of nominal damages.[73]

> Common-law courts have traditionally vindicated deprivations of certain 'absolute' rights that are not shown to cause actual injury through an award of nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed[.][74]

Plaintiffs contend that their previous application of facts to federal and state law establish a prima facie case under 42 U.S.C. § 1983 of deprivation by the City of the Plaintiffs' First Amendment rights protected by the establishment clause and free exercise clauses as well as the Fourteenth Amendment due process clause and equal protection clauses.

Compensatory damages, on the other hand,

> may include not only out-of-pocket loss and other monetary harms, but also such injuries as "impairment of reputation ..., personal humiliation, and mental anguish and suffering." *Gertz v. Robert Welch, Inc., 418 U.S. 323, 350, 94 S.Ct. 2997, 3012, 41 L.Ed.2d 789 (1974).* See also Carey v. Piphus, supra, 435 U.S., at 264, 98 S Ct., at 1052 (mental and emotional distress constitute compensable injury in §1983 cases.) ...

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[73] See *Searles v. Van Bebber*, 251 F.3d 869, 879 (10th Cir. 2001) *cert. denied* 536 U.S. 904, 122 S.Ct. 2356, 153 L.Ed.2d 279 (2002).

[74] *Carey v, Piphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).

* * * * *

> Presumed damages are a substitute for ordinary compensatory damages, not a supplement for an award that fully compensates the alleged injury. When a plaintiff seeks compensation for an injury that is *311 likely to have occurred but difficult to establish, some form of presumed damages may possibly be appropriate. See Carey, 435 U.S., at 262, 98 S.Ct., at 1051; cf. Dun & Bradstreet, Inc. v. Greenmoss Builders, 472 U.S. 749, 760-761, 105 S.Ct. 2939, 2946, 86 L.Ed.2d 593 (1985) (opinion of POWELL, J); Gertz v. Robert Welch, Inc., supra, 418 U.S., at 349, 94 S.Ct., at 3011. In those circumstances, presumed damages may roughly approximate the harm that the plaintiff suffered and thereby compensate for harms that may be impossible to measure.[75]

Regardless of whether damages are nominal or compensatory, Plaintiffs would still considered to be prevailing parties for purposes of this litigation.

> When a court awards nominal damages, it neither enters judgment for defendant on the merits nor declares the defendant's legal immunity to suit. ... A judgment in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay.[76]

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[75] *Memphis Community School District v. Edward J Stachura* 477 U.S. 299, 106 S.Ct. 2537, 91 L.Ed.2d 249 (1986)
[76] *Farrar v. Hobby*, 506 U.S. 103, 112-113, 113 S.Ct. 266, 121 L.Ed.2d 494 (1992).

CONCLUSION

Having withdrawn with prejudice as it applies to the City (reserving the same against the RDA,) claims under the Fifth, Sixth and Seventh Causes of Action with for all the reasons set forth above, the remaining claims for equitable, declaratory and monetary relief under RLUIPA, the Utah Constitution, and the United States Constitution are valid and should be heard. Accordingly, the City's Motion for Summary Judgment should be denied.

DATED this 24th day of March, 2006.

CRAIG L. TAYLOR & ASSOCIATES

M Hilton

Matthew Hilton
Craig L. Taylor
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2006, I caused a true and correct copy of the foregoing to the following:

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Tab 2

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY MISSION, et al.,	:	
Plaintiff	:	**REPLY MEMORANDUM IN SUPPORT OF SALT LAKE CITY'S MOTION FOR SUMMARY JUDGMENT**
vs.	:	
SALT LAKE CITY, et al.,	:	(Oral Argument Requested)
Defendant.	:	
SALT LAKE REDEVELOPMENT AGENCY,	:	Civil No. 990908945
Third-Party Plaintiff,	:	Judge Joseph C. Fratto
vs.	:	
McDONALD BROTHERS INVESTMENTS, a Utah general partnership,	:	
Third-Party Defendant.	:	

Defendant Salt Lake City Corporation (the "City") submits this Reply Memorandum in support of its Motion for Summary Judgment in this case.

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To a large extent, Salt Lake City's Motion for Summary Judgment is not disputed by plaintiffs. Plaintiffs mostly do not dispute the City's Statement of Undisputed Facts, they only add additional, mostly irrelevant facts of their own. Similarly, plaintiffs do not dispute the City's legal arguments, they raise only tangential attacks. Perhaps most importantly, plaintiffs offer no valid reasons why the bulk of their claims are not ripe. Most of this lawsuit can be dismissed on that ground.

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STATEMENT OF UNDISPUTED FACTS

The following facts of record remain undisputed in this case:

1. Plaintiffs are persons affiliated with the Salt Lake City Mission (hereinafter "Plaintiffs" or the "Mission"), a nondenominational religious group who provide service primarily to the homeless and impoverished. (Deposition Exhibit 78; Salt Lake City Mission web page, Appendix Exhibit A.)

Although plaintiffs purport to dispute this fact, their statement is merely a longer version of what the City stated.

2. In 1999, the Mission was located in a building at approximately 466 West 200 South in what has become the Gateway area of Salt Lake City. The Mission had a month-to-month lease with its landlord. (Deposition Exhibits 6, 14.)

Not disputed.

3. During the summer of 1999, the Mission's landlord gave notice to the Mission that it was terminating the Mission's lease. (Id.)

Not disputed.

4. Later that year, the Salt Lake City Redevelopment Agency (the "RDA") purchased the property. (Deposition Exhibit 35.)

Not disputed.

5. The City and the RDA are separate governmental entities. (U.C.A. §§ 17B-4-201 and 67-1a-6.5.)

Not disputed.

6. *The City was not responsible for the termination of the Mission's lease, for the purchase of the property, or the need for the Mission's relocation. (Deposition of Wayne Wilson, pages 374-75, Deposition of Valda Tarbet, page 63. Appendix Exhibits B and C.)*

Not disputed.

7. *The Mission filed a claim for relocation expenses against the RDA. The Mission never filed any claim for relocation expenses against the City. (Deposition Exhibits 19, 26.)*

This fact is irrelevant now that plaintiffs have withdrawn their claims for relocation expenses against the City. Nevertheless, plaintiffs admit that they did not file a timely and proper notice of claim with the City.

8. *On several occasions, the Mission inquired about various possibilities for the relocation of its facility and was informed as to the process that would be required for such an application. (Deposition Exhibits 2 & 11.)*

Plaintiffs purport to dispute this fact but do not provide a citation to any record evidence.[1]

9. *The City also provided the Mission with blank application forms. (Deposition Exhibits 63 & 64.)*

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[1] The purported dispute of this Statement of Undisputed Fact cites to "legal analysis, Part B2; and C, 80-82, infra, and attendant deposition '_____'." However, the cited legal analysis and page numbers do not exist. In addition, the purported citation to the record is blank. Although Plaintiffs delayed filing their Memorandum in Opposition for an additional 10 days beyond the deadline agreed upon, their Memorandum is filled with blank citations to the record, incorrect citations to the record, and/or citations to a non-existent exhibit. Specifically, Plaintiffs' Exhibit 9 is incomplete, and Exhibits 11, 15, 27, 33, 38, 42, 43, 44, 71 and 84 are simply missing.

Plaintiffs do not dispute the fact stated. They add other facts, but the fact stated stands.

10. On at least two occasions, pursuant to information provided by the Mission, the City has issued an administrative classification of the Mission's proposed activities. (Deposition Exhibits 2 & 28.)

Plaintiffs do not dispute the fact stated. They add additional facts but the fact stated stands undisputed.

11. The Mission proposed to move into a building located at 580 West 300 South. That building was located in zone D3. Based on the description of the uses of the building, the City determined that the Mission would be a Place of Worship, which was a permitted use in that zone, and a Homeless Shelter, which was a conditional use. (Deposition Exhibit 2.)

Plaintiffs do not dispute the fact stated. The reference to "the April 20, 1999, letter speaks for itself" does not dispute that the statement of fact correctly summarizes the letter.

12. The Mission never filed for a conditional use with regard to the proposed location at 580 West 300 South. (Affidavit of Cheri Coffey, ¶ 15, Appendix Exhibit I.)

Not disputed.

13. A permitted use is one that is allowed merely by filing for a permit and meeting applicable City codes. (Coffey Affidavit, ¶ 3.)

Plaintiffs do not dispute the fact stated. They add additional facts but the fact stated stands undisputed.

14. A conditional use is determined by the Planning Commission after consideration

of an application, staff report, and after a public hearing where the applicant can speak and the community can speak.

> *A conditional use is a use which has potential adverse impacts upon the immediate neighborhood and the city as a whole. It requires a careful review of its location, design, configuration and special impact to determine the desirability of allowing it on a particular site. Whether it is appropriate in a particular location requires a weighing, in each case, of the public need and benefit against the local impact, taking into account the applicant's proposals for ameliorating any adverse impacts through special site planning, development techniques and contributions to the provision of public improvements, rights of way and services.*

Any applicant who seeks a conditional use permit must appear before the affected neighborhood's community council. (Coffey Affidavit, ¶ 4.)

Plaintiffs do not dispute the fact stated. They add additional facts but the fact stated stands undisputed.

15. Pursuant to City ordinances, the Mission was required to present its proposal for a conditional use permit to the local Community Council to obtain non-binding input and recommendations. (Id. and Deposition Exhibit 76.)

Plaintiffs do not dispute the facts stated. They add additional facts, but the fact stated stands undisputed.

16. All other applicants for a place of worship have been required to comply with this process. (City Document 327, Appendix Exhibit H.)

Plaintiffs purport to dispute this fact, but the record evidence cited (Paragraphs 88, 118 and 132) are non-responsive to this issue. Accordingly, this fact remains undisputed and

should be deemed admitted.

17. Permitted uses are appropriate anywhere in a zone as long as they meet City codes. However, some uses are conditional uses because, in general, they may be more appropriate in specific areas based on various things including what other uses are in the vicinity, traffic patterns, capacity of streets, existing infrastructure, impacts from the subject type of use on abutting properties, geographical features etc. These things all play a role in determining what types of uses should be allowed in what areas and whether a conditional use should be allowed. Due to the potential for impacts, a conditional use is required so that each use can be examined and a decision made on a case by case basis. (Coffey Affidavit, ¶ 5.)

Not disputed.

18. Ultimately, a conditional use is determined by whether the proposed use is compatible with the neighborhood and will it have a material net cumulative adverse impact on the community or the city as a whole. (Deposition of Randolph Taylor, page 40 line 23-page 41 line 12, Appendix Exhibit D.)

Not disputed.

19. Places of Worship are allowed in Salt Lake City as a matter of right in the following zones: Commercial CB, CC, CS, CSHBD, CG; Downtown D-1, D-2, D-3, D-4; Gateway GMU; and Special Purpose RP, BP, I, UI, MU. These zones comprise approximately 10.8% of the area of Salt Lake City (without including the City Creek area). (Coffey Affidavit, ¶ 6.)

Although Plaintiffs purport to dispute Paragraph 19, they cite to no record evidence in

support of their dispute.

20. Places of Worship are also allowed as a conditional use in all residential zones, in the Neighborhood Commercial zone (CN) and in the Light Industrial Zone (M-1). (Coffey Affidavit, ¶ 7.)

Although Plaintiffs purport to dispute Paragraph 20, they cite to no record evidence to support their dispute.

21. Under Salt Lake City ordinances, a homeless shelter is classified as a building or portion thereof in which sleeping accommodations are provided on an emergency basis for the temporarily homeless. (Taylor Deposition, page 8 lines 12-23; page 34 line 23-page 24 line 3.)

Although Plaintiffs purport to dispute this fact, the only record of evidence cited is a recitation of the definitions contained in the Salt Lake City Code. Accordingly, this fact remains undisputed.

22. *Homeless Shelters are allowed as a conditional use in the D-3 and the CG zoning districts. Salt Lake City has not prohibited the location of homeless shelters in the City. The City has several operating homeless shelters. (Coffey Affidavit, ¶ 8.)*

Plaintiffs do not dispute the fact stated. They add additional facts, but the fact stated stands undisputed.

23. *At one time, City policy discouraged the concentration of homeless shelters, substance abuse treatment centers and similar uses in the Downtown and Gateway area (the so called "moratorium"). However, the policy did not forbid such uses, provided that an applicant or the Mission applied for a conditional use permit. (Deposition Exhibits 2, 49, 88 and Taylor*

Deposition, page 37.)

Plaintiffs cite to no record evidence to support their first statement, since the Hilton affidavit does not exist. Plaintiffs do not dispute the facts stated. They add additional facts, but the fact stated remains undisputed.

24. Salt Lake City has regulated all homeless shelters, regardless of their ownership or affiliation. (Coffey Affidavit, ¶ 10.)

Plaintiffs dispute this fact, arguing that the City has not regulated churches that participate in the Interfaith Hospitality Network. However, the record evidence by Plaintiffs contradicts that assertion. Specifically, Plaintiffs' Fact 33 acknowledges that the limited services provided by the Interfaith Hospitality Churches is regarded as an "accessory use" of those churches, such that they are not classified as "homeless shelters." Thus, Fact No. 24 as asserted by the City remains undisputed.

25. The regulation of homeless shelters is motivated by wholly secular concerns, not religious concerns. (Deposition Exhibits 49, 88.)

Although Plaintiffs purport to dispute this fact, none of the record evidence they cite disputes the City's allegation that the regulation of homeless shelters is motivated by wholly secular concerns. Accordingly, that fact remains undisputed.

26. In September 1999, the Mission filed an application for a conditional use permit for a place of worship. The proposed location was the former Rosewood Terrace nursing home located at 158 North 600 West, Salt Lake City (hereinafter referred to as "Rosewood Terrace"). (Deposition Exhibits 48, 78.)

Not disputed.

27. Rosewood Terrace was located in zone SR1, a zoning category established by the City which was a limited residential zone that allowed Places of Worship only as a conditional use. (Taylor Deposition, page 67 lines 14-20.)

Not disputed.

28. In general Places of Worship inherently involve large numbers of people congregating together with the attendant noise and traffic. Such a use has the potential to have more negative impacts on residential neighborhoods and fewer impacts in the zones where Places of Worship are permitted as a matter of right. Thus, in many areas Places of Worship are a conditional use to allow the specific fact based determination of whether they are appropriate for that area, particularly residential areas. (Coffey Affidavit, ¶ 9.)

Plaintiffs do not dispute the fact asserted. Although they add other additional facts, the fact asserted by the City remains undisputed.

29. Plaintiffs applied for and were heard regarding a conditional use of the Rosewood Terrace property where they wished to locate their Place of Worship. (Deposition Exhibits 48, 84 and Coffey Affidavit, ¶ 14 and the attachments thereto.)

Plaintiffs do not dispute the fact stated. They assert other facts and arguments, but the fact stated remains undisputed.

30. On October 7, 1999, the City Planning Commission denied the Mission's application for a conditional use permit to relocate its facility to the Rosewood Terrace Building. Plaintiffs were not granted a conditional use at Rosewood Terrace because of the

impact on the neighborhood and the inability to mitigate that impact. The Planning Commission determined that the neighborhood was too fragile to support the activities proposed by the Mission. The Planning Commission determined that there were likely to be heavy impacts on the neighborhood from this proposed use. The Mission plan was to have 25-30 residents on a semi-permanent basis in a boarding house at the site as well as to bus in up to 200 of the "homeless-poor" at various times during the day for a variety of counseling, rehabilitation services, religious devotionals and chapel services. While it was felt that the Mission could control what went on in its building, it was determined that it likely would not be able to control what went on outside. This was based on objective evidence. In its prior location the Mission had a history of at least 58 police calls per year and as high as 122 calls per year. It was stated by plaintiffs that the Mission would be performing similar activities in the Rosewood Terrace location so it was rationally determined that the Mission would bring with it this higher need for police intervention. This was of particular concern to the neighborhood surrounding Rosewood Terrace because they were trying to recover from activities which had required police in the past. The neighborhood included the Guadalupe neighborhood and the Fairpark community. Both communities were working on reviving from previous times of drug houses and high crime. The goal was to establish safe, stable and cohesive neighborhoods for which progress was being made. It was determined that the impact of the Mission would reverse that progress. Thus, the Planning Commission concluded that the need for the conditional use did not outweigh the potential impact on the community and it would not be possible to mitigate the detrimental impact that the Mission would impose upon that fragile neighborhood. (Salt Lake City Planning

Commission Staff Report attached to the Coffey Affidavit, and Deposition Exhibits 79 & 84.)

Although Plaintiffs have included a dispute to this allegation, that "dispute" acknowledges the facts asserted.

31. *In September 1999, the Community Council filed an appeal challenging the City's administrative classification of the Mission's proposed activities. (Deposition Exhibit 55.)*

Plaintiffs do not dispute the fact asserted, notwithstanding their attempt to list it as a "disputed" fact.

32. In connection with that appeal, the Mission received notice of, had the opportunity and, in fact, did present evidence at the Board of Adjustment hearing. (Deposition Exhibits 81 & 42.)

Plaintiffs do not dispute the fact asserted. They add other additional facts, but the fact stated remains undisputed

33. In November 1999, the Board of Adjustment held that the Mission's proposed activities constituted a place of worship and a homeless shelter. (Deposition Exhibit 42.)

Plaintiffs do not dispute the facts stated. They attempt to assert legal arguments, but the fact as stated remains undisputed.

34. Plaintiffs did not timely appeal the Planning Commission's denial of the conditional use for the Rosewood Terrace location although they could have by appealing to the Land Use Appeals Board. After that the matter could have been appealed to the courts. (Coffey Affidavit, ¶ 11.)

Notwithstanding its "dispute", Plaintiffs admit the fact as asserted by the City.

35. The Mission did not file a timely appeal of the decision of the Planning Commission or the Board of Adjustment. (Coffey Affidavit, ¶ 11.)

In their "dispute", Plaintiffs admit the fact as asserted by the City.

36. Plaintiffs had notice of and could have used the conditional use process for other locations. Although the Mission made several inquiries to the City, it only filed one application with the City, seeking to relocate its facilities to the Rosewood Terrace Building located at 158 North 600 West. (Deposition Exhibits 63, 64, Coffey Affidavit, ¶ 15.)

Plaintiffs have cited no record evidence in opposition of Fact 36. Accordingly, those facts should be deemed admitted.

37. [This paragraph intentionally left blank.]

38. Plaintiffs have not been flagged in Salt Lake City computers as being targeted for extra scrutiny, it is not possible to flag persons or associations, only properties can be flagged. (Taylor Deposition, page 18 line 18-page 19 line 2; Deposition of Roger Evans, page 7 line 13-page 8 line 1, Appendix Exhibits D and E.)

Plaintiffs do not dispute the fact stated, that plaintiffs were not flagged in SLC computers as being targeted for extra scrutiny. Although Plaintiffs assert other facts, the facts as stated by the City remain undisputed.

39. Plaintiffs' proposal for the Rosewood Terrace building was, in part, a Place of Worship for people who did not live in that neighborhood, plaintiffs stated that they would be busing in most of the users of the building. (Deposition Exhibit 78.)

Plaintiffs do not cite any record evidence in opposition to Fact No. 39, which should be deemed admitted.

40. Ultimately, plaintiffs relocated their Place of Worship, and carried out their proposed activities in conformity with their religious beliefs, in the Central Christian Church located at 370 East 300 South in Salt Lake City. (Wilson Deposition, page 267.)

Plaintiffs do dispute a portion of Fact No. 40, asserting that the Mission was unable to carry on its own worship services at the Central Christian Church. However, the record evidence cited reveals that church services were held "on a limited basis." (See Deposition of Wayne Wilson, page 170, lines 16-25, Plaintiffs' Appendix Exhibit 1), and that the Mission "was unable to have its own worship services in the sanctuary of the church. (See Deposition of Wayne Wilson, paragraph 48.) However, Plaintiffs' own evidence further indicates that during this same time period Plaintiffs were able to conduct bible studies and other group sessions. Indeed, Plaintiffs' own evidence indicates that after moving to the Central Christian Church, Plaintiffs were able to increase virtually all of the services they provided. (See Exhibit 8 attached to Affidavit of Wayne Wilson.) Thus, the primary fact that Plaintiffs were able to continue their religious activities of the Central Christian Church is not disputed.

41. The zoning ordinances and their regulation of temporary housing for the homeless have a secular purpose, to limit the impact on neighborhoods to a reasonable level. (Coffey Affidavit, ¶ 12.)

Plaintiffs have not cited any record evidence in opposition to Fact 41, which should therefore be deemed admitted.

42. Several Salt Lake area churches participate in the Interfaith Hospitality Network. (Deposition Exhibit 32.)

Plaintiffs' purported dispute actually confirms the fact stated in Fact No. 42.

43. Those Interfaith Hospitality churches operate within certain guidelines. Pursuant to those guidelines, each church may house a maximum of 4-6 homeless families (a maximum of 16-20 persons) for one week, four or five times a year on a rotating schedule. (Id.)

Plaintiffs have not cited any record evidence which supports their dispute of Fact No. 43. Indeed, Deposition Exhibit 32, cited by Plaintiffs in their response, is dated March 2000.

44. The City is willing to allow the Mission or any other church to operate according to these same Interfaith Hospitality guidelines. (City Response to Request for Admission No. 9, Appendix Exhibit 6.)

Plaintiffs do not dispute the accuracy of the City's statement. While Plaintiffs argue that they should not be required to operate according to the guidelines for the Interfaith Hospitality Network, they have not disputed the fact that the City would allow them to do so if they so desire.

45. The Mission has acknowledged that it does not intend to operate its activities within those Interfaith Hospitality guidelines. (Wilson Deposition, pp. 390-95.)

Although Plaintiffs purport to dispute Fact No. 45, in their response they do not dispute the fact that they do not intend to operate their activities within the guidelines used by the Interfaith Hospitality Churches.

46. The Religious Land Use and Institutionalized Persons Act was passed in September 2000. (Second Amended Complaint, ¶ 129.)

Not disputed.

47. Virtually all of the events described in the Mission's Second Amended Complaint occurred before September 2000. (Second Amended Complaint, ¶¶ 9-88.)

Plaintiffs do not dispute the accuracy of the facts asserted in Paragraph 47, although Plaintiffs assert that additional conversations and meetings with the City occurred after September 2000, those additional facts do not dispute the accuracy of the facts contained in Fact No. 47.

48. Plaintiffs have designated accountant John Ravarino as their spokesman on damages. (Ravarino Deposition, page 209 line 16-page 210 line 8, Appendix Exhibit F.)

Plaintiffs purport to dispute Fact No. 48, but fail to cite any record evidence to support their allegations. (The citations listed all refer to a blank exhibit number.) In addition, the record evidence cited by the City contains a specific acknowledgment by counsel for Plaintiffs that Mr. Ravarino was the only person who would talk about damages. (See Deposition of John Ravarino, page 209, line 16-page 210, line 8, City Appendix F.) Accordingly, Fact No. 48 should be deemed admitted.

49. Plaintiffs have submitted special damage claims for the time period of October 1999 when they moved out of their long time location through 2001 when they were relocated at the Central Christian Church, 370 East 300 South, Salt Lake City, Utah. (Deposition Exhibit 19.)

Again, Plaintiffs failed to cite any record evidence to support their alleged dispute of that fact.

50. Plaintiffs' claim for special damages consists of expenses involved in moving, abandonment of improvements to their prior location, loss of property in the move, lost contributions and improvements to its new building. (Id.)

Plaintiffs purport to dispute Fact No. 50 based upon the record evidence cited in response to Fact No. 48. However, as discussed above, Plaintiffs have failed to cite any record evidence in support of their disagreement as to Fact No. 48.

51. Plaintiffs lost the lease on their old location because of the actions of their landlord and not Salt Lake City. (Deposition Exhibit 14, Wilson Deposition, pp. 374-75.)

Not disputed.

52. During the period of time for which they claim special damages, the Mission had income (money coming into the Mission) of $673,920.57. (Ravarino Deposition, page 194 line 15-page 197 line 25, and Deposition Exhibit 19, page RDA00807.)

Not disputed.

53. The Mission had expenses during that time period of 383,793.66. (Ravarino Deposition, page 197, and Exhibit 19, page RDA00810.[2])

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[2] The deposition actually has a typographical error, listing expenses as "283,000 some odd dollars." The correct number is shown in Exhibit 19 that is being referred to. Using the correct, higher number operates to plaintiffs' benefit. In addition, Ravarino did testify, although with a lack of precision, that the expense figures for the time period for which damages were being claimed did not include some items totaling $ 45,456. Ravarino Deposition, page 198 line 24-page 203 line 12 and Exhibit 19.

Not disputed.

54. The Mission had net income, or a net surplus, of $290,126.91. (Ravarino Deposition, page 198 lines 1-6, and Exhibit 19, page RDA00810.

Not disputed.

55. During a comparable period outside of the time frame for which they are claiming special damages, the Mission had income of $807,456.57, expenses of $563,356.71, and a surplus of only $244,099.86. (Ravarino Deposition, page 197 line 2-page 198 line 12, and Exhibit 19, page RDA00807 and 810.)

Not disputed.

56. Ravarino did testify, somewhat inexactly, that the expense figures for the time period for which damages were being claimed did not include some items appearing to total $45,456. (Ravarino Deposition, page 198 line 24-page 203 line 12, and Exhibit 19.)

Plaintiffs do not directly dispute these facts. Rather, they come up with a different total amount which is less than the City set forth. Ultimately, this fact is irrelevant because plaintiffs do not contest that they have no special economic damages.

RESPONSE TO PLAINTIFFS' LIST OF OMITTED FACTS

In their Memorandum, Plaintiffs assert a voluminous list of what they represent to be omitted facts.[3] Due to the delay in receiving Plaintiffs' Memorandum in Opposition, and due to the voluminous nature of Plaintiffs' Statement of Omitted Facts, the City has not had an

[3] The list of omitted facts consists of 148 numbered paragraphs, comprising in excess of 39 pages.

opportunity to review every fact, together with the record evidence cited in support, to verify the accuracy of Plaintiffs' allegations. Nevertheless, the City has identified numerous factual allegations which should not be considered based upon the absence of any record evidence cited, or because the record evidence cited does not support the factual allegations made.

With regard to alleged Omitted Facts that do have some support, the City disagrees with many of them. Nevertheless, for the purposes of this Motion only, the City does not dispute those facts because they are irrelevant, and do not create a genuine issue of material fact precluding summary judgment. The additional omitted facts offered by Plaintiffs mostly provide background information, they do not pertain to the legal issues raised by the City's Motion for Summary Judgment. This, together with the fact that the relevant facts set forth by the City have not been successfully disputed, means that summary judgment should be granted.

4. The documents referenced speak of public "hearing" procedures.

5. Plaintiffs have cited to no record evidence to support the fact stated.

6. The evidence cited by Plaintiffs does not support the allegation made.

12. No such citations (Chapter 19) exist within the Salt Lake City Code. Most definitions are found in Chapter 21A.62.040. In addition, Plaintiffs' statement that there is no definition for a homeless shelter is incorrect. (Plaintiffs' Fact 1.)

13. Plaintiffs have cited to no record evidence supporting their allegations, since the Affidavit of Matthew Hilton is non-existent.

14. Plaintiffs have failed to cite to any record evidence to support the allegation.

34. Plaintiffs have failed to cite to any record evidence to support the last sentence in

that paragraph.

36. Plaintiffs have failed to cite to any record evidence to support those allegations.

41. The evidence cited does not support the first statement made.

42. Plaintiffs have failed to cite to any record evidence, since the Hilton affidavit does not exist.

44. Plaintiffs have failed to cite to any record evidence, since the Hilton affidavit does not exist.

45. Plaintiffs have failed to cite to any record evidence to support their factual allegations.

48. The record evidence cited does not support the allegations made.

52. The record cited does not support the allegations made.

59. The City disputes the allegation set forth in paragraph 59 because at the Board of Adjustment hearing, Wayne Wilson discussed with the Board of Adjustment the practices of the Interfaith Churches. (See Deposition Exhibit 43 at pages 0544-0545.)

63. No record evidence cited.

64. The City disputes the allegation set forth in paragraph 64 because Plaintiffs confuse the distinction between a "notice to cease and desist" and a "notice and order."

80. The City disputes the allegation set forth in paragraph 80 because they fail to distinguish between an administrative interpretation and an administrative decision. (See Deposition Exhibit 94 and Salt Lake City Code Section 21A.62.040 and Section 21A.16.010.)

86. The City disputes the allegation set forth in paragraph 86 because the record

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evidence cited does not support all the allegations made.

87. The City disputes the allegation set forth in paragraph 87 because the record evidence cited does not support the allegations made. Specifically, Deposition Exhibit 97 states that the Community Council provided a statement in support of the proposal.

92. The record evidence cited does not support the statement made. Specifically, the deposition testimony indicates that the handwritten notes are Bill Wright's, but there is no indication that the letters were written by him.

95. No record evidence cited.

98. The record evidence cited does not support the statement made.

101. No record evidence cited.

105. The documents cited do not support all of the statements made. Specifically, the representation as to the proposed classification of Plaintiffs' uses does not match the description set forth in the documents.

110. The City objects to the fact set forth in paragraph 110 because it assumes facts that are not in evidence. Specifically, it has not been established that a charitable organization would be a permitted use in an SR-1 zone.

116. No record evidence cited.

117.

119. No record evidence cited.

120. No record evidence cited.

125. No record evidence cited.

126. The evidence cited does not support the factual statements made. Specifically,

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Cherri Coffey testified that when conditional use proposals were forwarded without having gone to the Community Council first, the Planning Commission sent them back. (See Deposition of Cherri Coffey, page 56, Plaintiffs' Appendix Exhibit 10.)

127. No record evidence cited.

130. No record evidence has been cited to support the statements made. In addition, the statement contains argument rather than facts.

138. No record evidence cited.

139. No record evidence cited.

141. No record evidence has been cited to support the statement made in the first sentence.

142. No record evidence has been cited to support the allegation, since the Hilton affidavit does not exist.

143. The City acknowledges that it opposed the temporary restraining order requested by Plaintiffs, but denies the remaining allegations set forth in that paragraph. In addition, Plaintiffs have failed to cite to any record evidence to support their allegations.

144. No record evidence cited.

146. No record evidence cited.

147. No record evidence cited. The City is unaware of any document or exhibit identified as "City 33."

148. No record evidence cited.

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ARGUMENT

I. PLAINTIFFS' CONSTITUTIONAL CLAIMS SHOULD BE DISMISSED.

A. Summary Judgment Should Be Granted Dismissing All Of Plaintiffs' Constitutional Claims and RLUIPA Claim Because They Are Not Ripe.

1. RLUIPA Claims Are Not Ripe. In responding to the City's ripeness argument, Plaintiffs admit that RLUIPA was not applicable to any of the events that occurred in or prior to 1999, prior to the enactment of the Act. Thus, the only claims to which RLUIPA could possibly apply are to those decisions made by the City after September 2000.

In the present case, the events which occurred after September 2000 are set forth in the Affidavit of Wayne Wilson, paragraphs 56-70. However, beyond identifying those events, Plaintiffs make no further effort in their Memorandum in Support to explain why their RLUIPA claims are ripe for judicial review. Indeed, an analysis of the facts of this case reveals that they are not.

The only decision rendered by the City after September 2000 is set forth in a letter dated June 7, 2004 addressed to Plaintiffs. (See Plaintiffs' Exhibit 57 and Wilson Affidavit, ¶ 69.) Plaintiffs did not make any effort to appeal that decision to the Board of Adjustment. (Plaintiffs have submitted nothing showing any appeal.) Plaintiffs have also made no attempt to modify their proposed activities to comply with the requirements of City ordinances. (See City Fact Nos. 44 and 45.) Plaintiffs have made no attempt to find another location for their activities in either a D3 or CG zone where homeless shelters are allowed. (See City Fact No. 22). Nor have the plaintiffs made any attempt to file a new conditional use application. (See City Fact No. 36.) As such, Plaintiffs have failed to obtain a final decision from the City as to acceptable activities

and locations.

In Murphy v. New Milford Zoning Commission, 402 F.3d 342 (2nd Cir. 2005), the court dismissed the plaintiffs' claims under RLUIPA based upon a finding that the claims were not yet ripe for judicial review. In that case, the plaintiffs had been issued an informal letter by the city advising them that the prayer meetings they were holding in their home violated zoning regulations. Plaintiffs filed suit alleging that the attempt to enforce these zoning regulations violated RLUIPA. In reviewing this issue, the Second Circuit Court of Appeals dismissed the case because the homeowners had not appealed the zoning violation to the local zoning board of appeals and had failed to obtain a final decision from the city on this issue.

> Thus, the Murphys [plaintiffs] may not proceed in federal court until they have obtained a final, definitive position from local authorities as to how their property may be used. Because such a decision has not yet been rendered, we lack jurisdiction.... The zoning board of appeals possesses the authority to review the cease and desist order *de novo* to determine whether the zoning regulations were properly applied.... Hence, the Murphys' claims are not ripe.

Id. at 352-53.

For these same reasons, Plaintiffs' RLUIPA claims in this case are also not ripe and should be dismissed. Plaintiffs have not yet obtained a final decision from the City as to the decision reflected in the June 7, 2004 letter. Plaintiffs have also not obtained a final decision as to whether or not any modification of their proposed activities would comply with City ordinances. Finally, Plaintiffs have also not attempted to find another property that might be suitable for their proposed activities, and they have not filed any other applications for a conditional use permit. Under these circumstances, Plaintiffs have simply failed to obtain a final decision from the City on any of these issues, and their claims for a violation of RLUIPA are

simply unripe.

2. Constitutional Claims Are Not Ripe. There are essentially four situations in this matter upon which plaintiffs base their Constitutional claims. First, plaintiffs sought a location for their Mission in Salt Lake City prior to the year 2000 but made only informal inquiries, never going through the conditional use process that Salt Lake City provides for the location of a use in a non-permitted area (except once, discussed below). As to this situation, because plaintiffs did not go through the conditional use process, plaintiffs did not obtain a final, definitive decision by Salt Lake City authorities. Second, plaintiffs sought a location for their Mission in Salt Lake City after the year 2000. Again, they made only informal inquiries, never filing a formal application or going through the conditional use process and did not obtain a final, definitive decision by Salt Lake City authorities. Third, plaintiffs did apply for one conditional use with regard to the Rosewood Terrace property in 1999. However, plaintiffs do not deny that they did not appeal the adverse decision to the Land Use Appeals Board as they could have done. Thus, as to this situation, plaintiffs did not obtain a final, definitive decision by Salt Lake City authorities. Fourth, plaintiffs did obtain a final decision from the Board of Adjustment as to whether the uses to which they proposed to put the Rosewood Terrace property were a place of worship with an allowable accessory use or a place of worship and a homeless shelter. Only this fourth situation is ripe.

Plaintiffs argue as to the first three situations that they can still litigate those situations despite the lack of ripeness. First, they argue that they need not exhaust administrative remedies before bringing Constitutional claims (both federal and state) because they will suffer irreparable

harm. Memorandum in Opposition at page 6.[4] The problem with this argument is that irreparable harm is not an exception to ripeness and plaintiffs fail to raise a factual issue as to whether they suffered irreparable harm.

The general rule is that state Constitutional claims, including equitable claims, not only must be ripe but a plaintiff must also exhaust administrative remedies. See Utah Code Ann. § 10-9-1001(1) [former law]; Utah Code Ann. § 10-9a-801(1) [current law]; Patterson v. American Fork City, 2003 UT 7, ¶¶ 17-21, 67 P.3d 466, 471 (Utah 2003). Plaintiffs provide no support that irreparable harm will excuse a failure to exhaust administrative remedies. Plaintiffs cite to Snyder v. Murray City Crop., 2003 UT 13, 73 P.3d 325 but that case does not support their position because it was not a zoning case where the plaintiff had a defined process to follow to obtain approval. Instead Snyder involved an individual who sought to present a prayer at a City Council meeting. The prayer was rejected by the City Council and there were no other administrative steps plaintiff needed to follow. Exhaustion was never addressed in the opinion.

In addition, plaintiffs fail to show that they will even suffer irreparable harm which requires rejection of their argument. See Patterson, 2003 UT 13 at ¶ 20.[5] In fact, plaintiffs'

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[4] The City notes that in discussing "failure to exhaust" plaintiffs do not directly address the issue raised by the City. The City did not contend that plaintiffs did not exhaust administrative remedies, the City contended the claims were not ripe. Although similar, ripeness applies even where exhaustion may not because ripeness is more of a prudential concern and is well recognized in land use cases. See Murphy v. New Milford Zoning Com'n. 402 F.3d 342, 347-353 (2nd Cir. 2005) discussed in the City's Memorandum in Support.

[5] "In support thereof, Pattersons offer only the cursory assertion that City officials are hostile to their rights and that they have "clearly pleaded sufficient facts indicating irreparable harm and the futility of any future attempts [to pursue administrative remedies]." We decline the apparent invitation to peruse Pattersons' lengthy list of allegations in search of specific facts supporting

submission in opposition to summary judgment show they are not suffering irreparable harm, they continue to operate and provide service although perhaps at a lesser extent than they would perhaps like. See, e.g., Memorandum in Opposition at page xlvi (converts in 2006 projected to be 500, 500 needy families distributed pantry food, 5,000 pieces of goods provided for needy people, etc.).

With regard to the federal Constitutional claims, this is not an exhaustion question. The City argued that the claims were not ripe because plaintiffs have never obtained a final decision from the City so there is nothing yet to challenge, the City's final decisionmaker could grant their requests. Ripeness is different than exhaustion.[6] Plaintiffs do not cite any support that irreparable harm will excuse a lack of ripeness and make no showing of irreparable harm.

Plaintiffs' second argument with regard to ripeness is a claim that it would have been futile to pursue a conditional use permit. While this is a recognized exception to ripeness, plaintiffs do not create a genuine issue of material fact on this point. With regard to their futility

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their claims of irreparable harm and futility. We note only that allegations of unfairness in the day-to-day relationship between Pattersons and City staff do not support a claim that the entire administrative appeals process is inoperative or unavailable."

[6] Patterson stated "Indeed, Pattersons correctly point out that they need not exhaust their administrative remedies before pursuing their federal § 1983 claims" citing to Felder v. Casey, 487 U.S. 131, 147 (1988). 2003 UT 13 at ¶ 18. However, Patterson suggests that this was inapplicable to a ripeness challenge because it later stated "Because we uphold the trial court's dismissal of Pattersons' § 1983 claims on the ground that no deprivation of a protected liberty or property interest has occurred, we need not reach the question of whether or not those claims were ripe for decision." 2003 UT 13 at ¶ 28 n.3. Felder also was not a case similar to this one, it considered whether a state law requiring a notice of claim prior to suing a governmental entity applied and held that such a state remedy need not be exhausted before suing under 42 U.S.C. § 1983 in federal or state court. It did not reach the issue of ripeness.

claim, plaintiffs discuss only one attempt to relocate, to the Rosewood Terrace building, they do not contend that seeking conditional uses for any other location would have been futile. See Memorandum in Opposition at pages 7-8. With regard to Rosewood Terrace, plaintiffs' only evidence of futility is their statement that their lease for that building expired prior to the time they could have appealed the decision to the Land Use Board. This does not show futility. "A property owner, for example, will be excused from obtaining a final decision if pursuing an appeal to a zoning board of appeals or seeking a variance would be futile. That is, a property owner need not pursue such applications when a zoning agency lacks discretion to grant variances or has dug in its heels and made clear that all such applications will be denied." Murphy v. New Milford Zoning Com'n, 402 F.3d at 349. Plaintiffs have not set forth any facts that the City's zoning agency lacked discretion to grant variances or dug in its heels and made clear it would deny all of plaintiffs' applications. (In fact, plaintiffs could not prove this, they never gave the City a chance to rule more than once.)

Plaintiffs' third argument against ripeness is that they deserve equitable relief under the Utah Constitution to prohibit the continued use of alleged unlawful practices. However, even equitable state claims require administrative exhaustion. Patterson, 2003 UT 7, ¶ 19.

For the foregoing reasons, the Court should dismiss all of plaintiffs' claims except as to the decision from the Board of Adjustment as to whether the uses to which they proposed to put the Rosewood Terrace property were a place of worship with an allowable accessory use or a place of worship and a homeless shelter. The other matters will not be ripe until plaintiffs pick a location, apply for a conditional use, and obtain a final determination on that. It is only at that

time that the Court and the parties will know what would have happened and whether any constitutional violations have occurred.

B. Summary Judgment Should Be Granted Dismissing Plaintiffs' Due Process Claim Because Salt Lake City's Zoning Ordinances Are Not Arbitrary Or Unreasonable And Plaintiffs Were Provided The Opportunity To Be Heard When The Ordinances Were Applied To Them.

Plaintiffs do not dispute Salt Lake City's arguments that its zoning ordinances as applied to plaintiffs did not violate due process rights—that the ordinances are not arbitrary or unreasonable, that plaintiffs had notice and an opportunity to be heard, and the ordinances were not applied in an arbitrary or unreasonable manner to the sole application for a conditional use that plaintiffs made. (In fact, plaintiffs do not even address those arguments.)

Plaintiffs do put forth two other arguments about due process. First, they argue that the ordinances are vague both facially and as applied. Plaintiffs do not state exactly why they believe Ordinance § 21A.62.040 is vague but allude to the fact that the Ordinance requires a determination of what is an accessory use that may permissibly be undertaken at a place of worship without applying for a conditional use based on general criteria.

The Colorado Supreme Court addressed a similar situation and found that a zoning ordinance regulating where religious institutions could be located was not vague. The court set forth helpful standards to address a claim of vagueness:

> A statute is vague on its face if it is "impermissibly vague in all its applications;" that is, there is no conduct that it proscribes with sufficient clarity. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495, 102 S.Ct. 1186, 1191, 71 L.Ed.2d 362 (1982); *People v. Milne*, 690 P.2d 829 (Colo. 1984); L. Tribe, *American Constitutional Law* 1033- 35 (2d ed. 1988). A statute is vague as applied if it does not, with sufficient clarity, prohibit the conduct against which it is to be enforced. *Palmer v. City of Euclid*, 402 U.S. 544, 91 S.Ct. 1563, 29

> L.Ed.2d 98 (1971); L. Tribe, *supra* at 1033-35. A party may test a law for vagueness as applied only with respect to his particular conduct; if a statute is not vague as applied to that particular conduct, it will be enforced even though the law may be vague as applied to the conduct of others. *Hoffman Estates,* 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982); *Parker v. Levy,* 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974); *Milne,* 690 P.2d at 836; L. Tribe, *supra,* at 1036.

City of Colorado Springs v. Blanche, 761 P.2d 212, 219 (Colo. 1988) (dismissing vagueness claim).

In addition, in making this determination the Court should keep in mind that the amount of discretion afforded a zoning board in determining whether a particular land use is permissible is exceptionally high because zoning is an inherently discretionary system. See AT & T Wireless PCS, Inc. v. Winston Salem Zoning Bd. of Adjustment, 172 F.3d 307, 316 (4th Cir. 1999); Gardner v. City of Baltimore Mayor & City Council, 969 F.2d 63, 67 (4th Cir. 1992) (recognizing that land-use decisions are a core function of local government and that subdivision control is an inherently discretionary system). The Court should also be mindful that "[v]agueness challenges to statutes not threatening First Amendment interests are examined in light of the facts of the case at hand; the statute is judged on an as-applied basis." Maynard v. Cartwright, 486 U.S. 356, 361 (1988).

The challenged ordinance is not unconstitutionally vague on its face. The ordinance adequately defines a "place of worship" and adequately defines an "accessory use," as well as can be done in the zoning context:

> "Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.

"Accessory use" means a use that:

A. Is subordinate in area, extent and purpose to, and serves a principal use;
B. Is customarily found as an incident to such principal use;
C. Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;
D. Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and
E. Is under the same ownership or control as the principal use.

Thus, looking at the ordinance it can be easily determined that a chapel for weekly services is allowed, classrooms for Sunday School are allowed, kitchens to provide food for church functions are allowed, and a retail store to sell donated items is not allowed as an accessory use, it would not be subordinate nor is it customarily found as an incident to the principal use as a place of worship. Even plaintiffs' proposed homeless shelter can be determined on the face of the statute, in this case it was determined that the homeless shelter was not "subordinate," it was a primary use taking it out of the category of an accessory use.

Plaintiffs' further contention that the ordinance is vague because it has three potential meanings is based on their omission of words. When looked at as a whole, the ordinance states clearly that a place of worship includes "any accessory use or structure used for religious worship."

Plaintiffs' as applied vagueness challenge is premised on what they say are six instances of inconsistent application of the City's rules and regulations. Where this argument fails is that the instances they cite were not final determinations. While the decisions of certain lower level administrators might have been inconsistent, all vagueness problems as applied would have disappeared had plaintiffs followed the process through to its end. For example, plaintiffs complain that zoning administrator Randy Taylor did not understand certain things or found the

matter complicated. However, Taylor was only the first level of review, the matters were clarified by the Planning Commission and ultimately decided by the Board of Adjustment in the only instance that the process was followed to a conclusion. See Statement of Undisputed Fact Nos. 31-32 and the exhibits cited therein.

Finally, plaintiffs argue that the zoning decisions imposed a prior restraint on their activities and thus a higher standard applies to their vagueness challenge. The cases plaintiffs cite to involve permits to solicit for religious causes, plaintiffs do not cite to a single case applying a prior restraint analysis to a zoning law. Zoning cases are not examined under the prior restraint doctrines if there is no absolute ban on where a church can locate but instead conditional uses are allowed if applied for. City of Colorado Springs v. Blanche rejected a similar argument because there, as here, the zoning ordinances did not flatly prohibit places of worship, they allowed conditional uses. See 761 P.2d at 216 and n.5 ("Here, as in City of Englewood, the zoning ordinance at issue is the "permissive" type. A majority of jurisdictions have held these types of ordinances to be constitutional [citing cases]" and "Our conclusion that Colorado Springs' permissive zoning scheme is constitutional is bolstered by the United States Supreme Court's repeated dismissal of appeals from state court decisions upholding the constitutionality of zoning laws which restrict the location of religious institutions. The Court dismissed the appeals in the following cases for want of a substantial federal question [citing cases]").

Plaintiffs raise a second due process argument. See Memorandum in Opposition at pages 40-44. Plaintiffs state that they "initiated dialogue with the City" to reconsider the 1999 request

to use the Rosewood Terrace Building and the City's determination that what they want to do is a homeless shelter rather than an accessory use. Plaintiffs complain that the City informed them that if the proposed uses of the Rosewood Terrace building had not changed then the City's determination that they were a homeless shelter would not change. Plaintiffs argue that the use of the prior Board of Adjustment proceedings against the Mission is a denial of due process.

Plaintiffs do not dispute that in 1999 they received notice of, had the opportunity to and, in fact, did present evidence at the Board of Adjustment hearing. Statement of Undisputed Fact Nos. 31-32. Thus, plaintiffs received due process at that time. After that point in time, plaintiffs have not come forward with any changed circumstances, they have represented to the City that they wish to use the property in the exact same way. See Memorandum in Opposition at pages 40-41 discussing renewed efforts to change their classification as a homeless shelter but not presenting any change of use. Not only was it consistent with due process for the City to not change its position, under well established law absent a change in circumstances the City cannot change or alter its prior decision. See Root v. Zoning Board of Appeals of the Twon of Madison, 565 A.2d 14, 15-16 (Conn. Sup. Ct. 1989) (a zoning board of appeals is prohibited from reversing a previous decision unless the facts and circumstances have materially changed); Rhema Christian Center v. District of Columbia Board of Zoning Adj., 515 A.2d 189, 193 (D.C. App. 1986) (traditional zoning law incorporates the preclusion concept. when a variance is denied and the applicant resubmits the same or a substantially similar application, the applicant must demonstrate that conditions have changed).

Plaintiffs argue that the City in not changing its position is making an improper

application of res judicata because, they argue, plaintiffs were not parties to the original decision. This is not true, the undisputed facts show that plaintiffs were a party because they fully participated in the proceedings and presented evidence. However, even if this point were accepted, that would not mean that there was a due process violation. Plaintiffs could have sought a new, formal administrative interpretation. As part of this process they could have raised their argument about res judicata not being applicable. They also could have raised the argument they make in their Memorandum in Opposition, that they feel there were deficiencies in the prior hearing before the Board of Adjustment because there was no presentation of the City practices regarding accessory use that were being applied to the Interfaith Churches. Even if a ruling was made the same as the "informal" rulings they say they received from PZD staff and counsel, Administrator Wayne Mills, and the Mayor, they could then have gone to the Board of Adjustment for a final, determinative decision from the City. The fact that they did not pursue this does not show a due process violation, it shows that the process was available but they just failed to pursue it. In addition, it shows that the matter is not ripe.

C. Summary Judgment Should Be Granted Dismissing Plaintiffs' Free Exercise of Religion Claims Because The City Is Not Regulating Religious Belief, It Is Regulating Conduct.

Plaintiffs completely ignore the City's arguments on this point, that Messiah Baptist Church v. County of Jefferson, 859 F.2d 820 (10th Cir. 1988) applies and requires denial of plaintiffs' Free Exercise claims. Instead, plaintiffs raise irrelevant issues or arguments made under other claims (for example, plaintiffs reiterate their vagueness challenge under the Free Exercise heading and claim without support that there are no time constraints for pre-judicial

review). Plaintiffs also list five actions it perceives as showing hostility to it and concludes that these actions were motivated by its particular brand of religion. As to these, plaintiffs fail to support by citation to evidence that any of these things happened[7] much less present any evidence at all that religion was the motivation. Because plaintiffs fail to dispute the City's arguments on this point, summary judgment should be granted dismissing the Free Exercise of Religion claims.

D. Summary Judgment Should Be Granted Dismissing Plaintiffs' Equal Protection/Establishment Clause Claims Because Salt Lake City Has Not Established Any Religion, Plaintiffs Are Not Being Treated Differently Than Similarly Situated Organizations, And Any Difference In Treatment Is Because They Are Not Similarly Situated.

Plaintiffs claim that City ordinances are a facial violation of the Establishment Clause because there is an excessive entanglement of the City with religion because the City determines for zoning purposes what constitutes religious worship, an accessory use of religious worship, and whether that accessory use is customary for that religious worship. Memorandum in Opposition at pages 18-19 discussing City Ordinance § 21A.62.040. Plaintiffs complain that any church introducing any new aspect of religious worship that included conduct would be at risk. Id.

This argument fails because Lemon v. Kurtzman, 403 U.S. 602, 614 (1971) itself recognized that building and zoning regulations of necessity require some necessary and

[7] The City makes this statement because the support cited by plaintiffs is "(see Omitted Facts # ____, *supra*)". Plaintiffs do not fill in any of the blanks. Even if the City and the Court were to read the 148 statements of Omitted Facts and fill in the blanks for plaintiffs, the exhibits upon which those facts rely are often missing with a statement made "To be supplied."

permissible contacts between the government and religion. The Ordinance[8] plaintiffs object to has an acceptable level of entanglement, it defines "places of worship" in very broad terms, not attempting to pass on acceptableness of the proposed worship and does not require that the City inquire as to the particulars of worship or pass judgment on acceptable forms. With regard to "accessory uses," the Ordinance also has an acceptable level of entanglement, it sets forth a broad definition making most subordinate uses accessory. Thus, the Ordinance is not on its face unconstitutional.

Plaintiffs apparently recognize this so they also raise their claim "as applied." As applied, the Ordinance is equally valid. As applied, the City has not determined what are and what are not valid religious worship practices of the plaintiffs. All the City does has done is determine at what level the plaintiffs' proposed conduct of housing the homeless went beyond what the neighborhood could support and then declared that at that point that housing the homeless was no longer an accessory use, it was a homeless shelter. The only real decisions the City has made are purely secular, is housing the homeless on the proposed scale subordinate in area, extent and purpose to the proposed place of worship. The City has made no decision on

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[8] "Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.

"Accessory use" means a use that:
A. Is subordinate in area, extent and purpose to, and serves a principal use;
B. Is customarily found as an incident to such principal use;
C. Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;
D. Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and
E. Is under the same ownership or control as the principal use.

whether housing the homeless is a proper part of worship. plaintiffs are free to practice that conduct whether it is religious or not, they just have to do it in a zone where homeless shelters are allowed. "A church has no constitutional right to be free from reasonable zoning regulations nor does a church have a constitutional right to build its house of worship where it pleases." Messiah Baptist Church v. County of Jefferson, 859 F.2d at 826.

Plaintiffs also assert that the City has delegated governmental functions to a religious association and favors certain religions over the Mission. The problem with this attack is that the City has not delegated any decisions. As explained in the City's Statement of Undisputed Facts, the City has determined that the housing of the homeless on a limited basis is acceptable because of the limited impact on the neighborhood. See Statement of Undisputed Fact Nos. 41-45. The City has offered to allow any group to do this including plaintiffs. Statement of Undisputed Fact No. 44. This is not done because of any religious reasons, it is done due to the secular reason of limited impact on the surrounding neighborhoods. Statement of Undisputed Fact No. 41.

Plaintiffs seem to say that because they fall on one side of the line and the Interfaith Churches on the other, the City has delegated to the Interfaith Churches the right to set the cutoff point for when housing the homeless moves beyond an accessory use. This is not supported, what is supported by undisputed facts is that the line was drawn by the City for secular reasons, there was no delegation to any religious group.

Plaintiffs also seem to say that the City should not accept the Interfaith Churches representations of what they are doing and whether they are within the parameters established. As long as there is no evidence that the City has turned a blind eye to misrepresentations or

violations (and there is no evidence whatsoever of either misrepresentations and violations or ignoring such conduct) this simply does not state a violation of the Establishment Clause. The cases plaintiffs cite do not support such a proposition.

Plaintiffs next argue that allowing limited housing of the homeless favors Interfaith Churches over plaintiffs. However, the City has shown that it applies the same rules to all groups who wish to house the homeless, as long as it is limited it is allowed. The City has offered plaintiffs the same right and plaintiffs even did this for a number of years in the Central Christian Church building. Statement of Undisputed Fact Nos. 40, 44.

Plaintiffs also argue that they are being treated differently from the Interfaith Churches because the Interfaith Churches house families from the area without addictions whereas plaintiffs propose to house all including singles, transients and the addicted. They assert that this shows that the secular purpose has been abandoned. They also seem to complain that there are no standards for when the homeless can be housed and when they cannot without obtaining a conditional use for a homeless shelter.

The problem with this argument is that it ignores the undisputed facts in this case. The City has established that there is a secular purpose behind its actions, the impact on the neighborhood. As long as there is limited impact, housing the homeless is allowed without a conditional use being sought and obtained. Housing families versus single men, local people versus transients, the down on their luck versus addicts are all valid indicators of the likely impact on a neighborhood. There are also standards for when housing the homeless is clearly acceptable, the City has set forth that standard and offered plaintiffs the opportunity to house the

homeless on the same terms and conditions as the Interfaith Churches.

Plaintiffs also raise these issues as an equal protection challenge, raising perceived instances of different treatment of them from other churches. Each of their arguments, however, are without merit.

Plaintiffs' first assert that they have been treated differently from the Interfaith Churches. However, plaintiffs fail to point out that the Interfaith Churches provide food and shelter to individuals in need on a very limited basis with minimal impact to the surrounding neighborhood. (Only 4-6 families, maximum of 16-20 people, for one week, four or five times a year on a rotating schedule.) (See City Exhibit 32.) In contrast, plaintiffs were proposing to house 30 people on a permanent basis, together with meals for 60-80 people every day, which would have a significant impact on the surrounding neighborhood. (See City Exhibit 78.) Thus, any discrepancy in treatment is based not upon the religious entity providing the service, but upon the magnitude of the services provided and the impact to the community. In addition, the City has offered to allow plaintiffs or any other entity to operate on the same limited basis as the Interfaith Churches, but plaintiffs have declined to do so. (City Facts. 43-44.)

Plaintiffs also complain that the Zions Lutheran Church and several of the Interfaith Churches have been allowed to expand existing conditional uses with only administrative approval required, rather than complying with the Community Council and Planning Commission process ordinarily required for the approval of conditional uses. However, plaintiffs' assertions undermine its own argument. In each of the cases cited, administrative approval was granted for the expansion of a pre-existing use. The standard for the expansion of

a pre-existing use is different than the standard for the approval of a new use. (See Plaintiffs' Exhibit 70.) Thus, the mere fact that plaintiffs' attempt to establish a new conditional use was required to utilize a process different than churches seeking an expansion of an existing use, is not evidence of unequal treatment.

Plaintiffs also complain that the Church of the Madeline and the Jewish Community Center were treated differently before the Board of Adjustment. Specifically, plaintiffs allege in the case involving the Church of the Madeline, the City encouraged and allowed delays, but that in plaintiffs' case the City refused to postpone the Board of Adjustment hearing, even though the appellant had requested the delay. (See Plaintiffs' Memorandum in Opposition, pages 26-27.) Plaintiffs' argument on this point is disingenuous. In the fall of 1999, plaintiffs filed an application for a temporary restraining order with the court, seeking to force the City to process plaintiffs' application without waiting for plaintiffs to make a presentation at the local community council, because doing so would delay making a decision on plaintiffs' application. (Plaintiffs' Fact 143.) Although the court did not grant plaintiffs' request for a restraining order, the City became aware that plaintiffs were time sensitive, and thus, in deference to plaintiffs' interests, the City denied appellant's request to postpone the Board of Adjustment hearing. Thus, if anything, plaintiffs received treatment that was preferential to the Church of the Madeline.

Plaintiffs also complain that in the Board of Adjustment case involving the Jewish Community Center, the Board of Adjustment was provided an opportunity to evaluate the scope, nature and extent of accessory uses. However, the same opportunity existed at both the Planning

Commission and Board of Adjustment hearings in this case. At both of those hearings, plaintiffs themselves introduced evidence alerting the Planning Commission and the Board of Adjustment to the practices of the Interfaith Churches. (See Deposition Exhibits 82 and 43.)

Finally, the Mission complains that an administrative exception was granted to the Summum Church in deference to its free exercise of religion, asserting that no such accommodation has been granted plaintiffs. (See Plaintiffs' Memorandum in Opposition, page 27.) This argument overlooks an important distinction between the nature of the request from the Summum Church and the nature of the request from plaintiffs. The Summum Church made a request for authorization to mummify and store dead bodies as part of its religious activities. Under City ordinances, the storage of dead bodies cannot occur anywhere in the City outside of a cemetery. In contrast, plaintiffs' request involves a place of worship, boarding house and homeless shelter, which would be allowed in the D3 and CG zones. (See City Fact No. 22.) Thus, the religious activities of the Summum Church could not be accommodated anywhere in the City without an exception. In contrast, plaintiffs' religious activities can be accommodated within the zoning districts which provide for such uses.

Plaintiffs' equal protection challenge is even weaker because, as plaintiffs admit, equal protection is determined on a rational basis test. The City has put forth rational reasons for any differing treatment of plaintiffs from the Interfaith and other churches. Thus, plaintiffs' equal protection claims should be dismissed.

II. THE MISSION HAS NO CLAIM FOR RELOCATION EXPENSES AGAINST THE CITY.

and

III. THE MISSION HAS NO CLAIM AGAINST THE CITY FOR THIRD PARTY BREACH OF CONTRACT OR QUANTUM MERUIT.

Plaintiffs abandon their Fifth, Sixth and Seventh Causes of Action against the City. See Plaintiffs' Memorandum In Opposition To Salt Lake City's Motion for Summary Judgment, page 1. This would also include the claim in the Fifth Cause of Action for third party breach of contract and quantum meruit. Thus, summary judgment should be granted to the City on these causes of action, discussed at Points II and III of the City's Memorandum In Support.

IV. THE MISSION HAS FAILED TO STATE A CLAIM FOR A VIOLATION OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000.

Even if such claims are ripe, Plaintiffs have nevertheless failed to state any legitimate claim for a violation of RLUIPA.

As discussed above, Plaintiffs have acknowledged that they have no legitimate claim for a violation of RLUIPA for any events which occurred prior to September 2000. Plaintiffs have also acknowledged that they have no claim for a violation of Subsection (a) of RLUIPA. (See Plaintiffs' Memorandum in Opposition, pages 2-3.) Notwithstanding these admissions, however, Plaintiffs assert three RLUIPA claims.

First, Plaintiffs claim that the City has violated Subsection (b)(2) of the Act by discriminating against the Mission in its implementation of its land use regulations vis-à-vis the participating Interfaith Churches. (See Plaintiffs' Memorandum in Opposition, page 4.)

This argument, based essentially on equal protection grounds, is without merit. The record evidence indicates that the Interfaith Churches operate on a much smaller scale and with much less impact upon the community than would Plaintiffs. (See City Fact No. 43 and City Exhibit 32.) Specifically, the Interfaith Churches house a maximum of 4-6 homeless families (a maximum of 16-20 persons) for one week, four or five times a year, on a rotating schedule. Meals are prepared only for those staying at the church. In contrast, Plaintiffs' proposed activities would involve approximately 30 people living on-site year round, together with daily breakfasts for approximately 60-80 people, many of whom would be bussed to the site. (See City Exhibit 78.) Thus, Plaintiffs' complaint that they are treated differently than the Interfaith Churches is simply based upon the fact that their proposed activities, and the impact of those proposed activities upon the community, are dramatically different.

Moreover, the City has offered to allow Plaintiffs to conduct activities on a scale similar to those conducted by the Interfaith Churches. Plaintiffs have thus far declined that offer. (See City Fact Nos. 44-45.) These facts are insufficient to form the basis of a claim for discrimination under RLUIPA.

Plaintiffs also claim the City has violated Subsection (b)(3) of RLUIPA by imposing regulations that unreasonably limit religious assemblies, institutions or structures. Specifically, Plaintiffs assert that it is unreasonable for the City to require Plaintiffs to incur the expense of finding, locating and tentatively securing a location as a prerequisite to applying for an administrative interpretation. (See Plaintiffs' Memorandum in Opposition.

page 4.) This argument is presumably based upon the City's ordinance outlining the process for obtaining an administrative interpretation. (See Deposition Exhibit 94.) This argument is also deficient.

In making this argument, Plaintiffs apparently confuse the distinction between administrative interpretations (discussed in Section 21.A.12.010, et seq. of the City Code) and administrative decisions (defined in Section 21.A.62.040). While City ordinances indicate that only a property owner or the owner's authorized agent may seek an administrative interpretation, there is no limitation as to who may request an administrative decision. Appeals from both administrative interpretations and administrative decisions are heard by the Board of Adjustment. (See Section 21.A.12.040D and 21.A.16.010.)

In the present case, Plaintiffs requested and received several administrative interpretations or decisions, including a letter dated April 20, 1999 (City Exhibit 2), a letter dated September 14, 1999 (City Exhibit 28) and a letter dated June 7, 2004 (Plaintiffs' Exhibit 57). Plaintiffs could have appealed any of those decisions to the Board of Adjustment, but elected not to do so. In any event, however, the administrative processes set forth in City ordinances do not impose an unreasonable limitation on Plaintiffs' religious assembly, institution, or structure.

Plaintiffs' final argument is that the City has violated RLUIPA due to past "discrimination or unfair delay." Plaintiffs do not cite any controlling legal authority for that

proposition.[9] As to discrimination, Plaintiffs have never cited any evidence to suggest that Plaintiffs are treated differently than other non-religious entities. Thus, the only evidence of any discrimination offered by Plaintiffs is their argument that they have been treated differently than the Interfaith Churches. For the reasons discussed above, those differences in treatment, based upon significant differences in practice and impact, do not constitute discrimination.

Plaintiffs also have failed to produce any record evidence demonstrating unreasonable delay. During the course of this case, the City issued several administrative decisions, a decision on Plaintiffs' request for a conditional use permit, and a decision on the appeal filed by the local Community Council. None of those decisions was unreasonably delayed.

(a) April 20, 1999 Administrative interpretation: Issued 39 days after first meeting on March 12, 1999. (See City Exhibit 2 and Affidavit of Philip Arena, paragraphs 3-8, attached as Exhibit 9 to Plaintiffs' Memorandum in Opposition.)

(b) September 14, 1999 Administrative decision: Issued 13 days following the filing of Plaintiffs' conditional use application on September 1, 1999. (See City Exhibit 28 and City Exhibit 48.)

(c) October 7, 1999 Planning Commission decision on conditional use application: Issued 36 days following the filing of the application. (See City Exhibit 48 and City Exhibit 84.)

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[9] The authority cited by Plaintiffs in support of this position is an isolated statement from the legislative history contained in the congressional record. Such a statement of individual legislators is at best advisory only.

(d) November 15, 1999 Board of Adjustment decision on appeal of City administrative decision: Issued 42 days after appeal was filed. (See City Exhibits 42 and 55.)

(e) June 7, 2004 Administrative decision: Issued 35 days following written request on May 3, 2004. (See Plaintiffs' Exhibit 57 and Deposition Exhibit 61.)[10]

These time periods required for issuing City decisions, ranging from 13 to 42 days, given the complexity of the matters at issue and the requirements for providing notice of public hearings, are not unreasonable and do not provide a basis for claiming a violation of RLUIPA.

V. SHOULD ANY CLAIM SURVIVE, PARTIAL SUMMARY JUDGMENT SHOULD BE GRANTED THAT PLAINTIFFS HAVE NO SPECIAL DAMAGES.

Plaintiffs do not dispute that they have no evidence of special damages (economic losses).

Plaintiffs argue that they can show at trial, if that occurs, that they have nominal damages. The City does not disagree with this, the City has moved for summary judgment only as to special, economic damages of which plaintiffs have none.

Plaintiffs also argue that they can show at trial general damages such as impairment of reputation, personal humiliation, mental anguish and suffering or "presumed" damages. Again,

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[10] Although Plaintiffs sent a letter to the City dated June 24, 2003 (Deposition Exhibit 60), that letter merely provided "some basic information about the Salt Lake City Mission." It did not request any response from the City. Plaintiffs did not make such a request until their letter of May 3, 2004 (Deposition Exhibit 61).

the City does not disagree with this (although this will be an issue potentially subject to a directed verdict. The City seeks a ruling at this time only that plaintiffs have no special, economic damages.

CONCLUSION

For all the reasons set forth above, the Mission's Second Amended Complaint fails to state any cognizable claim for relief against the City. Accordingly, the City's Motion for Summary Judgment should be granted, and all claims which the Mission asserts against the City should be dismissed with prejudice.

DATED this 31st day of March, 2006.

LYNN H. PACE
MORRIS O HAGGERTY
Attorneys for Defendant
Salt Lake City Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2006, I caused a true and correct copy of the foregoing to the following:

Matthew Hilton 472 North Main Street Kaysville, UT 84037 Fax No. (801) 544-9977	✓ U.S. Mail ____ Hand Delivered ____ Overnight ____ Via Facsimile
Vincent C. Rampton Jones, Waldo, Holbrook & McDonough 170 South Main Street, Suite 1500 Salt Lake City, UT 84101 Fax No. (801) 328-0537	✓ U.S. Mail ____ Hand Delivered ____ Overnight ____ Via Facsimile
John A. Snow Van Cott, Bagley, Cornwall & McCarthy 50 South Main Street, Suite 1600 P.O. Box 45340 Salt Lake City, UT 84145-0340 Fax No. (801) 534-0058	✓ U.S. Mail ____ Hand Delivered ____ Overnight ____ Via Facsimile

Sandra Stanger

4077

Tab 3

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Telephone: (801) 544-9955

Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Salt Lake City Mission, *et. al.*,	**AFFIDAVIT OF WAYNE C. WILSON**
v.	
Salt Lake City, *et. al.*,	Civil No. 990908945
Defendants	Judge: Joseph C. Fratto
Salt Lake Redevelopment Agency,	
Third-Party Plaintiff	
v.	
McDonald Brothers Investments, a Utah General Partnership,	
Third-Party Defendants.	

3101

COMES NOW Wayne C. Wilson, under oath and penalty of perjury, and states that the following is true:

1. I am over eighteen years of age, of sound mind and body, and make this affidavit based on my own personal knowledge and as Pastor and Executive Director of the Salt Lake City Mission.

2. On April 16, 1986, as a church, the Spectacular Ministries of the Lord's Servants, was recognized as a non-profit, spiritual corporation by the state of Utah. The purposes stated in the Articles of Incorporation are a reflection of God's religious vision to me. The corporation at present is in good standing.

3. On July 26, 1988, the Utah State Tax Commission granted exemption from franchise tax to the Mission. A copy of the notice of this decision is attached hereto as Exhibit 1.

4. Upon inquiry, the Internal Revenue Service notified me on behalf of the Mission that it is their practice to not require churches to apply for tax-exempt status because it is automatically granted. It is my understanding that counsel for the Mission has telephonically confirmed the same.

5. Beginning January 15, 1994, the Mission opened its doors at 466-468 West 200 South, Salt Lake City. The property on which the Mission premises were located was owned by McDonald Brothers Investments, a Utah general partnership.

6. During April and May of 1994, the Mission was served with a Notice to Quit by our landlord McDonald Brothers Investment. The Amended Eviction Notice dated May 3, 1994, stated that a basis for the Notice to Quit was that the Mission was "causing or suffering premises

to be used as residence in violation of zoning laws." On May 19, 1994, an agreement was reached in court, with the Judge, that provided the Mission could continue doing what it was doing as a church, and continue caring for the homeless provided certain matters were improved as outlined in the written order of the court. After the trial was over on May 19, 1994, James McDonald told me that he was sorry the proceedings had been brought and that he had been pressured by city officials to do so. The Mission received a building permit from the city to proceed forward with the renovations ordered by the court.

8. The RDA relies on the provisions of UCA § 78-36-3 (1)(d) to state that the Mission was in unlawful detainer. That subsection states that

> [a] tenant of real property for a term less than life (like the Mission's month-to-month tenancy) is guilty of unlawful detainer: ... [w]hen he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78-38-9 and remains in possession after service upon him of a three days' notice to quit..[1]

9. After the resolution of the judicial proceedings in 1994 brought by MBI against the Mission for unlawful detainer, the Mission was allowed to remain in the MBI premises.

10. At no time subsequent thereto was the Mission served with a three days' notice to quit by MBI under U.C.A. § 78-36-3(d).

11. At no time thereafter did the Mission or Pastor Wilson

> Lease[] premises contrary to the covenants of the lease, or commit[] or permit[] waste on the premises, or set[] up or carry[y] on any unlawful business on or in the premises, or suffer[], permit[], or maintain[] on or about the premises any

[1] U.C.A. § 78-336-3(1)(d).

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nuisance, including nuisance involving controlled substances, gambling, criminal activity, parties that interfere with the comfortable enjoyment of life or property, prostitution, and criminal firearms (all as defined in Section 78-38-9).

10. On May ___, 1994, although the city did not appear to agree with the legal arguments and factual representations my counsel had made for me, the criminal charges were dismissed by the city. I understood that then city attorney Roger Cutler was aware of and spoke publicly regarding the dismissal.

11. Subsequent to the criminal charges being dismissed by the City, I continued to notify the police department of criminal conduct that I, and the staff of the Mission, would observe occurring on the block between 400-500 West and 200 South. A significant number of phone calls made from the Mission to the police department were made by persons seeking refuge in the Mission. It is likely that this occurred because there were no public telephones within this one block area. I sensed irritation when I talked to some of the officers regarding these complaints, but the majority supported police chief Ortega's request that citizens report all crime of which they were aware.

12. On December 24, 1996, I was given a Notice of Zoning Violation by Sherie Reich. After receiving the Notice, I called Harvey Boyd of the City's enforcement division of the planning and zoning department and inquired about its enforcement. He told me not to worry about it. A copy of the Zoning violation is hereto attached as Exhibit 2. That night Traveler's Aid (Road Home) sent over a mother and her baby child to the Mission to secure emergency shelter. A police officer brought by another person released from the hospital with no place to go.

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13. On December 26, 1996, I was given a Criminal Citation by zoning enforcement official Kent Mickelson for violating the City Zoning Ordinances by maintaining a homeless shelter. A copy of the Criminal Citation is attached hereto as Exhibit 3.

14. On December 28, 1996 Sherie Reich, Kent Mickelson, and Harvey Boyd came to the mission and told me I had to close down my homeless shelter.

15. Beginning on January 15, 1997, I was represented in the criminal proceeding regarding the Zoning violation by the present Counsel for the Mission in this case. I understood Judge Hutchings ruling in the 1994 unlawful detainer proceedings established a lawful nature of my presence at the Missions address. I also understood the result of the court proceedings to mean that engaging in religious worship through presentations in the Mission and outreach ministries to "feed and clothe Jesus" by ministering to the needs of the homeless and poor, regardless of family status, addiction, or residency, was lawful at the Mission's location.

16. On May __, 1997, the City Prosecutor's Office dismissed the criminal charges against me.

17. On May 23, 1997, the Spectacular Ministries of the Lord's Servants filed a dba with the State of Utah, using 'Salt Lake City Mission' as its name.

18. On July 18, 1997, the Utah State Tax Commission granted the Mission a sales tax exemption number because it qualified as a religious or charitable institution. A copy of the notice of this decision is attached hereto as Exhibit 4.

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19. On August 12, 1997, the United States Post Office granted the Mission postal privileges as a non-profit organization. A copy of the notice of this decision is attached hereto as Exhibit 5.

20. On August 14, 1997, the Mission's counsel and I met with Lynn Pace of the City Attorney's Office to learn about the requirements to locate a homeless shelter in the city. On August 20, 1997, Mr. Pace wrote a letter to the Mission's counsel explaining that such uses were limited to the D-3 and CG zones of the city. In addition he reconfirmed the existing policy of the city against further concentration of homeless services

> within one geographic area. For that reason, it is more likely that your client would obtain approval of a proposal if his proposed shelter were located outside of the downtown area since there is already a large shelter and several support facilities in that area.

Nonetheless, the City Attorney assured the Mission's counsel that:

> [i]f your client has a specific proposal he would like us to review or if he would like to have a general discussion as to the range of possible sites, we would be happy to discuss that matter with him. If you and your client would like to discuss this matter, please contact me so that we can arrange an appropriate meeting time. In contrast, if your client would like to meet without attorneys, please have him contact Brent Wilde at 535-6180, who has assured me that he will make himself available to meet with your client.

A true and accurate copy of this letter from counsel is attached hereto as Exhibit 6.

21. By the winter of 1998, the Mission was actively looking to relocate to a permanent location that the Mission could purchase.

22. The Mission's presentations at various community councils before 1999 were opposed by members of the Mayor's office and uniformed members of the police department.

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23. Before 1999, the Mission wanted to move to the Sutherland Building located at 405 South Redwood Road. I made a presentation at the Poplar Grove Community Council. A uniformed police officer appeared at the meeting and spoke against the Mission. After the presentation, chair indicated that the Mission would receive a letter of determination in about a week; thereafter, however, he refused to send the Mission a letter. In the absence of the same, staff at PZD refused to allow the Mission to file an application for a conditional use permit. I have produced to the city true and accurate copies of documents marked with numbers 0708 MIS to 0737 MIS that show efforts of the Mission to prepare for the submission of a conditional use permit application and presentation to the Community Council.

24. Before 1999, the Mission wanted to move to 1515 South 400 West (formerly, Travelers Aid Society; now, The Road Home). I made a presentation at the People's Freeway Community Council. The Community Council offered to assist the Mission to locate outside of their Community Council area, but would not approve the requested location. One of the officers who had appeared at the Mission offices and told the Mission that the Mayor's Office wanted them shut down appeared at the meeting and spoke against the Mission. The Community Council never sent verification of the presentation or their decision to the Mission. Despite having made the presentation, thereafter staff at PZD twice refused to allow the Mission to file an application. I have produced to the city true and accurate copies of documents marked with numbers 0746 MIS to 0756 MIS that show efforts of the Mission to prepare for the submission of a conditional use permit application and presentation to the Community Council.

25. Before 1999, the Mission wanted to relocate at 850 West 1600 North (at the Superfund site). PZD staff refused to notify Capital Hill Community Council that the Mission needed to be on their agenda to make a presentation; thereby, justifying the Mission's belief that the preparing of an application would also be futile.

26. In the early part of 1999, the Mission determined that it would like to acquire the Cohen Building located at 580 West 300 South. At the time of the inquiry, a Church was a permitted use in the D-3 zone where the property was located. A building permit was requested. Notwithstanding the foregoing, Randy Taylor, Zoning Administrator, encouraged the Mission to make a presentation to the Rio Grande Community Council. Previously the Mission had requested a building permit for the renovation of the Cohen Building located at that address, but had been delayed in receiving a response because the city wanted to clarify what classification of use they would assign to the Mission at that location. While the Mission was informed that attendance was not mandatory, in an effort to cooperate, we agreed to attend the Rio Grande Community council meeting on March 17, 1999. Phil Arena of the Mission made the presentation. The presentation was disrupted by Marge Harvey of the Mayor's Office who spoke out against the presentation. Other uniformed police officers in attendance spoke out against the Mission as well. The Mission was asked to make another presentation at the next meeting on April 21,1999.

27. On April 20, 1999, staff of the PZD brought to the Mission an administrative interpretation of the uses of the Mission at the Cohen property located at 580 West 300 South. The administrative interpretation letter classified the Mission as being something that required

state licensure as well as a homeless shelter. We had been visited by the State Department of Human Services Office of Licensing on April 13, 1999, for an inspection requested by the City PZD. On April 19, 1999, the licensing office wrote the Mission a letter that indicated licensure was not applicable to our religiously based activities. A true and accurate copy is attached hereto as Exhibit 7. We received this letter on the morning of April 21, 1999, and immediately faxed a copy to the PZD and the office of Mayor Corradini.

28. Notwithstanding our commitment to make a second presentation at the Rio Grande Community Council on the night of April 21, 1999, after the Mission and I read the letter from Randy Taylor at PZD, we felt that it would be futile to apply for a conditional use permit regarding the Cohen property. We concluded this for two reasons. First the location of our church needed to be accessible to those persons in need of spiritual and temporal assistance. Because of the city policy opposing the concentration in the city of any additional services for the homeless, it seemed that no matter what we submitted regarding our relocation, the staff would find that our proposal would have a negative impact on "the city as a whole." Second the letter contained an unsolicited offer to assist the Mission in relocating in Salt Lake County (instead of assisting us to remain in the city.)

29. On April 21, 1999, the Mission again presented at the Rio Grande Community Council. Brent Wilde of the PZD was in attendance and disputed if not debated the Mission's claim it was only a church rather than all of the use classifications contained in the April 20, 1999Administrative Interpretation letter that were contrary to the use classifications explained by the Mission.

30. On April 22, 1999, I obtained for the Mission, by facsimile from the Mayor's Office a listing of all Community Councils and their respective chairperson.

31. Check # 2375, dated June 4, 1999, was submitted by the Mission to MBI as the $600 June 1999 rent payment and cleared the Mission's checking account on June 11, 1999. The month-to-month tenancy was redefined by agreement among the parties and MBI's acceptance of check # 2413, dated June 17, 1999, for the rent payable for July 1999. Although the check did not clear the Mission's bank account until July 9, 1999, the acceptance of the check in June 1999, and subsequent cashing of the same prior to the execution by MBI and RDA of the July 21, 1999, Sale and Purchase Agreement, was sufficient to establish a tenancy that began on July 1, and according to the Parties' agreement dated July 31, 1999, continued through September 30, 1999.

32. During the middle of the summer, the Mission determined it would try to relocate in the Rosewood Terrace Building at 168 North 600 West located in the Fairpark Community Council area. I was unable to reach the Chairman of the Fairpark Community Council during early August 1999 because he had gone of vacation. Unbeknown to the Mission, the Fairpark Community Council meeting for August 1999 had been cancelled because of vacation schedules. The Mission's counsel and I notified the PZD and City Attorney's Office of the Mission's inability to meet with the Fairpark Community Council and the urgent need to begin processing its application for a conditional use regarding Rosewood Terrace properties.

33. At no time did I or the Mission receive from staff of the planning and zoning department of the city the form that I was to give a community council chairperson to execute so

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as to acknowledge that the Mission had made a presentation regarding a proposed conditional use by the Mission in that particular area of the city. At no time until the Mission's counsel became involved in the Missions conditional use permit application of September 1, 1999, (regarding the Rosewood Terrace Building) did I understand that the community council did not have the authority to withhold approval or prevent the Mission from applying for a conditional use permit. My experiences of being opposed at these presentations by individuals identified as being city employees of the Mayor's office or police department led me to believe that approval of the community council was a prerequisite to filing a conditional use permit application with the city.

34. On June 25, 1999, when Philip Arena requested a permit application for the Cohen property, staff at the permit counter was uncooperative, knowing that the Mission could not obtain a permit on the "Cohen" property without clearance from Randy Taylor, Zoning Administrator. The experience of Philip Arena on June 25, 1999, at the PZD permit counter closed the door on the Mission's efforts to receive city approval and relocate at the Cohen property. Based on the foregoing, the Mission concluded it would be futile to proceed with a conditional use permit application on the Cohen property.

35. I believe that had the Mission been allowed to file an application during the August 1999, it is likely that what the Mission perceived in the staff report as being religiously discriminatory against the Mission (and raised in either the Motion for a temporary restraining order, or at the October 7, 1999, presentation by Mission's counsel before the Commission) could have been addressed and resolved so as not to violate the constitutional rights of the

Mission. Because of the extremely negative publicity encouraged by city employees in the Fairpark Community Council area, the Mission and I did not deem it worthwhile to postpone the Commission's hearing on our proposal until the following month.

36. The September 14, 1999, administrative interpretation letter was neither requested in accordance with City ordinances nor expected by the Mission. The Mission's counsel had informally asked for clarification regarding the impact of non-state licensure on the zoning administrator's April 20, 1999, letter. If the September 14, 1999, letter was written in response to that request, it took ___ weeks for the City to issue the advice.

37. On September 14, 1999, the Mission was notified by the Fairpark Community Council that a vote would be taken of those attending the Community Council meeting scheduled for September 23, 1999, to determine whether or not the Community Council would be in favor of the Mission's presentation. No form from the Zoning Administrator or PZD was disclosed to or provided to the Mission for the City Chair to complete, acknowledging that the Mission had made a presentation regarding the proposal.

38. As to the federal relocation assistance, the RDA never provided the Mission with a "notice of intent to acquire" or "notice of eligibility for relocation assistance," prior to "commitment of Federal financial assistance" or "initiation of negotiation" as defined by the federal regulations implementing the federal Uniform Relocation and Assistance Act. The RDA failed to provide the Mission "as soon as feasible" with "a general written description of the displacing agency's relocation program" at all, much less in mandated detail and notification of right to appeal the Agency's determination of an application for assistance.

39. The RDA failed to provide the Mission with services as mandated, including, through a personal interview, (1) determining the relocation needs and preferences of the Mission, and (2) providing an explanation of (a) the relocation and other payments or other assistance for which the Mission may be eligible, and (b) procedures for obtaining such assistance. The RDA failed in its continuing duty to provide information on available commercial properties and locations as well as minimizing the hardships of the Mission by providing "such other help as may be appropriate."

40. The Mission filed a claim with the RDA seeking payment for actual reasonable moving and related expenses as required by 49 CFR 24.303 and reestablishment expenses required by 49 CFR 24.304. Because of the failure of the RDA to provide proper notice of eligibility, the RDA Defendants failed to allow the Mission to demonstrate the need for advance relocation payment. The RDA failed to provide "reasonable assistance [to the Mission] to complete and file any required claim for payment."

41. Had the Mission been notified of its right to seek an advance relocation payment, it would have done so and received the benefits thereby. (Affidavit of Wayne Wilson ¶ ___.) Having failed to provide the Mission with proper notice, the Mission cannot be charged with failure to give notice to the RDA of a "self-help" move because it never was notified by the RDA as required to do so. Having failed to give proper notice of the ability to file a claim in advance, the RDA can be charged with a failure to review the Mission's claim in an "expeditious manner" and "promptly notify the Mission as to any additional documentation that is required to support the claim." If the RDA disapproved all or part of the advance payment claimed by the

Mission, they were under a duty to "promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination." Finally, having failed to give notice of the right to request an advance relocation payment, the RDA failed to maintain adequate records of their treatment of the Mission's request for relocation assistance.

42. RDA's proffered fact #42 clarifies this statement, stating "[o]n October 9, 1999, the Mission finally vacated the Subject Property." For clarification regarding the factual basis indicating an absence of need to vacate the property June 11, 1999, see response to Disputed Fact # 32, *infra.*

43. While the City Attorney's Office forwarded a copy to Mission's counsel of the October 4, 1999, appeal filed by the Fairpark Community Council, to the September 14, 1999, administrative interpretation; neither I nor the Mission were notified by the city of (1) the appellants request to postpone the November 15, 1999, hearing, and (2) the option to appeal the Board of Adjustments ruling within thirty (30) days after the time the decision was made. The PZD staff never consulted with me nor with the Mission regarding the needed evidence on appeal or how the appeal would impact the Mission. In addition, counsel for the Mission received a copy of the minutes of the November 15, 1999, meeting after the time for appeal had run.

44. The Mission and I believe that had the City involved the Mission in the appeal, and had the City desired to assist the Mission's efforts to remain in the city, the issues of the appeal could have been more favorably framed as follows: (a) The status of the

boardinghouse would have been specifically addressed and considered for approval. Had the missionary training (disciple of Christ) program been approved as an ongoing non-conforming use, there would have been no need for a conditional use permit because it would not have been required had the boardinghouse been used for secular purposes. (b) Had the Board of Adjustment found the Mission to be a church or "place of worship," and the City's practices regarding "accessory use" and the Participating Churches with Interfaith been disclosed to the Board by the City staff and/or counsel, an obvious exception in practice to what by ordinance was defined as "a homeless shelter" would have been evident. Considering the narrow limitations Randy Taylor had placed on the Church's protecting the "homeless" only overnight when in "life threatening" situations, and limiting the Mission's advertising of the new location, the Board of Adjustments could well have determined the proposed "use" similarly constituted an "accessory use" of a church rather than a "homeless shelter."

45. Even had the Board of Adjustments denied the reframed issues, the record would have been established to facilitate an appeal. As it was, the City's framing of the issues in such a way as to preclude consideration of these factual and legal questions made an appeal based on the City's record of evidence futile.

46. In the meantime, the Mission had relocated in the basement of Central Christian Church at 370 South 400 East. After significant expense and effort, the Mission was able to renew part of its religious worship and service to the community.

47. As part of compliance to City ordinances the Mission was inspected by the City County Health Department, the Fire Department, Division for Building Code Enforcement, and police officers on a frequent basis.

48. Despite the success the Mission experienced at this new location, it was unable to have its own worship services in the sanctuary of the church. Notably, however, the Mission, staff, and volunteers were able to provide emergency overnight temporary housing for the homeless at the Central Christian Church, as well as other religious services. An outline of estimated totals of persons assisted by the Mission for the years before, during, and after the Missions stay at the Central Christian Church are included as Exhibit 8 to this affidavit. These totals reflect the spiritual and temporal expression of officers, staff, volunteers, and members of the congregation who reached out to others as they worshiped Jesus Christ by feeding, clothing, providing shelter and the hope of the Gospel to those in need.

49. The Mission and I believe that being required to restrict and redefine its religious mission to fit within categories that do not reflect its biblically based Mission is an affront to God. Nonetheless, neither I nor the Mission desire to engage in civil disobedience and desire to have our rights and duties under the past and current city ordinances declared and clarified.

50. The Mission does not facially object to operating within limits declared applicable to certain uses and properties by fire, health, and related authorities, as well as objective criteria articulated in City zoning regulations. (Deposition of Wayne Wilson, 482:21-24; Exhibit 9.)

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51. Interfaith and its Participating Churches serving the homeless "share our faith by action, not by words, bringing hope to those without." My religious convictions and those shared by the Mission also illustrate that "faith without works is dead," (James 2:17), but offers a different perspective on what it means to "feed Jesus [and] clothe Jesus," believing "[e]ven as ye have done it unto the least of these my brethren, ye have done it unto me." (See Matthew 25: 40.)

52. While perhaps based on "logical" assumptions, the City's *ad hoc* determinations of what constitutes acceptable amounts of "religious worship" of a church by offering to allow the Mission to conform to the Interfaith "standard" ignores key aspects of differences in the perspective of the two religious groups regarding religious worship that focuses on issues beyond numbers of people assisted and duration of stay.

53. The Interfaith guidelines operate not only in terms of numbers of homeless sheltered, and the duration of the stay, but also as to who is served. Interfaith only serves families (single- or two-parent families with children); the Mission serves families and individuals. Interfaith will not serve those with addictions; the Mission will. Interfaith implicitly was understood to focus on residents of the City and Salt Lake Valley; the Mission also serves those who are transient, those initially not residents of the City or Valley. The Mission will not turn away a homeless person in a life threatening position (twenty degrees (20°) or below outside) when there are no other available options in the City; Interfaith has no provision for such assistance.

54. The Mission also has strongly resisted efforts to use government funding for social service providers. To imply or require affiliation with an entity that serves God and the

homeless with Caesar rather than separating the two is not part of the Christian mission of the Mission. (See Deposition of John Ravarino, 108:21-24, Exhibit 10.)

55. The Mission and I believe that even assuming the City would approve the Mission's "accessory use" of our religious worship within the numeric restrictions and timeframe established by the Participating Churches with Interfaith, the Mission is still discriminated against because no Participating Church with Interfaith either (1) has been required to individually apply for the approval, or (2) be subject to City regulation regarding the same afterwards.

56. Contrary to the City's claims, several meetings and interchanges with City staff including Mayor Anderson occurred on May 3, 2001, June 23, 2003, June 21, 2004, and July 19, 2004.

57. Other meetings with counsel and ranking staff of the PZD occurred on September 8, 2003. Notes from the meeting in Deposition Exhibit 11 reflect aspects of the discussion held September 8, 2003.

58. At no time was the Mission asked by the City PZD to follow the requirements in the City ordinances to obtain an administrative interpretation.

59. The Mission did not file a request for an administrative interpretation regarding the Cohen property in 1999, nor the Rosewood Terrace property in 1999, 2003, or 2004. (Deposition of Wayne Mills 31:2-13, Exhibit 12.)

60. On June 30, 2002, the Mission moved out of the basement of the Central Christian Church because it could not afford to pay the continually escalating rent. On July 5,

2002, the Mission relocated its administrative offices at 342 West 200 South. At this new location, the Mission was unable to hold church services or provide homeless overnight services in emergency, life-threatening conditions.

61. After the Mission's departure from the Central Christian Church, it initiated dialogue with the City both as to re-consideration of its request to use the Rosewood Terrace Building and what "use" the Mission would be classified as regardless of the location. On

62. June 23, 2003, Phil Arena and I met with Mayor Rocky Anderson and Luis Zunguze, Planning Director, to discuss issues associated the relocation of the Mission a short meeting addressing the desire of the Mission to relocate in the Rosewood Terrace Building. On June 24, 2003, Phil Arena forwarded additional information regarding the Mission and its programs to Luis Zunguze. (672-674 MIS) On both June 24, 2003, and July 13, 2003, Matt Hilton wrote Lynn Pace and asked regarding procedures to amend City ordinances regarding the homeless. (467-472 MIS) Neither of the City Attorney's responses of July 25, 2003, nor August 19, 2003, addressed the Mission's inquiry regarding amendment of the City ordinances and policies regarding the homeless. (473-477 MIS)

63. On September 5, 2003, the owners of the Rosewood Terrace Property reconfirmed to the Mission in writing that they would like to complete the transaction proposed in writing in 1999.

64. On September 8, 2003, Phil Arena, counsel for the Mission, Lynn Pace, Louis Zunguze, Cheri Coffey, Brent Wilde, and I met at the City Offices. During that meeting, the Mission raised the following issues: (1) City administration has changed its policy on use, need

for homeless services, and their location. The Mission wanted to know what the policy now was. (2) Is there was any way to determine that the Mission was just a church and recognize the non-conforming use of the location? (3) The owners of the Rosewood Terrace Building will donate the same to the Mission as a one million five hundred thousand dollar ($ 1,500,000.00) donation. (4) At the Central Christian Church location, the Mission fed four hundred (400) people a day as a church and were told they did not impact the area. (5) Homeless do not go to shelters that are not downtown; homeless stay downtown. (6) If the Mission tightened up the condition under which the persons could be there who aren't in the discipleship, would they still be a homeless shelter? and (7) Is the City aware the other shelters in D-3 and CG zones allow anyone in the Winter Overflow to keep them from freezing?

65. Louis Zunguze wanted to know how the Mission (a) classified its use, (b) what it was proposing to do, and (c) indicated he wanted a formal proposal. Matt Hilton indicated that "[i]f the City allows providing shelter for families on a temporary basis, then the City should pass a policy that includes this as [being] o.k. in definition of churches." Lynn Pace responded that "[i]f you open [your] office etc. to someone who needs shelter [is different than] advertising shelter for the homeless." Lynn Pace stated (a) if the proposed use had not changed the Mission would still be looked at as a homeless shelter; (b) have to demonstrate change in circumstances before can ask for same thing again, and (c) the City will classify the use.

66. Brent Wilde indicated that (a) if people stay there temporarily, overnight, the Mission would be a homeless shelter, and (b) the people in the discipleship program may be looked at differently but don't know.

67. On October 23, 2003, I submitted a written request to Louis Zungune that the Mission be classified as a church. I received no response.

68. Subsequently, the Mission met with PZD staff and counsel on November 8, 2003. While the City's policy on concentrating services for the homeless had changed, counsel for the City informed the Mission that if its uses at the Rosewood Terrace Building had not changed, the Mission would remain classified as a homeless shelter and unable to qualify for the S-1 Zone. The Mission requested that changes in the City ordinances be made to reflect current practices among Interfaith churches regarding sheltering of the homeless.

69. On May 3, 2004, I again submitted a written request to Louis Zungune that the Mission be classified as a church. Louis Zungunze referred the matter to acting Zoning Administrator Wayne Mills. In response to the Mission's second request to the City to be classified as a church, on June 21, 2004, Zoning Administrator Wayne Mills informally notified the Mission that without showing a change in use, the Board of Adjustments classification would stand and preclude any relocation at the Rosewood Terrace Building because of the previous classification of the Mission's proposal as a homeless shelter. On June 21, 2004, the Mission and Attorney Michael Hutchings met with Mayor Anderson, City counsel, and the Planning Director in an effort to address relocation efforts. On July 19, 2004, the Mission and Attorney Michael Hutchings met again with Mayor Anderson, City counsel, and the PZD, but they were unable to resolve the impact of the Board of Adjustment ruling classifying the Mission as a "homeless shelter."

70. After either June 21, 2004, or July 19, 2004, at Mayor Anderson's direction, Cheri Coffey, of the City PZD staff, provided the Mission with a map of the zones of the City where the Mission could look to relocate. Ms. Coffey's attached notes reflected an emphasis on the restriction of the Mission's location to the D-3 and CG zones of the City. The map was restricted to the D-3 and CG zones of the City where "homeless shelters" are a conditional use. Mayor Rocky Anderson informed the Mission that its use classification would restrict its location to D-3 and CG zones. At no time has the City ever notified the Mission it could locate in all of the areas where churches are a permitted use or conditional use. (See City's Memorandum at 19-20; Affidavit of Cheri Coffey, ¶¶ 6, 7.) The Rosewood Terrace Building was subsequently purchased by another party and the property was not donated to the Mission.

Fear of prosecution if religious beliefs were exercised and subsequently determined to not be an "accessory use ... for religious worship" has limited the religious practice of the Mission and me. Refusal of the City to publicly define what the "accessory use" standards are as compared with those of a "homeless shelter" only has exacerbated the problem.

DATED this 15 day of March, 2006.

Wayne C. Wilson

Wayne C. Wilson

COUNTY OF DAVIS)
: ss
STATE OF UTAH)

On March 15, 2006, Wayne C. Wilson, known to me, personally appeared before me and swore under oath and penalty of perjury that he had executed the foregoing affidavit and that the statements contained therein were true.

DATED and EXECUTED this March 15, 2006.

NOTARY PUBLIC
ROBYN J. NEWBOLD
2290 East 3225 North
Layton, Utah 84040
My Commission Expires
June 15, 2008
STATE OF UTAH

NOTARY PUBLIC

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EXHIBIT 1

UTAH STATE TAX COMMISSION

160 East Third South
Salt Lake City, Utah 84134

Clyde R. Nichols, Jr.
Executive Director

R. H. Hansen, Chairman
Roger O. Tew, Commissioner
Joe B. Pacheco, Commissioner
G. Blaine Davis, Commissioner

July 26, 1988

Account No. 120236

Wayne C. Wilson
P.O. Box 250 #16249
Draper, Utah 84020-0250

Re: Spectacular Ministries of the Lord's Servants

Gentlemen:

Articles of incorporation, which were filed with the Division of Corporations by the subject corporation, have been examined and it is our opinion that the corporation is exempt from corporation franchise tax under the provisions of Section 59-7-105, Utah Code Annotated 1953, as amended. This corporation franchise tax exemption does not extend to Utah sales and use tax.

This exemption shall be effective so long as corporate activities are confined to those as authorized by the Articles of Incorporation. In the event the activities exceed or deviate from the powers granted by the Articles, this exemption shall cease to have effect and the corporation may be liable for the franchise tax.

In the event of any I.R.S. ruling, audit, redetermination, etc. a copy must be forwarded to the State Tax Commission for review.

Respectfully yours,

Charles Arnold, Supervisor
Corporations Group
Revenue Accounting

Telephone No. (801) 530-6257

CF.42/mp/1719r

EXHIBIT 2

INSPECTION REPORT

SALT LAKE CITY CORPORATION
Building Services and Licensing
451 SOUTH STATE STREET, ROOM 406 SALT LAKE CITY, UTA

Address 468 W 200 S

Date 12/24/96

Permit No. Complain

Inspection Kind: ☐ Bldg. ☐ Elec. ☐ Plbg. ☐ Mech. ☒ Zoning ☐ Preinspection ☐ Sign ☐ Fire ☐ Housing ☐ Special

Reason for Inspection: ☐ Called ☐ Routine ☒ Cc

Contractor

Stage
☐ Partial
☐ Complete

☐ Work Approved
☐ Work in Violation

☐ Issued Stop Card
☐ Double Fee

☐ Do Not Proceed With Work
☐ Make Necessary Corrections

Type of Inspection
☐ Footing ☐ Underground ☐ Bond B
☐ Foundation ☐ Rough ☐ Concret
☐ Frame ☐ Clearance ☐ Steel
☐ Insulation ☐ Final ☐ Column
☐ Void ☐ ☐ Progres
☐ Reinspection Req. ☐ Sheetro

☐ Unable to Make Inspection
☐ This Inspection is Required. Call 535-6436 Mornings 7:30—8:30 to Schedule Inspections
*** 24 Hour Notice Required ***

Certificate of Occupancy
☐ Shell Only
☐ Permanent
☐ Temporary _____ Days
☐ Not Required

☐ Prior Violations Not Corrected
☐ Work Must Be Completed Within _____ Days

Time 11 : 55 (AM) PM Comments:

This structure is only To Be used As a church - No sleeping at any Spot on premises Day or Nig This is a Violation of the SLC Zoning ordin Please cease & desist or a citation will issued

Signed: # 20 Sherrie B Rouch
Salt Lake City Inspector

2127

EXHIBIT 3

HOUSING / ZONIN NSPECTION REI IT

SALT LAKE CITY CORPORATION
Building Service nd Licensing
451 S. State St., Room 406
S.L.C., Ut. 84111

District 2 Final _____ Next Action Due _____

535-643

Address	Date/Time	Case Number
466-468 W 200 S.	12-26-96	

INSPECTIONS:	Initial	Progress	Compliance
Complaint	☐ IIC	☑ IPC	☐ ICC
Operation Paint Brush	☐ IIO	☐ IPO	☐ ICO
Business License	☐ IIB	☐ IPB	☐ ICB
Apartment License	☐ IIA	☐ IPA	☐ ICA

PERSONAL CONTACTS:
- Phone Call ☐ PCP
- Office ☐ PCO
- Visit ☐ PCV

LETTERS:
- Warning Letters ☐ LWL
- Certificate of Non-Compliance ☐ LCN
- Citation/Summons threat ☐ LCS
- Other Letters ☐ LOL

CITATIONS/SUMMONS:
- Citations ☑ CSC
- SUMMONS ☐ CSS

NOTICE AND ORDER: ☐ NAO

EXTENSIONS: ☐ EXT

CERTIFICATES:
- Lien ☐ RTL
- Non-Compliance ☐ RTN

HEARINGS:
- HAAB Board ☐ HHB
- Board of Adjustment ☐ HBA
- Court ☐ HCO

PROPERTY OWNER: _____

COMMENTS:

Issued citation to Rev. Wayne C. Wilson. Sign still on wood. Tables full of blankets and pillows. Several people sleeping on couches. Rev. would not allow entrance Signed #28 Asst. inspection at this time

Address	Date/Time	Case Number
466-468 W 200 S.	12-26-96	

INSPECTIONS:	Initial	Progress	Compliance
Complaint	☐ IIC	☑ IPC	☐ ICC
Operation Paint Brush	☐ IIO	☐ IPO	☐ ICO
Business License	☐ IIB	☐ IPB	☐ ICB
Apartment License	☐ IIA	☐ IPA	☐ ICA

PERSONAL CONTACTS:
- Phone Call ☐ PCP
- Office ☐ PCO
- Visit ☐ PCV

LETTERS:
- Warning Letters ☐ LWL
- Certificate of Non-Compliance ☐ LCN
- Citation/Summons threat ☐ LCS
- Other Letters ☐ LOL

CITATIONS/SUMMONS:
- Citations ☑ CSC
- SUMMONS ☐ CSS

NOTICE AND ORDER: ☐ NAO

EXTENSIONS: ☐ EXT

CERTIFICATES:
- Lien ☐ RTL
- Non-Compliance ☐ RTN

HEARINGS:
- HAAB Board ☐ HHB
- Board of Adjustment ☐ HBA
- Court ☐ HCO

PROPERTY OWNER: _____

COMMENTS:

Verified several building problems. No fire sprinklers. 1 fire extinguisher with no charge. Signed 25 citations at 11:15 A.M. this morning. Advised to follow up tomorrow. Signed #28 Asst.

3129

0320MIS

EXHIBIT 4

State of Utah
UTAH STATE TAX COMMISSION
210 North 1950 West Salt Lake City, Utah 84134

Michael O. Leavitt
Governor

Olene S. Walker
Lieutenant Governor

W. Val Oveson, Chairman
Richard B. McKeown, Commissioner
Joe B. Pacheco, Commissioner
Alice Shearer, Commissioner
Rodney G. Marrelli, Executive Director

June 18, 1997

WAYNE C WILSON
SPECTACULAR MINISTRIES
468 W 200 S
SALT LAKE UT 84101

RE: Religious/Charitable Sales Tax Exemption Number N11839

Dear Sir:

Based on the information submitted, we have determined that your organization qualifies as a religious or charitable institution and is exempt from sales/use tax on both purchases and sales of tangible personal property and related services, subject to the following qualifications:

1) The exemption only applies to purchases and sales for religious, charitable, or other purpose sanctioned by Section 501(c)(3) of the Internal Revenue Code. Individuals affiliated with the organization are **not** authorized to exempt purchases for their own personal use.

2) Purchases and sales pertaining to "unrelated trades or businesses" as defined in 26 U.S.C.A., Section 513 are **not** exempt and are subject to Utah sales and income tax provisions.

3) Sales of food or drink items to the general public are subject to tax unless sold at an isolated or occasional fund raiser, bazaar, etc. Food sales may also be subject to the "restaurant" tax in counties where this tax is imposed.

4) Purchases of construction materials as tangible personal property are exempt. Contractors may purchase tax-exempted construction materials on behalf of an exempt organization. Contractors should contact the Tax Commission for additional information.

Please refer to the enclosed general instructions for information on exemption certification, sales tax refund procedure, and record keeping requirements.

If you have any questions, please contact me at (801) 297-7507 , 1(800) 662-4335, Ext 7507 or fax (801) 297-7697.

Respectfully,

David Christensen
Customer Service Division

Enclosures

If you need an accommodation under the American's with Disabilities Act, contact the Tax Commission at (801) 297-3811 or Telecommunication Device for the Deaf (TDD) (801) 297-3819. Please allow three working days for a response.

3131

EXHIBIT 5

UNI ⁻D STATES POSTAL SERVICE
M. ..phis, TN 38165-9599

FC 9355

08/12/97

Authorization No. 0647122-RBS

SPECTACULAR MINSTRIES OF THE LORDS
SERVANTS
468 W 200 S
SALT LAKE CITY, UT 84101-1113

Dear Postal Customer:

Your application for nonprofit standard mail rate mailing privileges has been approved. Effective 08/05/97, your organization is authorized to mail at the nonprofit standard mail rates at SALT LAKE CITY, UT 84199.

Everything you present for mailing under this authorization must be prepared in accordance with the postal regulations that govern this class of mail. Therefore, please note the following requirements, as specified in E670.6 of the Domestic Mail Manual:

All matter mailed at the Nonprofit Standard Mail rates must identify the authorized nonprofit organization. The name and return address of the authorized nonprofit organization must be either on the outside of the mailpiece or in a prominent location on the material being mailed. Pseudonyms or bogus names of persons or organizations may not be used. If the mailpiece bears any name and return address, it must be that of the authorized nonprofit organization.

This authorization does not extend to mailings made at post offices other than the one named above. Also, please note that under E670.5 of the Domestic Mail Manual, your organization is authorized to mail only its own matter at these rates. You may not delegate or lend the use of your nonprofit standard mail authorization to any other person or organization. Doing so could result in the revocation of your authorization.

Prior to your first mailing, please contact the above-named post office to ensure all applicable fees are paid. Additionally, you must mail under this authorization at least once every two years. Unless you do so, your nonprofit standard mail rate authorization will be revoked for nonuse.

If you have not already done so, please contact the post office named above to discuss entry of your mail under this authorization.

PLEASE CITE YOUR AUTHORIZATION NUMBER AS GIVEN ABOVE IN ALL FUTURE CORRESPONDENCE WITH US, INCLUDING REQUESTS FOR ADDITIONAL MAILING POINTS.

Thank you for your business.

Sincerely,

Edward Walker
Manager
Rates and Classification Service Center

3133

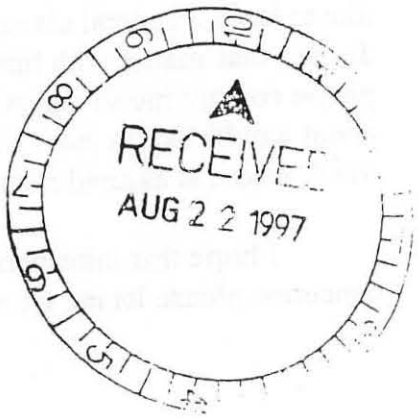
EXHIBIT 6

ROGER F. CUTLER
CITY ATTORNEY

SALT LAKE CITY CORPORATION

LAW DEPARTMENT

DEEDEE CORRADINI
MAYOR



August 20, 1997

Matthew Hilton
P.O. 781
Springville, UT 84663

Re: Location of Homeless Shelters in Salt Lake City

Dear Matt:

This letter is in response to our meeting on August 14, 1997. At that meeting, you and your client requested that I provide you with some information regarding the requirements of the Salt Lake City Zoning Code with respect to the establishment of homeless shelters. Specifically, you inquired as to where homeless shelters would be allowed in Salt Lake City and what circumstances govern the establishment of such shelters.

I have discussed this matter with Brent Wilde of the Planning Division. Homeless shelters are allowed uses in the CG and D-3 zones as conditional uses. You and/or your client could review the Salt Lake City Zoning Maps either at the Business License counter, in Room 215 of the City & County Building, or you could purchase a set of maps for $40.00. No homeless shelter can be approved unless it is in one of those two zoning districts.

In addition, homeless shelters are only allowed, even within those two zones, as conditional uses. In order to obtain a conditional use permit, your client would need to file an application, a copy of which is enclosed, and would need to attend a Community Council meeting to explain your proposal to the neighborhood and to appear before a hearing of the Salt Lake City Planning Commission. The Planning Commission grants or denies conditional use permits based upon a list of specific factors identified in the Salt Lake City Zoning Code. A list of those factors is also enclosed for your review. Although your client may apply for the establishment of a homeless shelter anywhere within a CG or D-3 zone, City policy discourages the high concentration of homeless shelters within one geographic area. For that reason, it is more likely that your client would obtain approval of a proposal if his proposed shelter were located outside of the downtown area since there is already a large shelter and several support facilities in that area.

451 SOUTH STATE, ROOM 505, SALT LAKE CITY, UTAH 84111
TELEPHONE: 801-535-7788, FAX: 801-535-7640

If your client has a specific proposal he would like us to review, or if he would like to have a general discussion as to the range of possible sites, we would be happy to discuss that matter with him. If you and your client would like to discuss this matter, please contact me so that we can arrange an appropriate meeting time. In contrast, if your client would like to meet without attorneys, please have him contact Brent Wilde at 535-6180, who has assured me that he will make himself available to meet with your client.

I hope this information is helpful to you. If you have any further questions or concerns, please let me know.

Sincerely yours,

LYNN H. PACE
Assistant City Attorney

LHP:isw
cc: Brent Wilde
Bill Wright
(\PL9984\LETTERS\hilton letter re homeless shelters - aug. 20, 1997.doc)

EXHIBIT 7

Michael O. Leavitt
Governor
Robin Arnold-Williams
Executive Director
Douglas E. West
Deputy Director
Reta D. Oram
Director

State of Utah

DEPARTMENT OF HUMAN SERVICES
OFFICE OF LICENSING

120 North 200 West, Suite 303
P.O. Box 45500
Salt Lake City, Utah 84145-0500
(801) 538-4242

an equal opportunity employer

April 19, 1999

Rev. Wayne Wilson
The Salt Lake City Mission
P.O. Box 142
Salt Lake City, Utah 84110-0142

RE: LICENSE NOTICE

Dear Rev. Wilson:

The Department of Human Services, Office of Licensing, conducted an on-site review at the Salt Lake City Mission April 16, 1999. The Mission does not provide human service treatment as described in the licensing law. Therefore, the Mission is not required to be licensed by the Department of Human Services.

The Salt Lake City Mission was set up to help the homeless and poor become independent, productive members of society through a life centered in Jesus Christ. The Mission offers long-term discipleship training programs.

If you have questions or concerns, please feel free to contact this Office at 538-4242. Thanks for your cooperation.

Sincerely,

Kent Callister

Kent Callister
Licensing Specialist

Exhibit 3

EXHIBIT 8

Category	1999	2000	2001	2002
Converts to Christ	245	300	300	500
Long-Term Recovery	10	15	12	20
Pantry food distributed to needy families	200	250	300	700
Goods provided for needy families	1500 people, 20,000 pieces	1500 people, 20,000 pieces	1700 people, 25,000 pieces	5,000 people, 40,000 pieces
Holiday and other meals provided.	250 volunteers; Thanksgiving dinners combined 3,000 Christmas dinners combined 3,000 Wrapped presents for various families 900	300 volunteers; Thanksgiving dinners combined 3,000; Christmas dinners combined 3,000; Wrapped presents for various families 900;	300 volunteers; Thanksgiving dinners combined 3,100; Christmas dinners combined 3,000; Wrapped presents for various families 1000;	500 volunteers; Thanksgiving dinners combined 6,000; Christmas dinners combined 5,000; Wrapped presents for various families 1,500;
Bible studies and other group sessions	500	600	600	650
Daily meals served	600 meals a day.	600 meals a day.	600 meals a day.	1500 meals a day
Shelter Provided	Yes	Yes	Yes	Yes/No

Category	2003	2004	2005	2006 (Projected)
Converts to Christ	200	250	300	500
Long-Term Recovery	12	15	20	20
Pantry food distributed to needy families	100	50	50	500
Goods provided for needy people	500 people; 8,000 pieces	200 people; 4,000 pieces	200 people; 4,000 pieces	500 people; 5,000 pieces
Holiday and other meals provided.	400 volunteers; Thanksgiving meals combined 2,500; Christmas dinners combined 2,000; Wrapped presents for various families 1,000;	500 volunteers; Thanksgiving dinners combined 4,000; Christmas dinners combined 3,000; Wrapped presents for various families 1,200;	500 volunteers; Thanksgiving dinners combined 4,700; Christmas dinners combined 3,000; Wrapped presents for various families 1,500;	500 volunteers; Thanksgiving dinners combined 4,700; Christmas dinners combined 4,800; Wrapped presents for various families 1,700;
Bible studies and other group sessions	400	400	400	1,000
Daily meals served	100	100	100	100
Shelter Provided	No	No	No	No

EXHIBIT 9

again so that I'm sure that I understand them.
And I want to hand you, if I may, a copy of Exhibit 19 to Mr. Wilson's deposition which is the document we were working off of. Do you remember that document?
MR. HILTON: I'd represent it's the one that we went over in the last deposition.
THE WITNESS: I recognize some of it, yes.
Q. (By Mr. Rampton) Do you remember when we were talking about it back in October?
A. I do.
Q. Before I dive into the nitty-gritty of it, I reviewed your deposition transcript from the last time and realized that I understood your explanation of allocated indirect costs much less completely than I believed I did as I was sitting at the table listening to you give it to me, and so since someday you're going to have to explain this to a court, it's probably a good exercise anyway.
Let me see if I understand what you were saying. For each of the pages in Exhibit 19, starting with about page RDA 00791, you stated the costs reflected on the various Exhibit A sheets in this document were a combination of direct and indirect costs, indirect costs calculated in accordance with

FASB I believe No. 17 that you stated.
Do you remember that?
A. I don't know my FSBs (sic) by heart, but I know that this first page will say --
Q. Okay. You're referring to a document to refresh your recollection on the question?
A. There's a lot of FSABs (sic).
MR. HILTON: You need to explain what the document is.
THE WITNESS: The document is the Accounting and Financial Reporting Guide For Christian Ministries. This is administered by the Evangelical Joint Accounting Committee, and I can make this available to you, but --
Q. (By Mr. Rampton) The Evangelical what Accounting Committee?
A. The Evangelical Joint Accounting Committee.
Q. Who are they?
A. That's what I'm trying to figure out. Thank you for asking.
You would think, if you copied the first four or five pages of their document, it would tell you, but I believe it's the American Institute of CPAs. And that's all I can tell you until I find out

who they are. It's not on the first five pages of their book.
They talk about an FD -- FASB Statement 117. Is that what you've just asked?
Q. Yes. Where I was going with the question is that you referenced that as a standard by which you prepared the exhibits in -- the Exhibit A pages of Exhibit 19, and my question was going to be why was it that you relied upon that standard in your work?
A. It's like the English language. It's universal in America and Canada, I just noticed.
Q. You're referring now to the FASB standards?
A. I'm referring to this guide which inculcates FASB 117.
Q. 117, have I got it wrong?
A. Well --
Q. 117, okay.
A. Well, 117 may not be the key one, but it appears to be one of the major ones. AICPA -- this is all reciting generally accepted accounting practices for Christian organizations, so the committee appears to be back there in the ivory tower in New York in the American Institute of CPAs, the people that work with FASB that write this stuff for a guide industrywide,

nationwide, Canadian-wide.
Q. Okay. And what I'm trying to understand is does it relate simply to Christian ministries or is it an accounting practice generally?
A. Christian ministries. Christian ministries probably are maybe 20 percent of all nonprofit organizations.
Q. Does the document that you're looking at there contain the text of FASB 117?
A. It does and --
Q. I'm trying to think how to handle this. Is that something I could look at?
A. Yes, you could look at it.
Q. Thank you.
MR. HAGGERTY: I'd request, since it's been referred to in the deposition, to go ahead and make it an exhibit and get copies at a later time.
THE WITNESS: May I make a distinction?
MR. HAGGERTY: Please.
THE WITNESS: United Way would account similarly. United Way is not a Christian organization. The American Red Cross would account similarly. They are not a Christian organization. Salvation Army is a Christian organization.
Q. (By Mr. Rampton) Okay. I'm not going to

EXHIBIT 10

Page 480

by the drug home.
Q You have no desire or intention to use the premises for emergency shelter. Was that not true?
A He told us not to put it --
Q Was not true?
A Yes.
Q Is what?
A We weren't going to do it? I wasn't going to use it as an emergency shelter.
Q You testified a few minutes ago you were putting them up on an emergency basis.
A Not at this facility.
Q You weren't going to do it at this place?
A Right. They wouldn't let us. He said, You can't.
Q All right.
A So we were trying to adapt ourselves to fit their -- what they say is their cookie cutter which we did over and over and no matter how we try to adapt, they won't let us in a facility. Oh, if you just become more like Interfaith, if we were a cookie cutter of Interfaith, we don't need you.
Q Who said cookie cutter to you?
A A cookie cutter is what --
Q Who said that to you --

Page 481

A Nobody.
(Reporter interrupts)
Q Sorry. You've been empathic with your church?
A Yes.
Q And you testified empathic that your function and your purpose are to define the Bible, correct?
A Correct.
Q Which part of the Bible? There's 1590 pages long. I checked over lunch.
A Okay.
Q Which part?
A I would say mainly in the new testament but the old, too. It's written and we read throughout the Bible. So the fabric of the Bible.
Q Would it be your position that your mission is devoted to doing whatever is abdicated in any portion of the Bible?
MR. HILTON: I object to that question. I don't think it has any bearing on RDA's duty to perform.
MR. RAMPTON: You can go ahead.
MR. HILTON: I'll instruct him not to answer unless ordered by the judge.

Page 482

MR. RAMPTON: We can vacate right now and get an order. Is that what you want?
MR. HILTON: I want to know the basis how it's relevant to what --
MR. RAMPTON: We've been in this case for six years. There are claims against the RDA for which if it is the prevailing party it may have entitlement to attorney fees if there's lack of good faith basis here. I'm trying to understand why you believe this ministry has the breadth of power and immunity to any kind of regulation?
THE WITNESS: I don't believe that.
Q (By Mr. Rampton) Well --
A Now, you're putting words in my mouth and I even says they have a right to regulate us according to the courts.
Q What --
A To an insubstantial degree I'm reading what it says right in law. I read the case of the Supreme Court says they can zone regulate to an insubstantial degree churches for public safety. I don't have a problem with us -- regulating us to public safety but telling me how I can or cannot worship God isn't right.
Q Okay. Let's get to that then. Let's get to

Page 483

that. What do you consider to be the worship of God?
A You said right here.
Q Just a moment please. You said in your prior testimony feed Jesus, clothe Jesus. I assume that refers to the passages in the Bible that say, Inasmuch as he have done it unto the least of these my brethren, ye have done it --
A Correct.
Q -- unto me, correct?
A Correct.
Q You're talking about doing anything for anybody that's the least of Christ's brethren, correct?
A Correct.
Q And whatever you can do for them, you are doing for Christ and that's part of your worship?
A Yes.
Q And therefore, the city, any government agency can exercise only minimal, whatever standard you articulated, limit the regulatory requirements, correct?
A Insubstantial degree for public safety and nothing else. I don't have a problem with public safety.
Q But nothing else?

EXHIBIT 11

9/8/03

Mission returning proposal to Rosewood Nursing

Stor Wilson
Matt Hilton
Phil Arena
Lynn Pace
Louis
Brent

Mission was paying $8,000 month for 400 sq site. Can't afford that.

Rosewood Terrance used as swatt use by Police Mngt company still there

Hilton - Adm has changed its policy on use + need for homeless services & their location (need to find out what the Adm is.)

Hilton "Interfaith Hospitality only helps one family per time

Hilton - still will have opposition by NHd.

Any way to have it determined that this is just a church (w/ some non conforming use words.)

Part of Job force, connected to 200 other missions, better programs, bilingual help etc. More sophisticated than 4 yrs ago.

Efforts to decrease traffic (take food in van to community)

Wilson - Pick up people at park + try to help them.

schooling for K-12.

If at Rosewood would be able to do more NH outreach - Social service outreach.

Fundraising. Back to school rallies.

EXHIBIT
44
Coffey

Wilson - Have to get people (outreach) into the church.
They don't fit in the boarding house category.
They are limited by parking but their clients don't have cars (less than 5%)
1yr. program they live there (inpatient) but not patients.
They want to graduate
Not residential, they are temporary housing.
The inpatients don't leave w/out going with the staff person.

Hilton - They want to reapply -
Bus people to the ranch
Food delivered to community by bus.
The people who "stay" there are part of discipleship program.

Wilson - The staff calls other providers to see if they can take in the homeless. If no one else can do it, then the Mission will take them in as last resort.

Wilson - The owners will donate the building for a $1.5 million donation.

Laura - Wants to know how they classify their use + what they are proposing to do.

01356
3147

Wilson - Ideally it's there can get people in overnight

& give them hope, they can help them.

Average stay is 8 month for discipleship program.
Lynn - What do you call that discipleship?
If they haven't changed the use, then they would still be looked at as a 'homeless shelter'

Wilson - at 300E 400S - they were told they didn't impact the NH. They fed 400 people a day because they come to "church" and then disperse."
Shelters that are outside Downtown, no one goes to. The homeless stay downtown.

Hilton - If they tightened up the conditions under which the persons could be there who aren't in the discipleship program, would they still be a homeless shelter?

Laws - They need to tell us what they want to do & what you have to do to "fix" it.

Brent - People who stay there temporarily, overnight would be homeless shelter. Those who are in discipleship program ~~could~~ may be looked at differently - but don't know.

Wilson - Considerees stay for 7 days while the church decides if wants to allow in discipleship

Does the City want to have a policy that people can stay in the Church who aren't part of discipleship

Check this out. ✱ Do the other shelters in D-3 & CG allow anyone in the Winter Overflow (St Vincent Soup Kitchen emergency shelter or Wigham Center to keep them from freezing.)?

Hilton - If the City allows providing shelter for families on temp basis, then the City should pass a policy that includes this as ok in def of churches.

Lynn - If you open office etc to someone who needs shelter vs advertising shelter for homeless.

Comments

01358

Several people may only stay for a few days + don't go through program. - What is that use? Not taking people in because cold, but providing Temp Shelter - Where is the use compatible in the City?

Hilton - Propose the Church services + the discipleship program + not letting the random people in.

Hilton - Having potential disciples come in would be year round which is what City classified as Homeless Shelter ???

3149

Average stay of those who commit stay 8 months

Hilton — What drives the program is their need for hope "through the gospel" Not just because they are homeless (some have homes but have ~~addict~~ addictions etc.

Wilton — If decrease traffic can have better outcome.

Wilson — They program is the same as last time because am trying to help people.

Lynn — Have to demonstrate Δ in circumstances before can ask for something again.
City will classify the use.

Ines — Wants a formal proposal.

Lynn — Enormous uphill Challenge to use site already requested.

01359

Brent — Res def require monthly occupancy
If can say they have monthly stay, that would make it better. That would be helpful.

Wilson — Doesn't ~~feel~~ feel like they fit in any part of the ord.
Doesn't want people to get amonth stay if they won't Commit.
Ideally they would like to feed them they

Brent — Don't put parameters on your use that you aren't able to Comply ~~with~~ with the parameters because if go outside the parameters, the NIT will Complain + you'll may have to go through revocation proceedings.

EXHIBIT 12

find that.

Q. Okay. Is there a formal process for a form or a fee for requesting an administrative decision?

A. Yes.

Q. So there's a form you fill out and a fee you have to pay; is that true?

A. Yes.

Q. Okay. And to your knowledge, did Pastor Wilson ever fill out that form or pay the fee or go through that process?

A. To my knowledge -- I don't remember that ever happening.

Q. Okay. We've talked a lot, and I don't mean to prolong the discussion about when the Mission would be -- would be, as Mr. Hilton put it, bound by the decision by the Board of Adjustment, and when they wouldn't.

For the sake of this discussion, let's assume that what the Mission wanted to do was, as defined in the Board of Adjustment case, at that location, if the Mission made a significant change in their proposal and wanted to go back to that location, would the city consider that?

A. I'm sorry, ask that again.

Tab 4

Craig L. Taylor and Associates
Craig Taylor (#4421)
Matthew Hilton (#3655)
472 North Main Street
Kaysville, UT 84037
Telephone: (801) 544-9955

Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

Salt Lake City Mission, *et. al.*,	)	**AFFIDAVIT OF MATTHEW HILTON**
v.	)	
Salt Lake City, *et. al.*,	)	Civil No. 990908945
Defendants	)	Judge: Joseph C. Fratto
Salt Lake Redevelopment Agency,	)	
Third-Party Plaintiff	)	
v.	)	
McDonald Brothers Investments, a Utah General Partnership,	)	
Third-Party Defendants.	)	

2499

COMES NOW Matthew Hilton, under oath and penalty of perjury, and states that the following is true:

1. I am over the age of 18 and competent in all respects to make this affidavit. I further declare under penalty of perjury that I have personal knowledge of the matters stated herein and affirm that the matters stated herein are true and accurate.

2. I am attorney practicing with the law firm of Craig L. Taylor & Associates which represents the Plaintiffs in this action.

3. I can verify that the document attached hereto as Exhibit "1" is a true and correct copy of correspondence dated August 30, 1999 from myself to Steve Swindle, counsel for MBI.

4. I can verify that the document attached hereto as Exhibit "2" is a true and correct copy of correspondence dated September 28, 1999 from Steve Swindle, counsel for MBI, to myself.

5. I can verify that the document attached hereto as Exhibit "3" is a true and correct copy of correspondence dated September 19, 2005 from Douglas M. Skie, EPA region 8, to myself.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE ON FOLLOWING PAGE]

2 of 11

DATED this 15 day of March, 2006.

Matthew Hilton

COUNTY OF DAVIS)
: ss
STATE OF UTAH)

On March 15, 2006, Matthew Hilton, known to me, personally appeared before me and swore under oath and penalty of perjury that he had executed the foregoing affidavit and that the statements contained therein were true.

DATED and EXECUTED this March 15, 2006.

NOTARY PUBLIC
ROBYN J. NEWBOLD
2290 East 3225 North
Layton, Utah 84040
My Commission Expires
June 15, 2008
STATE OF UTAH

NOTARY PUBLIC

CERTIFICATE OF DELIVERY

I hereby certify that on the 28th day of March, 2006, I had a copy of the foregoing document sent via facsimile and first class U.S. mail, postage prepaid, to the following:

Vincent C. Rampton
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street Suite 1500
Salt Lake City, UT 84101
Fax: (801) 328-0537

Lynn Pace
Salt Lake City's Attorney's Office
451 South State Street Suite # 505A
Salt Lake City, UT 84111
Fax: (801) 535-7640

John A. Snow
VANCOTT, BAGLEY, CORNWALL & McCARTHY
50 South Main Street Suite 1600
Salt Lake City, UT 84144
Fax: (801) 534-0058

Wayne Wilson and Philip Arena
Salt Lake City Mission
342 West 200 South
P.O. Box 142
Salt Lake City, UT 84110-0142
Fax: (801) 355-9364

DATED and EXECUTED this 28th day of March, 2006.

CRAIG L. TAYLOR & ASSOCIATES

By

2617

EXHIBIT 1

2413

Matthew Hilton
MATTHEW HILTON, P.C.
1220 North Main Street # 5A
P.O. Box 781
Springville, UT 84663
(801)-489-1111
(801)-489-6000 (Facsimile)

(VIA FACSIMILE 801-534-0058)

August 30, 1999

Steve Swindle
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street # 1600
Salt Lake City, UT 84144

RE: McDonald Brothers Investment, a Utah general partnership
Salt Lake City Mission (Spectacular Ministries of the Lord's Servants)
468 West 200 South
Salt Lake City, UT 84101

Dear Mr. Swindle:

I am hoping you were able to reach your clients regarding my request to at least allow the Mission to stay through the due diligence period is for the RDA. I understand that the Mission has to be out at the closing.

Thank you for your time and attention to this critical matter that affects the continuation of the valuable religious and social services provided by the Mission to many who are reached by no other private or government program or person.

With best regards, I remain,

Sincerely yours,

Matthew Hilton

Matthew Hilton

cc: Pastor Wayne Wilson

0283MIS

EXHIBIT 2

LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & McCARTHY
A PROFESSIONAL CORPORATION
ESTABLISHED 1874

50 SOUTH MAIN STREET, SUITE 1600
POST OFFICE BOX 45340
SALT LAKE CITY, UTAH 84145-0340
TELEPHONE (801) 532-3333
FACSIMILE (801) 534-0058
DIRECT DIAL (801) 237-0276

SUITE 900
2404 WASHINGTON BOULEVARD
OGDEN, UTAH 84401
(801) 394-5783
FACSIMILE (801) 627-2522

BUILDING C, SUITE 200-A
2200 PARK AVENUE
PARK CITY, UTAH 84060
(435) 649-3889
FACSIMILE (435) 649-3373

SSWINDLE@VANCOTT.COM

ENNETT, HARKNESS & KIRKPATRICK
1874-1890

BENNETT, MARSHALL & BRADLEY
1890-1896

BENNETT, HARKNESS, HOWAT
SUTHERLAND & VAN COTT
1896-1902

UTHERLAND, VAN COTT & ALLISON
1902-1907

VAN COTT, ALLISON & RITER
1907-1917

VAN COTT, RITER & FARNSWORTH
1917-1947

PHEN D. SWINDLE

September 28, 1999

VIA FACSIMILE
(801) 489-6000

Matthew Hilton, Esq.
1220 North Main Street, #5A
Springville, Utah 84663

Re: McDonald Brothers Investments / Salt Lake City Mission

Dear Matt:

I did not hear back from you following our telephone conversation on September 20, 1999.

I also tried without success to reach you last Friday and when I tried to reach you yesterday I was advised that you were out of the office for the day.

The Agreement which was entered into between your client, Spectacular Ministries of the Lords' Servants, and my client, McDonald Brothers Investments, dated July 31, 1999, provided that the premises would be vacated no later than September 6, 1999. We can appreciate the difficulty of your circumstances but, as you indicated to me on September 20, 1999, your client intends to honor its commitment to McDonald Brothers Investments, and it is, therefore, imperative that the premises be vacated as agreed. Obviously, if our client's transaction with the Redevelopment Agency of Salt Lake City does not close by reason of your client's failure to vacate the premises, there could be very significant damages to our client.

In accordance with the Agreement dated July 31, 1999, any continued possession of the premises by your client after September 6, 1999, constitutes an unlawful detainer pursuant to §78-36-3(1)(a) of the Utah Code. As you have indicated to me, our client has been most cooperative in attempting to meet the needs of your client. We obviously would prefer not to file an action to enforce this Agreement, but now we feel we are compelled to do so unless the premises are vacated no later than Tuesday, October 5, 1999.

Exhibit 23

If we must file an action, please let me know whether you will accept service for your client.

Your continued cooperation will be appreciated and if you should have any questions, please let me know.

Very truly yours,

Stephen D. Swindle

SDS/sb

cc: James T. McDonald

EXHIBIT 3

2 of 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
http://www.epa.gov/region08

SEP 19 2005

Ref: 8EPR-B

Mr. Matthew F. Hilton
Craig L. Taylor, P.C., Attorneys & Counselors at Law
472 North Main Street
Kaysville, UT 84037

Re: FOIA Request #313-05 - EPA Grants to Salt Lake City

Dear Mr. Hilton:

This letter is in response to your Freedom of Information Act inquiry dated August 18, 2005, regarding information pertaining to the Salt Lake City Brownfields project, more specifically the 500 West Park Blocks Targeted Brownfields Assessment (TBA).

Per your conversation on August 31, 2005, with Luke Chavez of my staff, I am enclosing a copy of Contract No. 68-W5-0031 and the total cost of the expenses incurred by EPA for the 500 West Park Blocks TBA. The total cost of the TBA at $62,159.87 included the production and implementation of the Sampling and Analysis Plan (SAP) and the final Analytical Results Report. No information was found in EPA Region VIII's records identifying any communication from Salt Lake City Redevelopment Agency (RDA) to EPA Region VIII, indicating that the request for assistance dated June 2, 1999, from Salt Lake City RDA was withdrawn, the information provided by the Sampling and Analysis Plan (SAP) was declined or rejected, or the expenses incurred by EPA Region VIII was repaid or reimbursed by the Salt Lake City RDA.

If you have further questions regarding this response please contact Luke Chavez at (303) 312-6512.

EXHIBIT
40
Tarbet

25/19

The total cost of this response is $80.65. A separate invoice covering these charges will be sent under separate cover.

Sincerely,

for DMS.

Douglas M. Skie, Program Director
Preparedness, Assessment and Emergency Response

Enclosures

2470

Tab 5

21A.12.010 Purpose Statement:

The interpretation authority established by this Chapter is intended to recognize that the provisions of this Title, though detailed and extensive, cannot, as a practical matter, address every specific situation to which these provisions may have to be applied. Many of these situations can be resolved or clarified by interpreting the specific provisions of this Title in light of the general and specific purposes for which those provisions were enacted. This interpretation authority is administrative rather than legislative. It is intended only to allow authoritative application of the provisions of this Title to specific cases. It is not intended to add to or change the essential content of this Title. (Ord. 26-95 § 2(6-1), 1995)

21A.12.020 Scope Of Zoning Administrator Authority:

The Zoning Administrator, subject to the procedures, standards and limitations of this Chapter, may render interpretations, including use interpretations, of the provisions of this Title and of any rule or regulation issued pursuant to it. (Ord. 26-95 § 2(6-2), 1995)

21A.12.030 Persons Entitled To Seek Interpretations:

Applications for interpretations may be filed only by a property owner having need for an interpretation or by the property owner's authorized agent. (Ord. 26-95 § 2(6-3), 1995)

21A.12.040 Procedures:

A. **Application:** An application for an interpretation of this Title shall be filed on a form provided by the Zoning Administrator and shall contain at least the following information:

1. **Provisions:** The specific provision or provisions of this title for which an interpretation is sought;

2. **Facts:** The facts of the specific situation giving rise to the request for an interpretation;

3. **Interpretation:** The precise interpretation claimed by the applicant to be correct;

4. **Statement:** When a use interpretation is sought, a statement of what use permitted under the current zoning classification of the property that the applicant claims either includes the proposed use, or is most similar to the proposed use; and

5. **Evidence:** When a use interpretation is sought, documents, statements, and other evidence demonstrating that the proposed use will comply with all use limitations established for the district in which it is proposed to be located.

6. **Fees:** Nonrefundable fees established pursuant to the fee schedule shall accompany the application.

7. **Notification To Recognized And Registered Organizations:** The city shall give notification, by first class mail to any organization which is entitled to receive notice pursuant to chapter 2.62 of this code, that a use interpretation has been determined.

B. **Action On Application:** The zoning administrator shall send the zoning administrator's written interpretation to the applicant stating any specific precedent or other reasons, or analysis upon which the determination is based.

C. **Records:** A record of decisions on all applications for interpretations of this title shall be kept on file in the office of the zoning administrator.

D. **Appeal:** Any person adversely affected by an interpretation rendered by the zoning administrator may appeal to the board of adjustment in accordance with the provisions of chapter 21A.16 of this part. (Ord. 26-95 § 2(6-4), 1995)

21A.12.050 Standards For Use Interpretations:

The following standards shall govern the zoning administrator, and the board of adjustment on appeals from the zoning administrator, in issuing use interpretations:

A. Any use defined in part VI, chapter 21A.62 of this title, shall be interpreted as defined;

B. Any use specifically listed without a "P" or "C" designated in the table of permitted and conditional uses for a district shall not be allowed in that zoning district;

C. No use interpretation shall allow a proposed use in a district unless evidence is presented demonstrating that the proposed use will comply with the development standards established for that particular district;

D. No use interpretation shall allow any use in a particular district unless such use is substantially similar to the uses allowed in that district and is more similar to such uses than to uses allowed in a less restrictive district;

E. If the proposed use is most similar to a conditional use authorized in the district in which it is proposed to be located, any use interpretation allowing such use shall require that it may be approved only as a conditional use pursuant to part v, chapter 21A.54 of this title; and

F. No use interpretation shall permit the establishment of any use that would be inconsistent with the statement of purpose of that zoning district. (Ord. 26-95 § 2(6-5), 1995)

21A.12.060 Effect Of Use Interpretations:

A use interpretation finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, a certificate of occupancy, subdivision approval, and site plan approval. (Ord. 26-95 § 2(6-6), 1995)

21A.12.070 Limitations On Use Interpretations:

A use interpretation finding a particular use to be a permitted use or a conditional use in a particular district shall be deemed to authorize only that particular use in the district and such use interpretation shall not be deemed to authorize any other allegedly similar use for which a separate use interpretation has not been issued. (Ord. 26-95 § 2(6-7), 1995)

Tab 6

21A.54.010 Purpose Statement:

A conditional use is a use which has potential adverse impacts upon the immediate neighborhood and the city as a whole. It requires a careful review of its location, design, configuration and special impact to determine the desirability of allowing it on a particular site. Whether it is appropriate in a particular location requires a weighing, in each case, of the public need and benefit against the local impact, taking into account the applicant's proposals for ameliorating any adverse impacts through special site planning, development techniques and contributions to the provision of public improvements, rights of way and services. (Ord. 26-95 § 2(27-1), 1995)

21A.54.020 Authority:

The planning commission, or in the case of administrative conditional uses, the planning director or designee, may, in accordance with the procedures and standards set out in this chapter, and other regulations applicable to the district in which the property is located, approve uses listed as conditional uses in the tables of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts. (Ord. 69-06 § 1, 2006: Ord. 26-95 § 2(27-2), 1995)

21A.54.030 Categories Of Conditional Uses:

Conditional uses shall consist of the following categories of uses:

A. **Uses Impacting Other Property:** Uses that may give rise to particular problems with respect to their impact upon neighboring property and the city as a whole, including their impact on public facilities; and

B. **Planned Developments:** The uses which fall within these categories are listed in the tables of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

C. **Administrative Consideration Of Conditional Uses:** Certain conditional uses may be considered to be low impact due to their particular location and are hereby authorized to be reviewed administratively according to the provisions contained in section 21A.54.155 of this chapter. Conditional uses that are authorized to be reviewed administratively are:

1. Applications for low power wireless telecommunication facilities that are listed as conditional uses in subsection 21A.40.090E of this title.

2. Alterations or modifications to a conditional use that increase the floor area by one thousand (1,000) gross square feet or more and/or increase the parking requirement.

3. Any conditional use as identified in the tables of permitted and conditional uses for each zoning district, except those that:

a. Are listed as a "residential" land use in the tables of permitted and conditional uses for each zoning district;

b. Are located within a residential zoning district;

c. Abut a residential zoning district or residential use; or

d. Require planned development approval.

4. Public/private utility buildings and structures in residential and nonresidential zoning districts. (Ord. 69-06 § 2, 2006: Ord. 13-04 § 34, 2004: Ord. 81-01 § 2, 2001: Ord. 26-95 § 2(27-3), 1995)

21A.54.040 Site Plan Review Required:

Site plan review of development proposals is required for all conditional uses in all districts. (Ord. 26-95 § 2(27-4), 1995)

21A.54.050 Initiation:

An application for a conditional use may be filed with the zoning administrator by the owner of the subject property or by an authorized agent. (Ord. 26-95 § 2(27-5), 1995)

21A.54.060 Procedures:

A. **Application:** A complete application shall contain at least the following information submitted by the applicant, unless certain information is determined by the zoning administrator to be inapplicable or unnecessary to appropriately evaluate the application:

1. The applicant's name, address, telephone number and interest in the property;

2. The owner's name, address and telephone number, if different than the applicant, and the owner's signed consent to the filing of the application;

3. The street address and legal description of the subject property;

4. The zoning classification, zoning district boundaries and present use of the subject property;

5. A complete description of the proposed conditional use;

6. Site plans, as required pursuant to section 21A.58.060 of this part;

7. Traffic impact analysis;

8. A signed statement that the applicant has met with and explained the proposed conditional use to the appropriate neighborhood organization entitled to receive notice pursuant to title 2, chapter 2.62 of this code;

9. A statement indicating whether the applicant will require a variance in connection with the proposed conditional use;

10. Mailing labels and first class postage for all persons required to be notified of the public hearing on the proposed conditional use pursuant to part II, chapter 21A.10 of this title;

11. Such other and further information or documentation as the zoning administrator may deem to be necessary for a full and proper consideration and disposition of the particular application.

B. **Determination Of Completeness:** Upon receipt of an application for a conditional use, the zoning administrator shall make a determination of completeness of the application pursuant to section 21A.10.010 of this title.

C. **Fees:** The application for a conditional use shall be accompanied by the fee established on the fee schedule.

D. **Staff ReportSite Plan Review Report:** Once the zoning administrator has determined that the application is complete a staff report evaluating the conditional use application shall be prepared by the planning division and forwarded to the planning commission, or, in the case of administrative conditional uses, the planning director or designee along with a site plan review report prepared by the development review team.

E. **Public Hearing:** The planning commission, or, in the case of administrative conditional uses, the planning director or designee shall schedule and hold a public hearing on the proposed conditional use in accordance with the standards and procedures for conduct of the public hearing set forth in part II, chapter 21A.10 of this title. (See sections 21A.54.150 and 21A.54.155 of this chapter for additional procedures for public hearings in connection with planned developments and administrative conditional uses.)

F. **Notice Of Applications For Additional Approvals:** Whenever, in connection with the application for a conditional use approval, the applicant is requesting other types of approvals, such as a variance or special exception, all required notices shall include reference to the request for all required approvals.

G. **Planning Commission And Planning Director Or Designee Action:** At the conclusion of the public hearing, the planning commission, or, in the case of administrative conditional uses, the planning director or designee, shall either: 1) approve the conditional use; 2) approve the conditional use subject to specific modifications; or 3) deny the conditional use. (Ord. 69-06 § 3, 2006: Ord. 26-95 § 2(27-6), 1995)

21A.54.070 Sequence Of Approval Of Applications For Both A Conditional Use And A Variance:

Whenever the applicant indicates pursuant to subsection 21A.54.060A9 of this chapter that a variance will be necessary in connection with the proposed conditional use (other than a planned development), the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the board of adjustment.

A. **Combined Review:** Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the board of adjustment, the commission and the board may hold a joint session to consider the conditional use and the variance applications simultaneously.

B. **Actions By Planning Commission And Board Of Adjustment:** Regardless of whether the planning commission and board of adjustment conduct their respective reviews in a combined session or separately, the board of adjustment shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use. (Ord. 26-95 § 2(27-7), 1995)

21A.54.080 Standards For Conditional Uses:

The planning commission shall only approve, approve with conditions, or deny a conditional use based upon written findings of fact with regard to each of the standards set forth below and, where applicable, any special standards for conditional uses set forth in a specific zoning district:

A. The proposed development is one of the conditional uses specifically listed in this title;

B. The proposed development is in harmony with the general purposes and intent of this title and is compatible with and implements the planning goals and objectives of the city, including applicable city master plans;

C. Streets or other means of access to the proposed development are suitable and adequate to carry anticipated traffic and will not materially degrade the service level on the adjacent streets;

D. The internal circulation system of the proposed development is properly designed;

E. Existing or proposed utility services are adequate for the proposed development and are designed in a manner that will not have an adverse impact on adjacent land uses or resources;

F. Appropriate buffering is provided to protect adjacent land uses from light, noise and visual impacts;

G. Architecture and building materials are consistent with the development and compatible with the adjacent neighborhood;

H. Landscaping is appropriate for the scale of the development;

I. The proposed development preserves historical, architectural and environmental features of the property;

J. Operating and delivery hours are compatible with adjacent land uses;

K. The proposed conditional use or, in the case of a planned development, the permitted and conditional uses contained therein, are compatible with the neighborhood surrounding the proposed development and will not have a material net cumulative adverse impact on the neighborhood or the city as a whole;

L. The proposed development complies with all other applicable codes and ordinances. (Ord. 35-99 § 95, 1999: Ord. 26-95 § 2(27-8), 1995)

21A.54.090 Conditions On Conditional Uses:

The planning commission, or, in the case of administrative conditional uses, the planning director or designee, may impose on a conditional use such conditions and limitations as may be necessary or appropriate to prevent or minimize adverse effects upon other property and improvements in the vicinity of the conditional use, upon the city as a whole, or upon public facilities and services. However, such conditions shall not be used as a means to authorize as a conditional use any use which is intended to be temporary only. These conditions may include, but are not limited to, conditions concerning use, construction, character, location, landscaping, screening, parking and other matters relating to the purposes and objectives of this title. Such conditions shall be expressly set forth in the motion authorizing the conditional use.

A. **Violations Of Conditions:** Violation of any such condition or limitation shall be a violation of this title and shall constitute grounds for revocation of the conditional use approval. (Ord. 69-06 § 4, 2006: Ord. 26-95 § 2(27-9), 1995)

21A.54.100 No Presumption Of Approval:

The listing of a conditional use in any table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth in this chapter and with the standards for the district in which it is located, in order to determine whether the conditional use is appropriate at the particular location. (Ord. 26-95 § 2(27-10), 1995)

21A.54.110 Effect Of Approval Of Conditional Use:

The approval of a proposed conditional use by the planning commission, or, in the case of administrative conditional uses, the planning director or designee, shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals that may be required by the regulations of the city, including, but not limited to, a building permit, certificate of occupancy and subdivision approval. (Ord. 69-06 § 5, 2006: Ord. 26-95 § 2(27-11), 1995)

21A.54.120 Limitations On Conditional Use Approval:

Subject to an extension of time granted by the planning commission, or, in the case of administrative conditional uses, the planning director or designee, no conditional use shall be valid for a period longer than twelve (12) months unless a building permit is issued and construction is actually begun within that period and is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period, or unless a longer time is requested and granted by the planning commission, or, in the case of administrative conditional uses, the planning director or designee. The approval of a proposed conditional use by the planning commission, or, in the case of administrative conditional uses, the planning director or designee, shall authorize only the particular use for which it was issued. (Ord. 69-06 § 6, 2006: Ord. 26-95 § 2(27-12), 1995)

21A.54.130 Conditional Use Related To The Land:

An approved conditional use relates only to, and is only for the benefit of the use and lot rather than the owner or operator of such use or lot. (Ord. 26-95 § 2(27-13), 1995)

21A.54.135 Alterations Or Modifications To A Conditional Use:

Any land use currently listed as a conditional use under existing zoning regulations shall be required to obtain conditional use approval subject to the provisions of this chapter if the floor area increases by one thousand (1,000) gross square feet or more and/or the parking requirement is increased.

A. **Administrative Consideration Of Conditional Use:** Applications for alterations and/or modifications to a conditional use may be reviewed according to the procedures set forth in section 21A.54.155 of this chapter. (Ord. 13-04 § 35, 2004)

21A.54.140 Conditional Use Approvals And Planned Developments:

When a development is proposed as a planned development pursuant to the procedures in section 21A.54.150 of this chapter and also includes an application for conditional use approval, the planning commission shall decide the planned development application and the conditional use application together. In the event that a new conditional use is proposed after a planned development has been approved pursuant to section 21A.54.150 of this chapter, the proposed conditional use shall be reviewed and approved, approved with conditions, approved with modifications, or denied under the standards set forth in section 21A.54.080 of this chapter. (Ord. 26-95 § 2(27-14), 1995)

21A.54.150 Planned Developments:

A. **Purpose Statement:** A planned development is a distinct category of conditional use. As such, it is intended to encourage the efficient use of land and resources, promoting greater efficiency in public and utility services and encouraging innovation in the planning and building of all types of development. Through the flexibility of the planned development technique, the city seeks to achieve the following specific objectives:

1. Creation of a more desirable environment than would be possible through strict application of other city land use regulations;

2. Promotion of a creative approach to the use of land and related physical facilities resulting in better design and development, including aesthetic amenities;

3. Combination and coordination of architectural styles, building forms and building relationships;

4. Preservation and enhancement of desirable site characteristics such as natural topography, vegetation and geologic features, and the prevention of soil erosion;

5. Preservation of buildings which are architecturally or historically significant or contribute to the character of the city;

6. Use of design, landscape or architectural features to create a pleasing environment;

7. Inclusion of special development amenities; and

8. Elimination of blighted structures or incompatible uses through redevelopment or rehabilitation.

B. **Authority:** The planning commission may approve planned developments for uses listed in the tables of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts. The approval shall be in accordance with the standards and procedures set forth in this section, and other regulations applicable to the district in which the property is located.

C. **Authority To Modify Regulations:** In approving any planned development, the planning commission may change, alter, modify or waive any provisions of this title or of the city's subdivision regulations as they apply to the proposed planned development. No such change, alteration, modification or waiver shall be approved unless the planning commission shall find that the proposed planned development:

1. Will achieve the purposes for which a planned development may be approved pursuant to subsection A of this section; and

2. Will not violate the general purposes, goals and objectives of this title and of any plans adopted by the planning commission or the city council.

D. **Limitation:** No change, alteration, modification or waiver authorized by subsection C of this

section shall authorize a change in the uses permitted in any district or a modification with respect to any standard established by this section, or a modification with respect to any standard in a zoning district made specifically applicable to planned developments, unless such regulations expressly authorize such a change, alteration, modification or waiver.

E. **Other Standards:**

1. **Minimum Area:** A planned development proposed for any parcel or tract of land under single ownership or control shall have a minimum net lot area for each zoning district as set forth in table 21A.54.150E2 of this section.

2. **Density Limitations:** Residential planned developments shall not exceed the density limitation of the zoning district where the planned development is proposed. The calculation of planned development density may include open space that is provided as an amenity to the planned development. Public or private roadways located within or adjacent to a planned development shall not be included in the planned development area for the purpose of calculating density.

Table 21A.54.150E2

PLANNED DEVELOPMENTS

Table 21A.54.150E2

PLANNED DEVELOPMENTS

DISTRICT	MINIMUM PLANNED DEVELOPMENT SIZE
Residential Districts	
FR-1/43,560 foothills estate residential district	5 acres
FR-2/21,780 foothills residential district	5 acres
FR-3/12,000 foothills residential district	5 acres
R-1/12,000 single-family residential district	5 acres
R-1/7,000 single-family residential district	20,000 square feet
R-1/5,000 single-family residential district	20,000 square feet
SR-1 special development pattern residential district	9,000 square feet
SR-2 special development pattern residential district	Reserved
SR-3 interior block single-family residential district	9,000 square feet
R-2 single- and two-family residential district	9,000 square feet
RMF-30 low density multi-family residential district	9,000 square feet
RMF-35 moderate density multi-family residential district	9,000 square feet

RMF-45 moderate/high density multi-family residential district	20,000 square feet
RMF-75 high density multi-family district	9,000 square feet
RB residential/business district	No minimum required
R-MU-35 residential/mixed use district	9,000 square feet
R-MU-45 residential/mixed use district	9,000 square feet
R-MU residential/mixed use district	No minimum required
RO residential/office district	20,000 square feet
Commercial Districts	
CN neighborhood commercial district	No minimum required
CB community business district	No minimum required
CS community shopping district	60,000 square feet
CC corridor commercial district	20,000 square feet
CSHBD Sugar House business district	No minimum required
CG general commercial district	1 acre
TC-75 transit corridor district	No minimum required
Manufacturing Districts	
M-1 light manufacturing district	2 acres
M-2 heavy manufacturing district	2 acres
Downtown Districts	
D-1 central business district	2 acres
D-2 downtown support commercial district	2 acres
D-3 downtown warehouse/residential district	1 acre
Special Purpose Districts	
RP research park district	10 acres
BP business park district	10 acres
FP foothills protection district	32 acres
AG agricultural district	10 acres
AG-2 agricultural district	4 acres
AG-5 agricultural district	10 acres
AG-20 agricultural district	40 acres
A airport district	2 acres
PL public lands district	5 acres
PL-2 public lands district	1 acre
I institutional district	5 acres
UI urban institutional district	1 acre

OS open space district	2 acres
MH mobile home park district	10 acres
EI extractive industries district	10 acres
MU mixed use district	No minimum required

3. **Consideration Of Reduced Width Public Street Dedication:** A residential planned development application may include a request to dedicate the street to Salt Lake City for perpetual use by the public. The request will be reviewed and evaluated individually by appropriate departments, including transportation, engineering, public utilities, public services and fire. Each department reviewer will consider the adequacy of the design and physical improvements proposed by the developer and will make recommendation for approval or describe required changes. A synopsis will be incorporated into the staff report for review and decision by the planning commission. Notwithstanding the foregoing, no such street will be accepted as a publicly owned street unless there is a minimum width of twenty feet (20') of pavement with an additional right of way as determined by the planning commission.

4. **Planned Developments:** Planned developments within the TC-75, RB, R-MU, MU, CN, CB, and CSHBD zoning districts and the South State Street overlay. Also planned developments within the CS zoning district, when the district is adjacent to more than sixty percent (60%) residential zoning (within 300 feet, either on the same block or across the street).

Planned developments within these zoning districts may be approved subject to consideration of the following general conceptual guidelines (a positive finding for each is not required):

a. The development shall be primarily oriented to the street, not an interior courtyard or parking lot,

b. The primary access shall be oriented to the pedestrian and mass transit,

c. The facade shall maintain detailing and glass in sufficient quantities to facilitate pedestrian interest and interaction,

d. Architectural detailing shall emphasize the pedestrian level of the building,

e. Parking lots shall be appropriately screened and landscaped to minimize their impact on the neighborhood,

f. Parking lot lighting shall be shielded to eliminate excessive glare or light into adjacent neighborhoods,

g. Dumpsters and loading docks shall be appropriately screened or located within the structure, and

h. Signage shall emphasize the pedestrian/mass transit orientation.

5. **Perimeter Setback:** The perimeter side and rear yard building setback shall be the greater of the required setbacks of the lot or adjoining lot unless modified by the planning commission.

6. **Topographic Change:** The planning commission may increase or decrease the side or rear yard setback where there is a topographic change between lots.

F. **Preapplication Conference:** Prior to submitting a planned development application, an applicant shall participate in a preapplication conference with the planning director and the development review team (DRT). A member of the planning commission and the city council member of the district in which the proposed planned development is located may be invited to attend the preapplication conference. Representatives of other city departments and decision making bodies may also be present, where appropriate.

1. **Purpose Statement:** The purpose of the preapplication conference is to enable the applicant to present the concept of the proposed planned development and to discuss the procedures and standards for planned development approval. The conference is intended to facilitate the filing and consideration of a complete application. No representation made by the planning director, the DRT, the city council and planning commission members, or the representatives of city departments or of other decision-making bodies during such conference shall be binding upon the city with respect to the application subsequently submitted.

2. **Scheduling Of Conference:** The planning director shall schedule the preapplication conference within fifteen (15) calendar days after receiving the request from the applicant.

3. **Information Needed For Preapplication Conference:** At the time of request for the preapplication conference, the applicant shall include a narrative summary of the proposal and a description of adjacent land uses and neighborhood characteristics.

4. **Action Following Preapplication Conference:** Following the preapplication conference, the staff of the planning director shall be available to assist the applicant in the application procedure for the planned development.

G. **Development Plan Approval Steps:** The development plan approval process requires a minimum of two (2) approval steps: 1) a preliminary development plan approval; and 2) a final development plan approval. An applicant may elect to submit a concept development plan pursuant to subsection H of this section before submitting an application for preliminary development plan approval in order to obtain guidance regarding how city requirements would apply to the nature and scope of the proposed planned development.

H. **Concept Development Plan (Optional):**

1. **Purpose Statement:** The concept development plan is an optional step that is intended to provide the applicant an opportunity to submit and obtain review of a plan showing the basic character and scope of the proposed planned development without incurring undue cost. At the election of the applicant, the concept development plan may be submitted to the planning commission for its review and decision following a public hearing.

2. **Application:** An application for submittal of a concept development plan shall include

the following items and information:

a. Schematic drawings, at a scale of not smaller than fifty feet to the inch (50' = 1"), of the proposed development concept, showing buildings located within eighty five feet (85') (exclusive of intervening streets and alleys) of the site; the general location of vehicular and pedestrian circulation and parking; public and private open space; and residential, commercial, industrial and other land uses, as applicable, and a tabulation of the following information:

i. Total number of dwelling units and rooming units proposed, by type of structure and number of bedrooms if the planned development includes residential land uses;

ii. Total square feet of building floor area proposed for commercial uses, recreation and accessory uses and industrial uses, by general type of use;

iii. Proposed number of off street parking and loading spaces for each proposed type of land use; and

iv. Total land area, expressed in square feet and as a percent of the total development area, proposed to be devoted to residential uses, by type of structure; commercial uses; industrial uses; other land uses; public and private open space; streets and sidewalks; and off street parking and loading area;

v. Total project density or intensity of use.

b. Proposed elevations.

c. When the planned development is to be constructed in phases, a schedule for the development of such phases shall be submitted stating the approximate beginning and completion time for each phase. When a development provides for common open space, the total area of common open space provided at any stage of development shall, at a minimum, bear the same relationship to the total open space to be provided in the entire development as the phases completed or under development bear to the entire development.

3. **Review By Development Review Team (DRT):** Upon receipt of a complete concept development plan application, the zoning administrator shall forward the application to the DRT for its review. The DRT shall prepare a memorandum with its general evaluation and recommendations regarding any revisions that must be incorporated in any subsequent application for preliminary development plan approval in order to assure compliance with the requirements of this title. A copy of this memorandum shall be sent to the applicant.

4. **Planning Commission Review Of The Concept Plan:** Upon receipt of the DRT memorandum pursuant to subsection H3 of this Section, the applicant may request in writing within fourteen (14) calendar days of the date of receipt thereof that the Planning Director forward the concept development plan application to the Planning Commission for its review and decision. The Zoning Administrator shall forward the concept development plan application accompanied by the DRT memorandum to the Planning Division for Planning Commission consideration at a public hearing. In the event that the applicant does not request Planning Commission review of the concept development plan within the

fourteen (14) day time frame provided, no further action shall be taken on the proposed planned development until the applicant submits an application for preliminary plan development approval.

5. **Public Hearing:** If an applicant requests Planning Commission review of the concept development plan pursuant to subsection H4 of this Section a public hearing shall be scheduled and conducted by the Planning Commission in accordance with the standards and procedures set forth in Part II, Chapter 21A.10 of this Title.

6. **Planning Commission Action:** Following the conclusion of the public hearing, the Planning Commission shall either approve the concept development plan, approve the concept development plan subject to modifications or conditions, or disapprove the concept development plan.

7. **Procedure Upon Denial Of Concept Development Plan:** If the Planning Commission denies the application for approval of the concept development plan, it shall require the applicant to resolve specific issues before approval may be granted, if resubmitted, for the preliminary development plan.

8. **Approval Of Concept Development Plan:** If the Planning Commission approves the concept development plan, with or without modifications or conditions, it shall adopt a motion establishing the land uses and density for the proposed planned development and authorizing the proposed applicant to submit an application for a preliminary development plan consistent with the approved concept development plan. Every such motion shall be expressly conditioned upon approval of the preliminary development plan in accordance with subsection I of this Section.

9. **Time Limitation On Concept Development Plan Approval:** Subject to an extension of time granted by the Planning Director, unless a preliminary development plan covering the area designated in the concept development plan has been filed within one year from the date the Planning Commission grants concept development plan approval, the Planning Commission's approval of the concept development plan shall automatically expire and be rendered void.

I. **Preliminary Development Plan:** Whether or not an applicant for a planned development elects first to submit a concept development plan, the applicant must file an application for preliminary development plan approval with the Zoning Administrator.

1. **Application Requirements:** The preliminary development plan application shall be submitted on a form provided by the Zoning Administrator accompanied by such number of copies of documents as the Zoning Administrator may require for processing of the application, and shall include at least the following information set forth below:

a. **General Information:**

i. The applicant's name, address, telephone number and interest in the property;

ii. The owner's name, address and telephone number, if different than the applicant, and the owner's signed consent to the filing of the application;

iii. The street address and legal description of the subject property;

iv. The zoning classification, zoning district boundaries and present use of the subject property;

v. A vicinity map with north, arrow scale and date, indicating the zoning classifications and current uses of properties within eighty five feet (85') (exclusive of intervening streets and alleys) of the subject property; and

vi. The proposed title of the project and the names, addresses and telephone numbers of the architect, landscape architect, planner or engineer on the project.

b. **Preliminary Development Plan:** A preliminary development plan at a scale of twenty feet to the inch (20' = 1") or larger, unless otherwise approved by the Zoning Administrator, setting forth at least the following, unless waived by the Zoning Administrator:

i. The location, dimensions and total area of the site;

ii. The location, dimensions, floor area, type of construction and use of each proposed building or structure;

iii. The number, the size and type of dwelling units in each building, and the overall dwelling unit density;

iv. The proposed treatment of open spaces and the exterior surfaces of all structures, with sketches of proposed landscaping and structures, including typical elevations;

v. Architectural graphics, if requested by the Zoning Administrator, including typical floor plans and elevations, profiles and cross sections;

vi. The number, location and dimensions of parking spaces and loading docks, with means of ingress and egress;

vii. The proposed traffic circulation pattern within the area of the development, including the location and description of public improvements to be installed, including any streets and access easements;

viii. A traffic impact analysis;

ix. The location and purpose of any existing or proposed dedication or easement;

x. The general drainage plan for the development tract;

xi. The location and dimensions of adjacent properties, abutting public rights of way and easements, and utilities serving the site;

xii. Significant topographical or physical features of the site, including existing trees;

xiii. Soils and subsurface conditions, if requested;

xiv. The location and proposed treatment of any historical structure or other historical design element or feature;

xv. One copy of the preliminary development plan colored or shaded (unmounted) for legibility and presentation at public meetings; and

xvi. A reduction of the preliminary development plan to eight and one-half by eleven inches (8 1/2 x 11"). The reduction need not include any area outside the property lines of the subject site.

c. **Plat Of Survey:** A plat of survey of the parcel of land, lot, lots, block, blocks, or parts or portions thereof, drawn to scale, showing the actual dimensions of the parcel, lot, lots, block, blocks, or portions thereof, according to the registered or recorded plat of such land.

d. **A Preliminary Subdivision Plat, If Required:** A preliminary subdivision plat showing that the planned development consists of and is conterminous with a single lot described in a recorded subdivision plat, or a proposed resubdivision or consolidation to create a single lot or separate lots of record in suitable form ready for review.

e. **Additional Information:** The application shall also contain the following information as well as such additional information, drawings, plans or documentation as may be requested by the Zoning Administrator or the Planning Commission if determined necessary or appropriate for a full and proper consideration and disposition of the application:

i. When the proposed planned development includes provisions for common open space or recreational facilities, a statement describing the provision to be made for the care and maintenance of such open space or recreational facilities;

ii. A written statement showing the relationship of the proposed planned development to any adopted General Plan of the City;

iii. A written statement addressing each of the standards set forth in subsection H of this Section, and such additional standards, if any, as may be applicable under the specific provisions of this Title. The statement shall explain specifically how the proposed planned development relates to and meets each such standard.

iv. A written statement showing why the proposed planned development is compatible with other property in the neighborhood.

2. **Review Procedure:** Upon the review of a preliminary development plan application, by the development review team, the zoning administrator shall notify the applicant of any deficiencies and or modifications necessary to complete the application.

a. **Public Hearing:** Upon receiving site plan review and recommendation from the development review team, and completing a staff report, the planning commission shall hold a public hearing to review the preliminary development plan application in

accordance with the standards and procedures set forth in part II, chapter 21A.10 of this title.

b. **Planning Commission Action:** Following the public hearing, the planning commission shall decide, on the basis of the standards contained in subsection I3 of this section whether to approve, approve with modifications or conditions, or deny the application.

c. **Planning Commission Action On Preliminary Development Plan Subject To Certification By Planning Director:** The motion of the planning commission approving the preliminary development plan shall include a provision approving the final development plan, subject to certification by the planning director that the final development plan is in conformance with the preliminary development plan approved by the planning commission.

d. **Notification Of Decision:** The planning director shall notify the applicant of the decision of the planning commission in writing, accompanied by one copy of the submitted plans marked to show such decision and a copy of the motion approving, approving with modifications, or denying the preliminary development plan application.

3. **Standards:** A planned development, as a conditional use, shall be subject to the standards for approval set forth in section 21A.54.080 of this chapter. The planning commission shall make written findings of fact with respect to each of the standards in section 21A.54.080 of this chapter before approval.

J. **Certification Of Final Development Plan Compliance:** Upon receipt of an application for final development plan certification, the planning director shall review the application to determine if it is complete, including any modifications required in conjunction with the approval by the planning commission. Within ten (10) working days of receipt of the completed application, the planning director shall either: 1) certify that the final development plan complies with the approved preliminary plan; or 2) refuse to certify the final development plan for lack of compliance with the preliminary development plan as finally approved by the planning commission.

K. **Effect Of Certification Of Compliance:** A final development plan as approved and certified shall not be modified, except pursuant to subsection S of this section.

L. **Effect Of Refusal Of Certification:** If the planning director refuses to certify the final development plan, the applicant shall be notified in writing of the items that do not comply with the approved preliminary development plan. The applicant shall have fourteen (14) days following receipt of the planning director's notice of lack of certification to correct the deficiencies identified. If the applicant fails to correct the deficiencies within the fourteen (14) day period, unless extended by the planning director, the final development plan shall automatically expire and be rendered void.

M. **Appeal Of Planning Director's Refusal To Certify Compliance:** Any party aggrieved by the decision of the planning director not to certify a final development plan, may appeal to the planning commission within thirty (30) days of the date of decision.

N. **Appeal Of The Planning Commission Decision:** Any party aggrieved by the decision of

the planning commission on appeal of the planning director's refusal to certify a final development plan, may file an appeal to the land use appeals board.

O. **Time Limit On Approved Planned Development:** No planned development approval shall be valid for a period longer than one year unless a building permit is issued and construction is diligently pursued. However, upon written request of the applicant, the one year period may be extended by the planning commission for such time as it shall determine for good cause shown, without further public hearing.

P. **Additional Requirements:** The decision approving a planned development shall contain a legal description of the property subject to the planned development. The decision shall be recorded by the city in the office of the county recorder before any permits may be issued.

Q. **Effect Of Approval Of Planned Development:** The approval of a proposed planned development by the planning commission shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall authorize the preparation, filing and processing of applications for any permits or approvals that may be required by the regulations of the city, including, but not limited to, a building permit, a certificate of occupancy and subdivision approval.

R. **Regulation During And Following Completion Of Development:** Following final development plan approval, the final development plan, rather than any other provision of this title, shall constitute the use, parking, loading, sign, bulk, space and yard regulations applicable to the subject property, and no use or development, other than home occupation and temporary uses, not allowed by the final development plan shall be permitted within the area of the planned development.

S. **Modifications To Development Plan:**

1. **New Application Required For Modifications And Amendments:** No substantial modification or amendment shall be made in the construction, development or use without a new application under the provisions of this title. Minor modifications or amendments may be made subject to written approval of the planning director and the date for completion may be extended by the planning commission upon recommendation of the planning director.

2. **Minor Modifications:** During build out of the planned development, the planning director may authorize minor modifications to the approved final development plan pursuant to the provisions for modifications to an approved site plan as set forth in chapter 21A.58 of this part, when such modifications appear necessary in light of technical or engineering considerations. Such minor modifications shall be limited to the following elements:

a. Adjusting the distance as shown on the approved final development plan between any one structure or group of structures, and any other structure or group of structures, or any vehicular circulation element or any boundary of the site;

b. Adjusting the location of any open space;

c. Adjusting any final grade;

d. Altering the types of landscaping elements and their arrangement within the required landscaping buffer area; and

e. Signs.

Such minor modifications shall be consistent with the intent and purpose of this title and the final development plan as approved pursuant to this section, and shall be the minimum necessary to overcome the particular difficulty and shall not be approved if such modifications would result in a violation of any standard or requirement of this title.

3. **Major Modifications:** Any modifications to the approved final development plan not authorized by subsection S2 of this section shall be considered to be a major modification. The planning commission shall give notice to all property owners whose properties are located within one hundred feet (100') (exclusive of intervening streets and alleys) of the planned development, requesting the major modification. The planning commission may approve an application for a major modification to the final development plan, not requiring a modification of written conditions of approval or recorded easements, upon finding that any changes in the plan as approved will be in substantial conformity with the final development plan. If the commission determines that a major modification is not in substantial conformity with the final development plan as approved, then the commission shall review the request in accordance with the procedures set forth in this subsection.

4. **Fees:** Fees for modifications to a final development plan shall be as set forth in the fee schedule, chapter 21A.64 of this title.

T. **Disclosure Of Infrastructure Costs For Planned Developments:** Planned developments, approved under this title after January 1, 1997, shall include provisions for disclosure of future private infrastructure maintenance and replacement costs to unit owners.

1. **Infrastructure Maintenance Estimates:** Using generally accepted accounting principles, the developer of any planned development shall calculate an initial estimate of the costs for maintenance and capital improvements of all infrastructure for the planned development including roads, sidewalks, curbs, gutters, water and sewer pipes and related facilities, drainage systems, landscaped or paved common areas and other similar facilities ("infrastructure"), for a period of sixty (60) years following the recording of the subdivision plat for the estimated date of first unit occupancy of the planned development, whichever is later.

2. **Initial Estimate Disclosure:** The following measures shall be incorporated in planned developments to assure that owners and future owners have received adequate disclosure of potential infrastructure maintenance and replacement costs:

a. The cost estimate shall be recorded with and referenced on the recorded plat for any planned development. The initial disclosure estimate shall cover all private infrastructure items and shall be prepared for six (6) increments of ten (10) years each.

b. The recorded plat shall also contain a statement entitled "Notice To Purchasers" disclosing that the infrastructure is privately owned and that the maintenance, repair, replacement and operation of the infrastructure is the responsibility of the property owners and will not be assumed by the city.

c. The cost estimate shall be specifically and separately disclosed to the purchaser of any property in the planned development, upon initial purchase and also upon all future purchases for the duration of the sixty (60) year period.

3. **Yearly Maintenance Statements:** The entity responsible for the operation and maintenance of the infrastructure shall, at least once each calendar year, notify all property owners in the planned development of the estimated yearly expenditures for maintenance, repair, operation or replacement of infrastructure, and at least once each calendar year shall notify all property owners of the actual expenditures incurred, and shall specify the reason(s) for any variance between the estimated expenditures and the actual expenditures.

4. **Maintenance Responsibilities:** The property owners in a planned development shall be collectively and individually responsible, on a pro rata basis, for operating, maintaining, repairing and replacing infrastructure to the extent necessary to ensure that access to the planned development is available to the city for emergency and other services and to ensure that the condition of the private infrastructure allows for the city's continued and uninterrupted operation of public facilities to which the private infrastructure may be connected or to which it may be adjacent. (Ord. 76-05 §§ 4, 5 (Exh. A), 2005: Ord. 12-05 § 1, 2005: Ord. 3-05 §§ 9 (Exh. A), 10, 2005: Ord. 71-04 § 27 (Exh. G), 2004: Ord. 13-04 §§ 36, 37 (Exh. K), 2004: Ord. 77-03 § 8, 2003: Ord. 73-02 § 19 (Exh. G), 2002: Ord. 70-02 § 4, 2002: Ord. 14-00 § 15, 2000: Ord. 35-99 §§ 96-99, 1999: Ord. 17-99 § 1, 1999: Ord. 52-97 § 1, 1997: Ord. 88-95 § 1 (Exh. A), 1995: Ord. 26-95 § 2(27-15), 1995)

21A.54.155 Administrative Consideration Of Conditional Uses:

The purpose of this section is to establish an administrative hearing process for certain categories of low impact conditional uses as authorized by subsection 21A.54.030C of this chapter. Applications for administrative conditional use approval shall be reviewed as follows:

A. **Preapplication And Application Requirements:**

1. **Preapplication Conference:** The applicant shall first meet with a member of the Salt Lake City planning division to discuss the application and alternatives.

2. **Community Council Review:** The applicant shall meet with the respective community council(s) pursuant to subsection 21A.10.010B of this title.

3. **Application:** The applicant shall file an application and associated application fees with the planning office on a form prescribed by the city and consistent with this chapter. After considering information received, the planning director or designee may choose to schedule an administrative hearing or to forward the application to the planning commission.

B. **Administrative Hearing:**

1. **Noticing And Posting Requirements:** Notice of the proposed conditional use shall be mailed to all applicable property owners and the property shall be posted pursuant to subsection 21A.10.020B of this title.

2. **Administrative Hearing:** After consideration of the information received from the applicant and concerned residents, the planning director or designee may approve, approve with conditions, or deny the conditional use request.

At the administrative hearing, the planning director or designee may decline to hear or decide the request and forward the application for planning commission consideration, if it is determined that there is neighborhood opposition, if the applicant has failed to adequately address the conditional use standards, or for any other reason at the discretion of the planning director or designee.

The planning director may grant the conditional use request only if the proposed development is consistent with the standards for conditional uses listed in section 21A.54.080 of this chapter and any specific standards listed in this title that regulate the particular use.

C. **Appeals:**

1. **Objection To Administrative Consideration:** The petitioner or any person who objects to the planning director or designee administratively considering the conditional use request may request a hearing before the planning commission by filing a written notice at any time prior to the planning director's scheduled administrative hearing on the conditional use request. If no such objections are received by the city prior to the planning director's administrative hearing, any objections to such administrative consideration will be deemed waived. The notice shall specify all reasons for the objection to the administrative hearing.

Upon receipt of such an objection, the matter will be forwarded to the Salt Lake City planning commission for consideration and decision.

2. **Appeal Of Administrative Consideration:** Any person aggrieved by the decision made by the planning director or designee at an administrative hearing may appeal that decision to the Salt Lake City planning commission by filing notice of an appeal within fourteen (14) days after the planning director's administrative hearing. The notice of appeal shall specify, in detail, the reason(s) for the appeal. Reasons for the appeal shall be based upon procedural error or compliance with the standards for conditional uses listed in section 21A.54.080 of this chapter or any specific standards listed in this title that regulate the particular use. (Ord. 69-06 § 7, 2006: Ord. 81-01 § 3, 2001)

21A.54.160 Appeal Of Planning Commission Decision:

Any party aggrieved by a decision of the planning commission on an application for a conditional use, including a planned development, may file an appeal to the land use appeals board within thirty (30) days of the date of the decision. The filing of the appeal shall not stay the decision of the planning commission pending the outcome of the appeal, unless the planning commission takes specific action to stay a decision. (Ord. 77-03 § 9, 2003: Ord. 83-96 § 6, 1996: Ord. 26-95 § 2(27-16), 1995)

21A.54.170 Appeal Of Land Use Appeals Board Decision:

Any party adversely affected by the decision of the land use appeals board on appeal from a decision of the planning commission may appeal to the district court within thirty (30) days of the date of the land use appeals board decision. (Ord. 83-96 § 7, 1996)

Tab 7

21A.62.040 Definitions:

For the purposes of this title, the following terms shall have the following meanings:

"Abutting" means adjacent or contiguous including property separated by an alley, a private right of way or a utility strip.

"Access taper" means the transitional portion of a drive access that connects a driveway to a parking pad located within a side yard.

"Accessory building or structure" means a subordinate building or structure, located on the same lot with the main building, occupied by or devoted to an accessory use. When an accessory building or structure is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

"Accessory guest and servants' quarters" means accessory living quarters with or without kitchen facilities located on the same lot as the principal use and meeting all yard and bulk requirements of the applicable district.

"Accessory lot" means a lot adjoining a principal lot under a single ownership.

Accessory Structure: See definition of Accessory Building Or Structure.

"Accessory use" means a use that:

A. Is subordinate in area, extent and purpose to, and serves a principal use;

B. Is customarily found as an incident to such principal use;

C. Contributes to the comfort, convenience or necessity of those occupying, working at or being serviced by such principal use;

D. Is, except as otherwise expressly authorized by the provisions of this title, located on the same zoning lot as such principal use; and

E. Is under the same ownership or control as the principal use.

"Administrative decision" means any order, requirement, decision, determination or interpretation made by the zoning administrator in the administration or the enforcement of this title.

"Agricultural use" means the use of a tract of land for growing crops in the open, dairying, pasturage, horticulture, floriculture, general farming uses and necessary accessory uses, including the structures necessary for carrying out farming operations; provided, however, such agricultural use shall not include the following uses:

A. Commercial operations or accessory uses which involve retail sales to the general public unless the use is specifically permitted by this title; and

B. The feeding of garbage to animals, the raising of poultry or furbearing animals as a principal use, or the operation or maintenance of commercial stockyards, or feed yards, slaughterhouses or rendering facilities.

"Alley" means a public or private right of way that affords a service access to abutting property.

"Alteration", as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side, by increasing in height, or the moving from one location or position to another.

"Alternative parking property" means the property for which an alternative parking requirement pursuant to section 21A.44.030 of this title is proposed.

"Amusement park" means a commercial facility or operation that primarily offers entertainment in the form of rides and games.

"Ancillary mechanical equipment" means supplemental equipment, attached or detached, including, but not limited to, equipment for the provision of services for heat, ventilation, air conditioning, electricity, plumbing, telephone and television.

"Animal pound" means a public or licensed private facility to temporarily detain and/or dispose of stray dogs, cats and other animals.

"Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves external to or attached to the exterior of any building.

Antenna, Low Power Radio Service: "Low power radio service antenna" means a transmitting or receiving device used in telecommunications that radiates or captures radio signals.

Antenna, Low Power Radio ServiceMonopole With Antennas And Antenna Support Structures Greater Than Two Feet In Width: "Low power radio service antennamonopole with antennas and antenna support structures greater than two feet in width" means a self-supporting monopole tower on which antennas and antenna support structures exceeding two feet (2') in width are placed. The antenna and antenna support structures may not exceed thirteen feet (13') in width or eight feet (8') in height.

Antenna, Low Power Radio ServiceMonopole With Antennas And Antenna Support Structures Less Than Two Feet In Width: "Low power radio service antennamonopole with antennas and antenna support structures less than two feet in width" means a monopole with antennas and antenna support structures not exceeding two feet (2') in width. Antennas and antenna support structures may not exceed ten feet (10') in height.

Antenna, Roof Mounted: "Roof mounted antenna" means an antenna or series of individual antennas mounted on a flat roof, mechanical room or penthouse of a building.

Antenna, Satellite Dish: "Satellite dish antenna" means a type of antenna capable of receiving, among other signals, television transmission signals, and which has a disk

shaped receiving device, excluding wall mountable antennas with a surface size less than four hundred (400) square inches, projecting no more than two feet (2').

Antenna, TV: "TV antenna" means a type of antenna used to receive television transmission signals, but which is not a satellite dish antenna.

Antenna, Wall Mounted: "Wall mounted antenna" means an antenna or series of individual antennas mounted against the vertical wall of a building.

Antenna, Whip: "Whip antenna" means an antenna that is cylindrical in shape. Whip antennas can be directional or omnidirectional and vary in size depending upon the frequency and gain for which they are designed.

Apartment: See definition of Dwelling, Multi-Family.

"Arcade" means range of arches supporting a roofed area along with a column structure, plain or decorated over a walkway adjacent to or abutting a row of retail stores on one side or both.

"Architecturally incompatible" means buildings or structures which are incongruous with adjacent and nearby development due to dissimilarities in style, materials, proportions, size, shape and/or other architectural or site design features.

"Art gallery" means an establishment engaged in the sale, loan or display of paintings, sculpture or other works of art. The term "art gallery" does not include libraries or museums.

"Art studio" means a building or portion of a building where an artist or photographer creates works of art.

"Assisted living facility (large)" means a facility licensed by the state of Utah that provides a combination of housing and personalized healthcare designed to respond to the individual needs of more than six (6) individuals who require help with the activities of daily living, such as meal preparation, personal grooming, housekeeping, medication, etc. Care is provided in a professionally managed group living environment in a way that promotes maximum independence and dignity for each resident.

"Assisted living facility (small)" means a facility licensed by the state of Utah that provides a combination of housing and personalized healthcare designed to respond to the individual needs of up to six (6) individuals who require help with the activities of daily living, such as meal preparation, personal grooming, housekeeping, medication, etc. Care is provided in a professionally managed group living environment in a way that promotes maximum independence and dignity for each resident.

"Auditorium" means a multipurpose assembly facility that is designed to accommodate conventions, live performances, trade shows, sports events and other such events.

"Automatic amusement device" means any machine, apparatus or device which, upon the insertion of a coin, token or similar object, operates or may be operated as a game or contest of skill or amusement and for the play of which a fee is charged, or a device similar

to any such machine, apparatus or device which has been manufactured, altered or modified so that operation is controlled without the insertion of a coin, token or similar object. The term does not include coin operated televisions, ride machines designed primarily for the amusement of children, or vending machines not incorporating features of gambling or skill.

"Automobile" means any vehicle propelled by its own motor and operating on ordinary roads. As used herein, the term includes passenger cars, light trucks (1 ton or less), motorcycles, recreation vehicles and the like.

Automobile Repair, Major: "Major automobile repair" means any use principally engaged in repairing of automobiles, including any activities excluded in the definition of Automobile Repair, Minor.

Automobile Repair, Minor: "Minor automobile repair" means a use engaged in the repair of automobiles involving the use of three (3) or fewer mechanics' service bays, where all repairs are performed within an enclosed building, and where not more than ten (10) automobiles, plus one automobile per employee, are parked on site at any one time including, but not limited to, those permitted as gas stations. Auto body repairs and drive train repair are excluded from this definition.

"Automobile salvage and recycling" means the dismantling of automobiles, including the collection and storage of parts for resale, and/or the storage of inoperative automobiles for future salvage or sale. Such activities may be conducted outdoors or within fully enclosed buildings.

Bakery, Commercial: "Commercial bakery" means a use involving the baking of food products for sale principally to the wholesale trade, not directly to the consumer.

"Base zoning district" means a zoning district that reflects the four (4) basic geographically based land use categories in the cityresidential areas, commercial areas, manufacturing areas and the downtownwith appropriate regulations and development standards to govern the uses in these districts.

"Basement" means a story wherein each exterior wall is fifty percent (50%) or more below grade. For purposes of establishing building height, a basement shall not count toward the maximum number of stories allowed. The exposed portion of the basement wall shall not exceed five feet (5').

"Bed and breakfast" means a building constructed originally as a single-family dwelling that is occupied by the property owner who offers lodging in up to seven (7) rooms on a nightly or weekly basis to paying guests. A bed and breakfast may provide breakfast to overnight guests only and shall not provide other meals.

"Bed and breakfast inn" means a building that is designed to accommodate up to eighteen (18) rooms for lodging on a nightly or weekly basis to paying guests. A bed and breakfast inn may provide breakfast from internal kitchen facilities to overnight guests and their guests only other than meals that are occasionally catered from off site establishments. The owner of the bed and breakfast inn may prepare meals on site or receive catered meals for private use.

"Bed and breakfast manor" means a building designed to accommodate up to thirty (30) rooms for lodging on a nightly or weekly basis to paying guests. A bed and breakfast manor may provide breakfast from internal kitchen facilities to overnight guests and their guests only other than meals that are occasionally catered from off site establishments. The owner of the bed and breakfast manor may prepare meals on site or receive catered meals for private use. Restaurants operating in conjunction with a bed and breakfast manor must be approved under a separate restaurant license.

"Block corner" means the ninety degree (90°) intersection of private property adjacent to the intersection of two (2) public street rights of way both of which are at least one hundred thirty two feet (132') wide. When applied to corner buildings, the provisions of this definition shall extend to one hundred sixty five feet (165') from the block corner on the street face and one hundred sixty five feet (165') in depth.

"Block face" means all of the lots facing one side of a street between two (2) intersecting streets. Corner properties shall be considered part of two (2) block faces, one for each of the two (2) intersecting streets. In no case shall a block face exceed one thousand feet (1,000').

"Board of adjustment" means the board of adjustment of Salt Lake City, Utah.

"Boarding house" means a building other than a hotel or motel, with three (3) or more bedrooms where direct or indirect compensation for lodging and/or kitchen facilities, not occupied in guest-rooms, or meals are provided for boarders and/or roomers not related to the head of the household by marriage, adoption, or blood. Rentals must be on at least a monthly basis.

"Brewpub" means a restaurant type establishment that also has a beer brewery, producing beer in batch sizes not less than seven (7) U.S. barrels (31 gallons), on the same property which produces, except as provided in subsection 6.08.081B2 of this code, only enough beer for sale and consumption on site or for retail carryout sale in containers holding less than two liters (2 l) or for wholesale as outlined in subsections D and E of this definition. Automated bottle or canning production is prohibited. At least fifty percent (50%) of the beer sold shall be brewed on the premises. Revenue from food sales shall constitute at least fifty percent (50%) of the total business revenues, excluding retail carryout sales of beer and the sales allowed pursuant to subsection 6.08.081B2 of this code. Brewpubs are limited to a total brewing capacity of two thousand five hundred (2,500) barrels per year or one hundred twenty (120) barrels of fermentation at any one time, whichever is less. Brewpubs may sell beer in keg (larger than 2 liters) containers for the following purposes and in the following amounts:

A. An unlimited number of kegs (not to exceed 2,500 barrel capacity) for "brew fests" which, for the purpose of this definition, means events, the primary purpose of which is the exposition of beers brewed by brewpubs and microbreweries, which include the participation of at least three (3) such brewers;

B. No more than one hundred (100) kegs per year (not to exceed 2,500 barrel capacity) to events sponsored by charitable organizations exempt from federal income tax pursuant to 26 USC, section 501(c)(3) or its successor; and

C. No more than one hundred (100) kegs per year (not to exceed 2,500 barrel capacity) to events operating under a single event license from the state and the city where the purpose of the event is not for commercial profit and where the beer is not wholesaled to the event sponsor but is, instead, dispensed by employees of the brewpub;

D. Unlimited distribution to other restaurants of same ownership or control (not to exceed 2,500 barrel capacity). "Ownership or control" means more than fifty percent (50%) ownership in the actual business or controlling interest in any management partnership; and

E. No more than five hundred (500) barrels for wholesale distribution (not to exceed 2,500 barrel capacity).

Buffer Yard: See definition of Landscape buffer.

"Buildable area" means the portion of the lot remaining after required yards have been provided and after the limitations of any pertinent environmental regulations have been applied. Buildings may be placed in any part of the buildable area, but if there are limitations on percent of the lot which may be covered by buildings, some open space may be required within the buildable area.

"Building" means a structure with a roof, intended for shelter or enclosure.

Building, Accessory: See definition of Accessory Building Or Structure.

"Building connection" means two (2) or more buildings which are connected in a substantial manner or by common interior space including internal pedestrian circulation. Where two (2) buildings are attached in this manner, they shall be considered a single building and shall be subject to all yard requirements of a single building. Determination of building connection shall be through the site plan review process.

"Building coverage" means that percentage of the lot covered by principal or accessory buildings.

Building, Front Line Of: "Front line of building" means the line of that face of the building nearest the front or corner side lot line of the lot. This face includes sun parlors, bay windows, and covered and/or uncovered porches, whether enclosed or unenclosed, but does not include uncovered steps less than four feet (4') above grade.

"Building heightin the FR-1, FR-2, FR-3, FP, R-1/5,000, R-1/7,000, R-1/12,000, R-2, SR-1 and SR-3 districts" shall be the vertical distance between the top of the roof and the grade of the site, as described in subsection 21A.24.010O1a of this title, measured at any given point of building coverage. (See illustration in section 21A.62.050 of this chapter.)

"Building heightoutside FR, FP, R-1, R-2 and SR districts" means the vertical distance, measured from the average elevation of the finished lot grade at each face of the building, to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof. (See illustration in section 21A.62.050 of this chapter.)

"Building line" means a line dividing a required yard from other portions of a lot.

"Building material distributor" means a type of wholesale distributor supplying the building materials industry, but excluding retail outlets conducted in a warehouse format.

"Building official" means the building official of the department of community development.

Building, Principal: "Principal building" means a building that is used primarily for the conduct of the principal use.

Building, Public: "Public building" means a building owned and operated, or owned and intended to be operated by a public agency of the United States of America or the state of Utah, or any of its subdivisions.

"Bulk" means the size and setbacks of the buildings or structures and the location of same with respect to one another, and including: a) height and area of buildings; b) location of exterior walls in relation to lot lines, streets or other buildings; c) gross floor area of buildings in relation to lot areas (floor area ratio); d) all open spaces allocated to buildings; e) amount of lot area required for each dwelling unit; and f) lot coverage.

"Business" means any occupation, employment or enterprise which occupies time, attention, labor and/or materials for compensation whether or not merchandise is exhibited or sold, or services are offered.

Business, Mobile: "Mobile business" means a business that conducts all or part of its operations on premises other than its own. The term "mobile business" shall not include any business involved in construction, home or building improvement, landscape construction, surveying or medical related activities, including veterinary services. The simple delivery of goods shall not constitute a mobile business.

"Business park" means a business district planned and developed as an optimal environment for business occupants while maintaining compatibility with the surrounding community.

"Carpool" means a mode of transportation where two (2) or more persons share a car ride to or from work.

"Carport" means a garage not completely enclosed by walls or doors. For the purpose of this title, a carport shall be subject to all of the regulations prescribed for a garage.

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

"Certificate of appropriateness" means a certification by the historic landmark commission stating that proposed work on historic property is compatible with the historic character of the property and of the historic preservation overlay district in which it is located.

"Certificate of occupancy" means an official authorization to occupy a structure as issued by the building official.

Certificate, Zoning: "Zoning certificate" means a written certification that a structure, use or parcel of land is, or will be, in compliance with the requirements of this title.

"Change of use" means the replacement of an existing use by a new use, or a change in the nature of an existing use which does not increase the size, occupancy, or site requirements. A change of ownership, tenancy, name or management, or a change in product or service within the same use classification where the previous nature of the use, line of business, or other function is substantially unchanged is not a change of use. (See also definition of Land Use Type (Similar Land Use Type).)

"Charity dining hall" means a sit down dining facility operated by a nonprofit organization to feed, without charge, the needy and the homeless.

"Chemical manufacturing" means a use engaged in making chemical products from raw or partially finished materials, but excluding chemical wholesale distributors.

"City council" means the city council of Salt Lake City, Utah.

"College or university" means an institution accredited by the state providing full time or part time education beyond the high school level for a BA, BS or associate degree, including any lodging rooms or housing for students or faculty. (See also definition of Schools.)

"Commercial districts" means those districts listed in subsection 21A.22.010B of this title.

"Commercial indoor recreation" means public or private recreation facilities, tennis or other racquet courts, swimming pools, bowling alleys, skating rinks, or similar uses which are enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. The term "commercial indoor recreation" shall include any accessory uses, such as snack bars, pro shops, and locker rooms, which are designed and intended primarily for the use of patrons of the principal recreational use. The term "commercial indoor recreation" shall not include theaters, cultural facilities, commercial recreation centers, massage parlors, or any use which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter in part III of this title for each category of zoning district or districts.

"Commercial laundry" means an establishment primarily engaged in the provision of laundering, dry cleaning, or dyeing services other than retail services establishments. Typical uses include bulk laundry and cleaning plants, diaper services, and linen supply services.

"Commercial outdoor recreation" means public or private golf courses, golf driving ranges, swimming pools, tennis courts, ball fields, ball courts, fishing piers, skateboarding courses, water slides, mechanical rides, go-cart or motorcycle courses, raceways, drag strips, stadiums, marinas, overnight camping, or gun firing ranges, which are not enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. The term "commercial outdoor recreation" shall include any accessory uses, such as snack bars, pro shops, and clubhouses which are designed and intended primarily for the use of

patrons of the principal recreational use.

"Commercial service establishment" means a building, property, or activity, of which the principal use or purpose is the provision of services for the installation and repair, on or off site, of equipment and facilities that support principal and accessory uses to commercial and consumer users. Commercial services establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

"Commercial vehicle" means a vehicle which exceeds one ton capacity and taxis. This shall include, but not be limited to, the following: buses, dump trucks, limousines, roll back tow trucks, stake body trucks, step vans, taxis, tow trucks and tractor trailers.

"Commercial video arcade" means a principal use that contains ten (10) or more automatic amusement devices.

"Common areas, space and facilities" means the property and improvements of the condominium project, or portions thereof, conforming to the definition set forth in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Communication tower" means a tower structure used for transmitting a broadcast signal or for receiving a broadcast signal (or other signal) for retransmission. A communication tower does not include "ham" radio transmission antenna.

"Community garden" means the exclusive use of a vacant lot for the growing of garden produce by a nonprofit organization in which food produced is consumed by local needy individuals and families.

"Community recreation center" means a place, structure, area, or other facility used for and providing social or recreational programs generally open to the public and designed to accommodate and serve segments of the community.

"Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored or applied to the land without adversely affecting human health or the environment.

"Concept development plan" means a conceptual plan submitted for review and comment in order to obtain guidance from the city regarding how city requirements would apply to a proposed planned development.

"Concrete manufacturing" means a use engaged in making and delivering "ready mix" type concrete from batch plant operations. This use excludes cement manufacturing, such as Portland cement, which is an ingredient in concrete manufacturing.

"Condominiumcondominium project and condominium unit" means property or portions thereof conforming to the definitions set forth in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Condominium ownership act of 1975 or act" means the provisions of chapter 8 of title 57 of Utah Code Annotated, as amended in 1975. (See part V, chapter 21A.56 of this title.)

Condominium Unit: See definition of CondominiumCondominium Project And Condominium Unit.

"Construction period" means the time period between when the building permit is obtained and the certificate of occupancy is issued.

"Contractor's yard/office" means a use that provides construction businesses with a base of operations that can include office space and indoor/ outdoor storage of construction equipment or materials used by the construction business. This use excludes salvage or recycling operations.

"Conversion" means a proposed change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, from single ownership of said parcel, such as an apartment house or multi-family dwelling, into that defined as a condominium project or other ownership arrangement involving separate ownership of individual units combined with joint collective ownership of common areas, facilities or elements. (See part V, chapter 21A.56 of this title.)

"Corner building" means a building, the structure of which rises above the ground within one hundred feet (100') of a block corner on the street face and one hundred feet (100') in depth.

Corner Lot: See definition of Lot, Corner.

Corner Side Yard: See definition of Yard, Corner Side.

"Dance studio" means a use engaged in the instruction of dance.

Daycare: Persons, associations, corporations, institutions or agencies providing on a regular basis care and supervision (regardless of educational emphasis) to children under fourteen (14) years of age, in lieu of care and supervision ordinarily provided by parents in their own homes, with or without charge, are engaged in providing child "daycare" for purposes of this title. Such providers and their facilities shall be classified as defined herein and shall be subject to the applicable provisions of title 5, chapters 9.08 through 9.20, 9.28 through 9.40, and 14.36 of this code, this title, and applicable state law.

Daycare Center, Adult: "Adult daycare center" means a nonmedical facility for the daytime care of adults who, due to advanced age, handicap or impairment, require assistance and/or supervision during the day by staff.

Daycare Center, Child: "Child daycare center" means an establishment providing care and maintenance to seven (7) or more children at any one time of any age separated from their parents or guardians.

Daycare, Nonregistered Home: "Nonregistered home daycare" means a person who uses his/her principal place of residence to provide daycare for no more than two (2) children.

Daycare, Registered Home Daycare Or Preschool: "Registered home daycare or preschool daycare" means the use of a principal place of residence to provide educational or daycare opportunities for children under age seven (7) in small groups. The group size at any given time shall not exceed eight (8), including the provider's own children under age seven (7).

"Decibel" means a logarithmic and dimensionless unit of measure of ten (10) used to describe the amplitude of sound. Decibel is denoted as "dB".

"Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into parcels by any person. The following activities or uses shall be taken for the purposes of these regulations to involve "development":

A. The construction of any principal building or structure;

B. Increase in the intensity of use of land, such as an increase in the number of dwelling units or an increase in nonresidential use intensity that requires additional parking;

C. Alteration of a shore or bank of a pond, river, stream, lake or other waterway;

D. Commencement of drilling (except to obtain soil samples), the driving of piles, or excavation on a parcel of land;

E. Demolition of a structure;

F. Clearing of land as an adjunct of construction, including clearing or removal of vegetation and including any significant disturbance of vegetation or soil manipulation; and

G. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

The following operations or uses shall not be taken for the purpose of these regulations to involve "development":

A. Work by a highway or road agency or railroad company for the maintenance of a road or railroad track, if the work is carried out on land within the boundaries of the right of way;

B. Utility installations as stated in subsection 21A.02.050B of this title;

C. Landscaping for residential uses; and

D. Work involving the maintenance of existing landscaped areas and existing rights of way such as setbacks and other planting areas.

"Development pattern": The development pattern standard applies to principal building height and wall height, attached garage placement and width, detached garage placement, height, wall height, and footprint size. A development pattern shall be established when three (3) or more existing structures are identified to establish the pattern, or in the case that three (3) structures constitutes more than fifty percent (50%) of the structures on the

block face fifty percent (50%) of the structures shall establish a pattern.

Disabled: See definition of Persons with disabilities.

"Drive-through window" means a facility which accommodates patrons' automobiles and from which the occupants of the automobiles may make purchases or transact business.

"Dwelling" means a building or portion thereof, which is designated for residential purposes of a family for occupancy on a monthly basis and which is a self-contained unit with kitchen and bathroom facilities. The term "dwelling" excludes living space within hotels, bed and breakfast establishments, apartment hotels, boarding houses and lodging houses.

Dwelling, Manufactured Home: "Manufactured home dwelling" means a dwelling transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation. A manufactured home dwelling shall be connected to all utilities required for permanent dwellings and shall be certified under the national manufactured housing construction and safety standards act of 1974. A manufactured home dwelling is a type of manufactured home that is considered a single-family dwelling for the purposes of this title. (See definition of Mobile Home.) A modular home is a type of manufactured home that is a dwelling transported in one or more sections that is fixed to a permanent site built foundation and connected to all utilities required for a permanent dwelling. The dwelling shall have a minimum roof pitch of three to twelve (3:12) and the nongable roof ends shall have a minimum overhang of twelve inches (12"). The dwelling shall also meet all uniform building code regulations and have a minimum width of twenty feet (20'). A "modular home dwelling" is a type of manufactured home that is considered a single-family dwelling for the purposes of this title.

Dwelling, Modular Home: See definition of Dwelling, Manufactured Home.

Dwelling, Multi-Family: "Multi-family dwelling" means a building containing three (3) or more dwellings on a single lot. For purposes of determining whether a lot is in multiple-family dwelling use, the following considerations shall apply:

A. Multiple-family dwelling uses may involve dwelling units intended to be rented and maintained under central ownership or management, or cooperative apartments, condominiums and the like.

B. Any multiple-family dwelling in which dwelling units are available for rental or lease for periods of less than one month shall be considered a hotel/ motel.

Dwelling, Single-Family: "Single-family dwelling" means a detached building containing only one dwelling unit surrounded by yards that is built on site or is a modular home dwelling that resembles site built dwellings. Mobile homes, travel trailers, housing mounted on self-propelled or drawn vehicles, tents, or other forms of temporary housing or portable housing are not included in this definition. All living areas of a single-family dwelling shall be accessible and occupied by the entire family.

Dwelling, Single-Family Attached: "Single-family attached dwelling" means a dwelling unit that is attached via a common party side wall to at least one other such dwelling and where at least three (3) such dwellings are connected together.

Dwelling, Single-Room Occupancy: "Single-room occupancy dwelling" means a residential dwelling facility containing individual, self-contained, dwelling units none of which may exceed five hundred (500) square feet in size.

Dwelling, Twin Home: "Twin home dwelling" means a building containing one dwelling separated from one other dwelling by a vertical party wall. Such a dwelling shall be located on its own individual lot.

Dwelling, Two-Family. "Two-family dwelling" means a detached building containing two (2) dwelling units on a single lot.

Dwelling Unit: See definition of Dwelling.

Electric Generation Facility, Public/Private: "Public/private electric generation facility" means an electric generating facility that uses natural gas, coal, solar energy, steam, wind or other means to produce electricity for exclusive delivery to the local or regional high voltage electric transmission grid.

"Electronic repair shop" means a use engaged in the consumer repair services of household electronic items and appliances.

"Elevation area" means the area or portion thereof (in square feet) of an architectural elevation of one side of a building.

Elevation Area, First Floor: "First floor elevation area" means the elevation area or portion thereof (in square feet) of the first or ground floor (story) of one side of a building.

"Emergency medical service facility" means a facility or licensed healthcare provider providing emergency medical or dental or similar examination, diagnosis, treatment and care on an outpatient basis only. An emergency medical service facility shall not provide twenty four (24) hour service unless it meets all zoning requirements applicable to hospitals.

"Equipment rental" means a type of use involving the rental of equipment, excluding heavy construction vehicles and equipment, in which all operations are contained within fully enclosed buildings.

Equipment Rental, Heavy: "Heavy equipment rental" means a type of use involving the rental of equipment, including heavy construction vehicles and equipment, in which all operations are not contained within fully enclosed buildings.

"Evergreen" means a plant having foliage that remains on the plant throughout the year.

"Excess dwelling units" means a number of residential dwelling units in a structure in excess of the number of dwelling units that have been approved either under applicable zoning codes or issued building permits.

"Existing/established subdivision" means any subdivision for which a plat has been approved by the city and recorded prior to the effective date hereof.

"Explosive manufacturing" means a use engaged in making explosive devices, but excluding explosive materials wholesale distributors.

"Extractive industry" means an establishment engaged in the on site extraction of surface or sub-surface mineral products or natural resources. Typical extractive industries are quarries, barrow pits, sand and gravel operations, oil and gas extraction, and mining operations.

"Family" means:

A. One or more persons related by blood, marriage, adoption, or legal guardianship, including foster children, living together as a single housekeeping unit in a dwelling unit; or

B. A group of not more than three (3) persons not related by blood, marriage, adoption, or legal guardianship living together as a single housekeeping unit in a dwelling unit; or

C. Two (2) unrelated persons and their children living together as a single housekeeping unit in a dwelling unit.

The term "family" shall not be construed to mean a club, group home, transitional victim home, substance abuse home, transitional home, a lodge or a fraternity/sorority house.

"Farmers' market" means an establishment for the sale of fresh produce and related food items, which may have outdoor storage and sales. A farmers' market may provide space for one or more vendors.

"Fee schedule" means a schedule of fees in connection with applications for a zoning amendment, a special exception, a conditional use, a zoning certificate, a certificate of occupancy, sign certificate, or any other type of approval required by the provisions of this title which is established by the city council and revised from time to time upon recommendation by the zoning administrator. The fee schedule is available from the zoning administrator.

"Fence" means a structure erected to provide privacy or security which defines a private space and may enhance the design of individual sites. A wall or similar barrier shall be deemed a fence.

"Fence, opaque or solid" means an artificially constructed solid or opaque barrier that blocks the transmission of at least ninety five percent (95%) of light and visibility through the fence, and is erected to screen areas from public streets and abutting properties.

"Fence, open" means an artificially constructed barrier that blocks the transmission of a maximum of fifty percent (50%) of light and visibility through the fence, and is erected to separate private property from public rights of way and abutting properties.

"Financial institution" means a building, property or activity, the principal use or purpose of which is the provision of financial services, including, but not limited to, banks, facilities for automated teller machines (ATMs), credit unions, savings and loan institutions, stock brokerages and mortgage companies. "Financial institution" shall not include any use or

other type of institution which is otherwise listed in the table of permitted and conditional uses for each category of zoning district or districts under this title.

"Fixed dimensional standards" means numerical maximum or minimum conditions which govern the development on a site.

"Flag lot" means a lot of irregular configuration in which an access strip (a strip of land of a width less than the required lot width) connects the main body of the lot to the street frontage. (See illustration in section 21A.62.050 of this chapter.)

"Flammable liquids or gases, heating fuel distribution" means a type of wholesale distributor engaged in supplying flammable liquids, gases and/or heating fuel. This use does not include the accessory storage of such substances on site.

Flea Market (Indoor): "Indoor flea market" means a building devoted to the indoor sales of new and used merchandise by independent vendors with individual stalls, tables, or other spaces.

Flea Market (Outdoor): "Outdoor flea market" means an outdoor area devoted to the periodic outdoor sales of new and used merchandise by independent vendors with individual stalls, tables, or other spaces.

Floor: See definition of Story (floor).

Floor Area, Gross: "Gross floor area" (for determining floor area ratio and size of establishment) means the sum of the gross horizontal area of all floors of the building measured from the exterior face of the exterior walls or from the centerline of walls separating two (2) buildings. The floor area of a building shall include basement floor area, penthouses, attic space having headroom of seven feet (7') or more, interior balconies and mezzanines, enclosed porches, and floor area devoted to accessory uses. The floor area of covered accessory buildings, including parking structures, shall be included in the calculation of floor area ratio. Space devoted to open air off street parking or loading shall not be included in floor area.

The floor area of structures devoted to bulk storage of materials including, but not limited to, grain elevators and petroleum storage tanks, shall be determined on the basis of height in feet (i.e., 10 feet in height shall equal one floor).

"Floor area ratio" means the number obtained by dividing the gross floor area of a building or other structure by the area of the lot on which the building or structure is located. When more than one building or structure is located on a lot, the floor area ratio is determined by dividing the total floor area of all the buildings or structures by the area of the site.

Floor Area, Usable: "Usable floor area" (for determining off street parking and loading requirements) means the sum of the gross horizontal areas of all floors of the building, as measured from the outside of the exterior walls, devoted to the principal use, including accessory storage areas located within selling or working space such as counters, racks, or closets, and any floor area devoted to retailing activities, to the production or processing of goods or to business or professional offices.

Floor area for the purposes of measurement for off street parking spaces shall not include:

A. Floor area devoted primarily to mechanical equipment or unfinished storage areas;

B. Floor area devoted to off street parking or loading facilities, including aisles, ramps, and maneuvering space.

"Fraternity/sorority house" means a building which is occupied only by a group of university or college students who are associated together in a fraternity/sorority that is officially recognized by the university or college and who receive from the fraternity/sorority lodging and/or meals on the premises for compensation.

Front Yard: See definition of Yard, Front.

"Funeral home" means an establishment where the dead are prepared for burial or cremation and where wakes and funerals may be held.

"Garage" means a building, or portion thereof, used to store or keep a motor vehicle.

Garage, Attached: "Attached garage" means an accessory building which has a roof or wall of which fifty percent (50%) or more is attached and in common with a dwelling. Where the accessory building is attached to a dwelling in this manner, it shall be considered part of the dwelling and shall be subject to all yard requirements of the main building.

"Gas station" means a building and premises where gasoline must be sold, and where oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail, and where, in addition, the following services may be rendered and sales made:

A. Sale and servicing of spark plugs, batteries, and distributors and distributor parts;

B. Tire servicing and repair, but not recapping or regrooving;

C. Replacement or adjustment of mufflers and tailpipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like;

D. Radiator cleaning and flushing; provision of water, antifreeze and the like;

E. Greasing and lubrication;

F. Providing and repairing fuel pumps, oil pumps and lines;

G. Servicing and repair of carburetors;

H. Electrical repairs;

I. Adjusting and repairing brakes;

J. Minor motor adjustments not involving removal of the head or crankcase; and

K. Sale of beverages, packaged foods, tobacco, and similar convenience goods.

Uses permissible at a gas station do not include major mechanical and body work, straightening of frames or body parts, steam cleaning, painting, welding, storage of automobiles not in operating condition, or any activity involving noise, glare, fumes, smoke or other characteristics to an extent greater than normally found in gas stations.

"General plan" means the comprehensive plan for Salt Lake City adopted by the city council.

"Government uses" means state or federal government operations providing services from specialized facilities, such as the highway department maintenance/construction, state police and federal bureau of investigation, etc. State or federal operations providing services from nonspecialized facilities shall be considered office uses.

Grade, Established: "Established grade" means the natural topographic grade of undisturbed areas on a site or the grade that exists after approved subdivision site development activity has been completed prior to approval for building permit construction activity.

Grade, Finished: "Finished grade" means the finished grade of a site after reconfiguring grades according to an approved regrading plan related to the initial building permit activity on a site.

Gross Floor Area: See definition of Floor Area, Gross.

"Groundcover" means any perennial evergreen plant material species that generally does not exceed twelve inches (12") in height and covers one hundred percent (100%) of the ground all year.

Group Home, Large: "Large group home" means a residential facility set up as a single housekeeping unit and shared by seven (7) or more unrelated persons, exclusive of staff, who require assistance and supervision. A large group home is licensed by the state of Utah and provides counseling, therapy and specialized treatment, along with habilitation or rehabilitation services for physically or mentally disabled persons. A large group home shall not include persons who are diagnosed with a substance abuse problem or who are staying in the home as a result of criminal offenses.

Group Home, Small: "Small group home" means a residential facility set up as a single housekeeping unit and shared by up to six (6) unrelated persons, exclusive of staff, who require assistance and supervision. A small group home is licensed by the state of Utah and provides counseling, therapy and specialized treatment, along with habilitation or rehabilitation services for physically or mentally disabled persons. A small group home shall not include persons who are diagnosed with a substance abuse problem or who are staying in the home as a result of criminal offenses.

"Guest" means any person hiring or occupying a room for living or sleeping purposes.

"Halfway home" means a facility, licensed or contracted by the state of Utah to provide for the supervision, counseling, training or treatment of residents to facilitate their transition

from a correctional institutional environment to independent living.

"Hard surfaced" means a concrete, asphalt surface, brick, stone or turf block.

"Health and fitness facility" means a business or membership organization providing exercise facilities and/or nonmedical personal services to patrons, including, but not limited to, gymnasiums (except facilities owned by a governmental entity), private clubs (athletic, health, or recreational), reducing salons, tanning salons, and weight control establishments.

"Health hazard" means a classification of a chemical for which there is statistically significant evidence based on a generally accepted study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed persons. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes.

"Heliport" means a facility or structure that is intended or used for the landing and takeoff of rotary-wing aircraft, but not including the regular repair or maintenance of such aircraft or the sale of goods or materials to users of such aircraft.

"Historic buildings or sites" means those buildings or sites listed on the national register of historic places.

"Historic Landmark Commission" means the historic landmark commission of Salt Lake City, Utah. (See section 21A.06.050 of this title.)

Historic Site: See definition of Landmark site.

"Home occupation" means a business, profession, occupation, or trade conducted for gain or support and located and conducted within a dwelling unit, which use is accessory, incidental and secondary to the use of the building for dwelling purposes and does not change the essential residential character of appearance of such building and subject to the regulations set forth in section 21A.36.030 of this title.

"Homeless shelter" means a building or portion thereof in which sleeping accommodations are provided on an emergency basis for the temporarily homeless.

"Hospital" means an institution licensed by the state of Utah specializing in giving clinical, temporary, or emergency services of a medical or surgical nature to human patients.

"Hotel/motel room" means a room or combination of rooms (suite) offered as a single unit for lodging on a daily or weekly basis.

"House museum" means a dwelling unit which is converted from its original principal use as a dwelling unit to a staffed institution dedicated to educational, aesthetic or historic purposes. Such museum should include a staff who commands an appropriate body of special knowledge necessary to convey the historical, aesthetic or architectural attributes of the building and its collections to the general public. Such staff should also have the ability to reach museological decisions consonant with the experience of his or her peers and

have access to and acquaintance with the literature of the field. Such museum should maintain either regular hours or be available for appointed visits such that access is reasonably convenient to the public.

"Impact statement" means a statement containing an analysis of a project's potential impact on the environment, traffic, aesthetics, schools, and/or municipal costs and revenues, as well as comments on how the development fits into the general plan of Salt Lake City.

Incinerator, Medical Waste/Hazardous Waste: "Medical waste/hazardous waste incinerator" means a device using heat, for the reduction of medical/ hazardous waste materials, as defined by the state of Utah division of solid and hazardous waste.

"Industrial assembly use" means an industrial use engaged in the fabrication of finished or partially finished products from component parts produced off-site. Assembly use shall not entail metal stamping, food processing, chemical processing or painting other than painting that is accessory to the assembly use.

"Infill" means new development that occurs within an already developed area where building patterns and lot platting are already established.

"Institution" means an organization or establishment providing religious, educational, charitable, medical, cultural or governmental services.

Interior Side Yard: See definition of Yard, Interior Side.

"Intermodal transit passenger hub" means a publicly owned and operated central transit passenger transfer facility servicing rail, bus, shuttle, limousine, taxis, bicyclists and pedestrians and may include, but is not limited to, the following complementary land uses such as offices, restaurants, retail sales and services, bus line terminals, bus line yards and repair facilities, limousine service and taxicab facilities.

"Interpretation" means an administrative decision regarding the general provisions of this title to specific cases. Interpretations shall not include administrative decisions that will effect a permitted use, conditional use or nonconforming use.

Interpretation, Use: "Use interpretation" means an administrative decision of this title related to specific cases which affect permitted use or conditional use provisions within a specific district and affect nonconforming uses.

"Jail" means a place for lawful confinement of persons. For the purpose of this title, a jail shall not include halfway homes and mental hospitals.

"Jewelry fabrication" means the production of jewelry from component materials, diamond cutting and related activities.

"Kennel, public or private" means the keeping of more than two (2) dogs and/or two (2) cats that are more than six (6) months old. A third dog or cat may be allowed if a pet rescue permit has been approved under section 8.04.130 of this code.

Laboratory, Medical, Dental, Optical: "Medical, dental and optical laboratory" means a

laboratory processing on- or off-site orders limited to medical testing and precision fabrication of dental/optical articles worn by patients.

"Land use" means the conduct of an activity, or the performance of a function or operation, on a site or in a building or facility for the purpose for which the land or building is occupied, or maintained, arranged, designed or intended.

Land Use Type (Similar Land Use Type): "Land use types" shall be considered to be similar land use types if both uses are allowed in the same zoning district or in the same or more restrictive zoning district within the commercial zoning category or in the same or more restrictive district within the manufacturing zoning category and the change from one land use type to another similar land use type does not increase the parking requirement. If the proposed land use type is a conditional use it will be subject to the conditional use process.

"Landfill" means a municipal, commercial or construction debris disposal facility where solid waste is placed in or on the land and which is not a land treatment facility. The term "landfill" does not include facilities where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

Landfill, Commercial: "Commercial landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. A commercial landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

Landfill, Construction Debris: "Construction debris landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste or dead animals, but excluding inert demolition waste used as fill material.

Landfill, End Use Plan: "End use plan landfill" means a plan showing how the site will be reused/ reclaimed upon completion of landfill activities to allow for the productive and compatible reuse of the site.

Landfill, Municipal: "Municipal landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government.

"Landmark site" means a building or site of historic importance designated by the city council.

"Landscape area" means that portion of a lot devoted exclusively to landscaping, except that streets, drives and sidewalks may be located within such area to provide reasonable access.

"Landscape buffer" means an area of natural or planted vegetation adjoining or surrounding a land use and unoccupied in its entirety by any building, structure, paving or portion of such land use, for the purposes of screening and softening the effects of the land use.

"Landscape plan" means the plan for landscaping required pursuant to part IV, chapter 21A.48 of this title.

"Landscape yard" means that portion of a lot required to be maintained in landscape area.

"Landscaping" means the improvement of a lot, parcel or tract of land with grass, shrubs and trees. Landscaping may include pedestrian walks, flower beds, ornamental objects such as fountains, statuary, and other similar natural and artificial objects designed and arranged to produce an aesthetically pleasing effect.

"Lattice tower" means a self-supporting multiple sided, open steel frame structure used to support telecommunications equipment.

"Legal conforming" means a status conferred by a provision of this title which shall be limited to the regulation(s) contained within that provision. Legal conforming status allows the reconstruction of a destroyed use/structure to its level of use intensity and building bulk before destruction.

"Limousine service" means a use that provides personal vehicular transportation for a fee, and operating by appointment only.

"Lodging house" means a residential structure that provides lodging with or without meals, is available for monthly occupancy only, and which makes no provision for cooking in any of the rooms occupied by paying guests.

"Lot" means a piece of land identified on a plat of record or in a deed of record of Salt Lake County and of sufficient area and dimensions to meet district requirements for width, area, use and coverage, and to provide such yards and open space as are required and has been approved as a lot through the subdivision process. A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded; except that no division or combination of any residual lot, portion of lot, or parcel shall be created which does not meet the requirements of this title and the subdivision regulations of the city.

"Lot area" means the total area within the property lines of the lot plus one-half (1/2) the right of way area of an adjacent public alley.

Lot Area, Net: "Net lot area" means the area within the property lines of a lot, excluding any right of way area of an adjacent public alley.

"Lot assemblage" means acquisition of two (2) or more contiguous lots by the same owner (s) that may or may not be consolidated into a single parcel.

Lot, Corner: "Corner lot" means a lot which has two (2) adjacent sides abutting on public streets, serving more than two (2) lots, provided the interior angle at the intersection of such two (2) sides is less than one hundred thirty five degrees (135o).

"Lot depth" means the mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

Lot, Flag: See definition of Flag Lot.

Lot, Interior: "Interior lot" means a lot other than a corner lot.

Lot Line, Corner Side: "Corner side lot line" means any lot line between the front and rear lot lines which abuts a public street.

Lot Line, Front: "Front lot line" means that boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way. On corner lots, the property owner shall declare the front lot line and corner side yard line on a building permit application. In the case of landlocked land, the front lot line shall be the lot line that faces the access to the lot.

Lot Line, Interior Side: "Interior side lot line" means any lot line between the front and rear lot lines which does not abut a public street.

Lot Line, Rear: "Rear lot line" means that boundary of a lot which is most distant from, and is, or is most nearly, parallel to, the front lot line.

Lot, Nonconforming: "Nonconforming lot" means a lot which lawfully existed prior to the effective date hereof, or any amendment thereto, but which fails to conform to the lot regulations of the zoning district in which it is located.

"Lot width" means the horizontal distance between the side lot lines measured at the required front yard setback.

"Lower power radio services facility or wireless telecommunications facility" means an unmanned structure which consists of equipment used primarily for the transmission, reception or transfer of voice or data through radio wave or (wireless) transmissions. Such sites typically require the construction of transmission support structures to which antenna equipment is attached. Low power radio services facilities include "cellular" or "PCS" (personal communications system) communications and paging systems.

"Major streets" means those streets identified as major streets on city map 19372.

Manufactured Home: See definition of Dwelling, Manufactured Home.

Manufacturing, Heavy: "Heavy manufacturing" means the assembly, fabrication, or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of adjacent property in terms of noise, smoke, fumes, odors, glare, or health and safety hazards, or that otherwise do not constitute "light manufacturing". Heavy manufacturing generally includes processing and fabrication of large or bulky products, products made from extracted or raw materials, or products involving flammable or explosive materials and processes which require extensive floor areas or land areas for the fabrication and/or incidental storage of the products. The term "heavy manufacturing" shall include uses such as refineries and chemical manufacturing. The term "heavy manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.

Manufacturing, Light: "Light manufacturing" means the assembly, fabrication or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication or processing takes place or where such processes are housed entirely within a

building. Light manufacturing generally includes processing and fabrication of finished products, predominantly from previously prepared materials, and includes processes which do not require extensive floor areas or land areas. The term "light manufacturing" shall include uses such as electronic equipment production and printing plants. The term "light manufacturing" shall not include any use which is otherwise listed specifically in the table of permitted and conditional uses for the category of zoning district or districts under this title.

"Master plan" means a portion of the long range general plan for Salt Lake City as adopted by the city council.

"Medical/dental office or clinic" means a facility dedicated exclusively to providing medical, dental or similar examination, diagnosis, treatment, care and related healthcare services by licensed healthcare providers and other healthcare professionals practicing medicine as a group on persons on an outpatient basis. No portion of the facility may be used to provide on site inpatient care, overnight care, or twenty four (24) hour operations, unless it is in compliance with all ordinances applicable to hospitals. Laboratory facilities shall be accessory only and shall be utilized for on site care.

"Medical nursing school" means a professional school with facilities for teaching and training individuals for the nursing profession and that awards a degree for individuals who complete the nursing curriculum.

"Microbrewery" means a brewpub which, in addition to retail sale and consumption on site, markets beer wholesale in an amount not to exceed sixty thousand (60,000) barrels (31 gallons) per year. Revenue from food sales must constitute at least fifty percent (50%) of the total business revenues, excluding wholesale and retail carryout sales of beer. (See sections 6.08.081 through 6.08.089 of this code.)

"Mid block area" means an area of development not deemed to be a block corner.

"Miniwarehouse" means a retail service establishment providing off site storage space to residents and businesses, offering convenience storage and limited warehousing services primarily for personal effects and household goods within enclosed structures having individual access, but excluding use as workshops, hobby shops, manufacturing or commercial activity.

"Mobile home" means a transportable, factory built home, designed as a year round residential dwelling and built prior to June 15, 1976, the effective date of the national manufactured housing construction and safety standards act of 1974. The following are not included in the mobile home definition:

A. Travel trailers, motor homes, camping trailers, or other recreational vehicles.

B. Manufactured and modular housing designed to be set on a permanent foundation.

"Motel/hotel" means a building or buildings in which lodging units are offered for persons, for compensation by the day or the week.

"Municipal services" means city or county government operations and governmental authorities providing services from specialized facilities, such as police service,

street/highway department maintenance/construction, fire protection, sewer and water services, etc. City or county operations and governmental authorities providing services from nonspecialized facilities shall be considered office uses.

"Museum" means an institution for the acquisition, preservation, study and exhibition of works of artistic, historical or scientific value and for which any sales relating to such exhibits are incidental and accessory to the exhibits presented.

"New construction" means on site erection, fabrication or installation of any building, structure, facility or addition thereto.

"Noncomplying structure" means buildings and structures that serve complying land uses which were legally established on the effective date of any amendment to this title that makes the structure not comply with the applicable yard area, height and/or bulk regulations of this title.

"Nonconforming lot" means a parcel of land which was legally established on the effective date of any amendment to this title that made the lot noncomplying that has less lot area, frontage or dimensions than required in the district in which it is located.

"Nonconforming use" means any building or land legally occupied by a use at the time of passage of the ordinance codified in this title or amendment thereto which does not conform after passage of said ordinance or amendment thereto with the use regulations of the district in which located.

"Nonconformity" means the presence of any nonconforming use or noncomplying structure.

"Nursing care facility" means a healthcare facility, other than a hospital, constructed, licensed and operated to provide patient living accommodations, twenty four (24) hour staff availability, and at least two (2) of the following patient services: a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological or other professional therapies to intermittent health related or paraprofessional personal care services; b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or c) a supervised living environment that provides support, training or assistance with individual activities of daily living.

"Obstruction" means a structure or appurtenance to a building that is located or projects into a required yard. Allowed obstructions are listed in section 21A.36.020 of this title.

"Off site" means a lot that is separate from the principal use.

"Off street parking" means parking provided on private or public property, excluding public rights of way.

"Office use" means a type of business use, which may or may not offer services to the public, that is engaged in the processing, manipulation or application of business information or professional expertise. An office use is not materially involved in fabricating, assembling or warehousing of physical products for the retail or wholesale market, nor is an

office engaged in the repair of products or retail services. Examples of professional offices include accounting, investment services, architecture, engineering, legal services and real estate services. Unless otherwise specified, office use shall include doctors' and dentists' offices. Office use shall not include any use or other type of establishment which is otherwise specifically listed in the table of permitted and conditional uses for the applicable zoning districts.

"Open space" means any area of a lot which is completely free and unobstructed from any structure or parking areas. Landscaping, walkways, uncovered patio areas, light poles and other ornamental features shall not be considered as obstructions for purposes of this definition. Driveways that provide access to parking lots shall not be considered as an obstruction subject to the driveways not exceeding twenty percent (20%) of any required yard area that they provide access through.

"Outdoor sales and display" means the use of open areas of the lot for sales or display of finished products for sale to the consuming public. Outdoor sales and display shall include accessory sales/ display areas, such as auto accessory items at a gas station, as well as principal sales/display areas, such as the sales yard of garden center. Outdoor sales and display shall not include items sold in bulk quantities (e.g., sand, gravel, lumber), merchandise inventory not intended for immediate sale, or items not typically sold to the consuming public (e.g., pallets, construction equipment and supplies, industrial products).

"Outdoor storage" means the use of open areas of the lot for the storage of items used for nonretail or industrial trade, the storage of merchandise inventory, and the storage of bulk materials such as sand, gravel, and other building materials. Outdoor storage shall also include contractors' yards and salvage or recycling areas.

"Outdoor storage, public" means the use of open areas of the lot for the storage of private personal property including recreational vehicles, automobiles and other personal equipment. This use category does not include or allow the storage of junk as defined in section 21A.40.140 of this title.

"Outdoor television monitor" means an outdoor large screen television monitor that displays material generated and/or produced by an on site television station. The material displayed shall be the television station's primary broadcast feed or rebroadcast news, sports and/or public affairs broadcasts, and shall not be in conflict with the federal communication commission's (FCC) community standards that apply to broadcasts from the television station between the hours of six o'clock (6:00) A.M. and twelve o'clock (12:00) midnight (regardless of the time of day that such material is displayed on the outdoor television monitor). The material displayed must be the television station's primary broadcast feed or rebroadcast news, sports and/or public affairs broadcasts to the general public (except between the hours of 12:00 midnight and 6:00 A.M. where daytime programming, consistent with community standards, may be substituted). Outdoor television monitors may not be illuminated to a brightness that causes undue glare or interference with adjacent properties. Sound emanating from the outdoor television monitor may not exceed Salt Lake City or County health standards.

"Overlay district" means a zoning district pertaining to particular geographic features or land uses imposing supplemental requirements and standards in addition to those provided in the base or underlying zoning district. Boundaries of overlay districts are shown on the

zoning map or on special maps referenced in the text.

"Parcel" means a continuous area of real property, or lot, which is legally described and accurately drawn on the plat of such property and recorded with Salt Lake County. See definition of Lot.

"Park and ride lot" means the use of a lot for parking as an adjunct to mass transit.

Park, Public: "Public park" means a park, playground, swimming pool, golf course or athletic field within the city which is under operation or management of the city's park department.

"Park strip" means the landscape area within a public way located between the back of street curb and the sidewalk, or in the absence of a sidewalk, the right of way line.

"Park strip landscaping" means the improvement of property within the street right of way situated between the back of curb and the sidewalk or, if there is no sidewalk, the back of curb and the right of way line, through the addition of plants and other organic and inorganic materials harmoniously combined to produce an effect appropriate for adjacent uses and compatible with the neighborhood. Park strip landscaping includes trees and may also include a combination of lawn, other perennial groundcover, flowering annuals and perennials, specimen shrubs, and inorganic material.

Parking Facility, Shared: "Shared parking facility" means a parking lot or garage used for shared parking by two (2) or more businesses or uses.

Parking Garage, Commercial: "Commercial parking garage" means a structure used for parking or storage of automobiles, generally available to the public, and involving payment of a charge for such parking or storage. A garage used solely in conjunction with multiple-family housing or a hotel shall not be construed to be a commercial garage, but rather a permitted accessory structure and use, even though not on the same premises as the multiple-family housing or motel/hotel.

Parking, Intensified Reuse: "Intensified reuse parking" means the change of the use of a building or structure, the past or present use of which may or may not be legally nonconforming as to parking, to a use which would require a greater number of parking stalls available on site which would otherwise be required pursuant to table 21A.44.060F of this title. Intensified parking reuse shall not include residential uses in residential zoning districts other than single room occupancy residential uses and unique residential populations.

Parking, LeasedAlternative Parking: "Leased parkingalternative parking" means the lease, for a period of not less than five (5) years, of parking spaces not required for any other use and located within five hundred feet (500') measured between a public entrance to the alternative parking property place of pedestrian egress from the leased parking along the shortest public pedestrian or vehicle way, except that in the downtown D-1 district the distance to the leased parking may be up to one thousand two hundred feet (1,200') measured between a public entrance to the alternative parking property and a place of pedestrian egress from the leased parking along the shortest public pedestrian or vehicle way.

"Parking lot" means a paved, open area on a lot used for the parking of more than four (4) automobiles whether free, for compensation, or as an accommodation for clients and customers.

Parking, Off Site: "Off site parking" means the use of a lot for required parking that is separate from the lot of the principal use.

Parking, Off SiteAlternative Parking: "Off site parkingalternative parking" means parking under the same ownership as the alternative parking property located within five hundred feet (500') of the alternative parking property, or within the one thousand two hundred feet (1,200') in a downtown D-1 district, measured between a public entrance to the alternative parking property and a place of pedestrian egress from the off site parking along the shortest public pedestrian or vehicle way, and which parking is not required or dedicated for another use.

Parking, Shared: "Shared parking" means off street parking facilities on one lot shared by multiple uses because the total demand for parking spaces is reduced due to the differences in parking demand for each use during specific periods of the day.

"Parking space" means space within a parking area of certain dimensions as defined in part IV, chapter 21A.44 of this title, exclusive of access drives, aisles, ramps, columns, for the storage of one passenger automobile or commercial vehicle under two (2) ton capacity.

Parking StudyAlternative Parking: "Parking studyalternative parking" means a study prepared by a licensed professional traffic engineer specifically addressing the parking demand generated by a use for which an alternative parking requirement is sought and which provides the city information necessary to determine whether the requested alternative parking requirement will have a material negative impact to adjacent or neighboring properties and be in the best interests of the city.

"Patio" means a paved surface on an earthen/ stone base that is not more than two feet (2') above established grade, designed for pedestrian use.

"Pawnshop" means a commercial establishment which lends money at interest in exchange for valuable personal property left with it as security.

"Pedestrian connection" means a right of way intended for pedestrian movement/activity, including, but not limited to, sidewalks, internal walkways, external and internal arcades, and plazas.

"Perennial" means a plant having a life span more than two (2) years.

"Performance standards" means standards which establish certain criteria which must be met on a site, but allow flexibility as to how those criteria can be met.

"Performing arts production facility" means a mixed use facility housing the elements needed to support a performing arts organization. Such facility should include space for the design and construction of stage components; costume and prop design and construction, administrative support, rehearsal space, storage space, and other functions associated either with an on site or off site live performance theater.

"Person" means a firm, association, authority, organization, partnership, company or corporation as well as an individual.

"Persons with disabilities" means the city adopts the definition of "disabled" from the Americans with disabilities act, the rehabilitation act, title 8 of the civil rights act and all other applicable federal and state laws.

"Pet cemetery" means a place designated for the burial of a dead animal where burial rights are sold.

"Philanthropic use" means an office or meeting hall used exclusively by a nonprofit public service organization.

"Place of worship" means a church, synagogue, temple, mosque or other place of religious worship, including any accessory use or structure used for religious worship.

"Planned development" means a lot or contiguous lots of a size sufficient to create its own character where there are multiple principal buildings on a single lot, where not otherwise authorized by this title, or where not all of the principal buildings have frontage on a public street. A planned development is controlled by a single landowner or by a group of landowners in common agreement as to control, to be developed as a single entity, the character of which is compatible with adjacent parcels and the intent of the zoning district or districts in which it is located.

"Planning commission" means the planning commission of Salt Lake City, Utah.

"Planning official" means the director of the planning division of the department of community development, or his/her designee.

"Planting season" means that period during which a particular species of vegetation may be planted for maximum survivability and healthy growth.

"Plaza" means an open area which is available to the public for walking, seating and eating.

"Precision instrument repair shop" means a shop that provides repair services for industrial, commercial, research, and similar establishments. Precision instrument repair does not include consumer repair services for individuals and households for items such as watches or jewelry, household appliances, musical instruments, cameras, and household electronic equipment.

Prepared Food, Take Out: "Take out prepared food" means a retail sales establishment which prepares food for consumption off site only.

"Printing plant" means a commercial establishment which contracts with persons for the printing and binding of written works. The term "printing plant" shall not include a publishing company or a retail copy or reproduction shop.

"Private recreational facility" means a golf course, swimming pool, tennis club or other recreational facility under private control, operation or management which functions as the principal use of the property.

"Public/private utility buildings and structures" means buildings or structures used in conjunction with the provision of public or private utilities.

Public Transportation, Employer Sponsored: "Employer sponsored public transportation" means a program offering free or substantially discounted passes on the Utah transit authority to employees.

"Publishing company" means a company whose business is the editing and publishing of works of authors. The term "publishing company" shall not include a printing plant, unless it is only accessory to the publishing business.

"Railroad freight terminal facility" means a major railroad track yard area for primary use by railroad employees for regional scale interstate mainline oriented intermodal freight transfers of: a) multimodal (sea, rail, truck transport) self-contained cargo containers from train to train, train to semitruck trailer, and semitruck trailer to train loading; and b) for new motor vehicle train transports to semitruck trailer transports for regional distribution purposes. No breakdown of self-contained cargo containers occurs at intermodal railroad freight terminal facilities.

Rear Yard: See definition of Yard, Rear.

"Reception center" means a facility which leases the premises for hosting weddings and other private events. The term "reception center" shall not include uses whose primary function is a restaurant or banquet hall.

"Record of survey map" means the map as defined in section 57-8-3(18), Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Recreation vehicle park" means a business that provides space for living in a recreational vehicle, (camper, travel trailer or motor home), on a daily or weekly basis. A recreational vehicle park may include accessory uses such as a convenience store, gasoline pumps and recreation amenities, such as swimming pools, tennis courts, etc., for the convenience of persons living in the park.

"Recycling collection station" means a use, often accessory in nature, providing designated containers for the collection, sorting and temporary storage of recoverable resources (such as paper, glass, metal and plastic products) until they are transported to separate processing facilities.

"Recycling container" means an enclosed or semienclosed container used for the temporary storage of recyclable materials until such materials can be efficiently collected and processed.

"Recycling processing center" means a facility to temporarily store, sort, recycle, process, compost or treat materials (such as paper, glass, metal and plastic products) to return them to a condition in which they can be reused for production or transported to another approved site for permanent storage, landfilling or further processing. Recycling processing center does not include automobile salvage and recycling.

"Relocatable office building" means a portable structure built temporarily on a chassis or

skids, and designed to be used with or without a permanent foundation for use or occupancy for any commercial or industrial purpose when connected to water, power or utility hookups. (See subsection 21A.42.070I of this title.)

"Resident healthcare facility" means a facility licensed by the state of Utah which provides protected living arrangements for two (2) or more persons who because of minor disabilities cannot, or choose not to, remain alone in their own home. The facility may serve the elderly, persons with minor mental or physical disabilities, or any other persons who are ambulatory or mobile and do not require continuous nursing care or services provided by another category of licensed health facility. The resident healthcare facility shall be considered the resident's principal place of residence.

"Residential districts" means those districts listed in subsection 21A.22.010A of this title.

Residential Structure: The term "residential structure" for the purposes of the RB zoning district means a structure that has maintained the original residential exterior without significant structural modifications. (False facades are not considered a significant structural modification.)

Residential Substance Abuse Treatment Home, Large: "Large residential substance abuse treatment home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and may include a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. A large residential substance abuse treatment home provides supervision, counseling and therapy through a temporary living arrangement and provides specialized treatment, habilitation or rehabilitation services for persons with alcohol, narcotic drug or chemical dependencies.

Residential Substance Abuse Treatment Home, Small: "Small residential substance abuse treatment home" means a residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and may include a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. A small residential substance abuse treatment home provides supervision, counseling and therapy through a temporary living arrangement and provides specialized treatment, habilitation or rehabilitation services for persons with alcohol, narcotic drug or chemical dependencies.

"Restaurant" means a building within which there is served a variety of hot food for consumption on the premises and where more than sixty percent (60%) of the gross volume is derived from the sale of foods served for consumption on the premises.

"Retail goods establishment" means a building, property or activity, the principal use or purpose of which is the sale of physical goods, products or merchandise directly to the consumer. Retail goods establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for the category of zoning district or districts.

"Retail services establishment" means a building, property or activity, the principal use or

purpose of which is the provision of personal services directly to the consumer. The term "retail services establishment" shall include, but shall not be limited to, barbershops, beauty parlors, laundry and dry cleaning establishments (plant off premises), tailoring shops, shoe repair shops and the like. Retail services establishment shall not include any use or other type of establishment which is otherwise listed specifically in the table of permitted and conditional uses found at the end of each chapter of part III of this title for each category of zoning district or districts.

"Retaining wall" means a wall designed to resist the lateral displacement of soil or other materials.

"Reverse vending machine" means a machine designed to pay cash to customers in exchange for the deposit of used beverage cans and/or bottles for recycling.

"Rooming house" means a building or group of attached or detached buildings containing in combination at least three (3) lodging units for occupancy on at least a monthly basis, with or without board, as distinguished from hotels and motels in which rentals are generally for daily or weekly periods and occupancy is by transients.

"Sanitarium" means a health facility or institution for the inpatient treatment and recuperation of persons suffering from physical or mental disorders, providing qualified medical, professional and nursing staff. A sanitarium shall not include facilities for the criminally insane.

Schools, Professional And Vocational: "Professional and vocational school" means schools offering occupational and vocational training, the courses of which are not generally transferable toward a bachelor's degree.

Schools, Public Or Private: "Public or private school" means an institution of learning or instruction primarily catering to minors, whether public or private, which is licensed at such facility by either the city or the state of Utah. The definition includes nursery schools, kindergarten, elementary schools, junior high schools, middle high schools, senior high schools or any special institution of learning under the jurisdiction of the state department of education, but not including professional and vocational schools, charm schools, dancing schools, music schools or similar limited schools nor public or private universities or colleges.

"Seasonal item sales" means items that are identified with individual holidays or celebrations relating to the four (4) seasons: spring, summer, autumn or winter (such as a winter festival or harvest festival). Such items include, but are not limited to, Valentine's Day or Easter items, Halloween pumpkin, or Christmas tree sales. Independence Day and Pioneer Day fireworks are governed independently in this code. Prepared food is not a seasonal item, however fresh farm produce, sold within the intermountain region harvest season, is allowed. Food pertaining to farmers' markets and farm sales are regulated separately.

Setback: See definition of Yard.

"Sewage treatment plant" means a licensed facility that purifies sanitary sewer effluent to a minimum level as established by state and/or federal environmental protection agencies.

"Sexually oriented business" means any business for which a sexually oriented business license is required as an adult business, nude entertainment business, or as a seminude dancing bar, pursuant to the sexually oriented business licensing requirements in chapter 5.61 of this code. (See section 21A.36.140 of this title.)

"Shopping center" means a concentration of related commercial establishments with one or more major anchor tenants, shared parking, and unified architectural and site design. A shopping center normally has single or coordinated ownership/ operations/management control and may include pad site as well as architecturally connected units.

"Shopping center pad site" means a separate parcel of land designated in the shopping center plan as a building site. The pad site may not be owned by the shopping center owner.

Side Yard: See definition of Yard, Side.

"Sight distance triangle" means a triangular area formed by a diagonal line connecting two (2) points located on intersecting right of way lines (or a right of way line and the edge of a driveway). For both residential driveways and nonresidential driveways, the points shall be determined through the site plan review process by the development review team. The purpose of the sight distance triangle is to define an area in which vision obstructions are prohibited. (See illustration in section 21A.62.050 of this chapter.)

Single-Family Dwelling: See definition of Dwelling, Single-Family.

"Site development permit" means a permit for earth work or site preparation required pursuant to chapter 18.28 of this code.

"Site plan" means an accurately scaled plan that illustrates the existing conditions on a land parcel and the details of a proposed development.

"Sketch plan review" means a preliminary review process administered by the development review administrator or designee for the purpose of determining the required standard for front or corner side yard; building height and wall height, width and placement of attached garages; and the location, building height and footprint of accessory structures prior to the formal submittal of plans to obtain a building permit.

"Sludge" means any solid, semisolid or liquid waste, including grit and screenings generated from a municipal, commercial or industrial wastewater treatment plant or water supply treatment plant or air pollution control facility or any other such use having similar characteristics.

"Snow cone and shaved ice hut" means a temporary building designed to accommodate the sales of flavored ice only.

"Social service mission" means an establishment that provides social services other than on site housing facilities.

"Solid waste transfer station" means a facility used to combine and compact loads of solid waste into larger units of waste, which are then loaded onto trucks for delivery to landfill

sites.

"Special purpose districts" means zoning districts which require regulations that address special types of land uses, such as the airport or institutional uses.

"Spot zoning" means the process of singling out a small parcel of land for a use classification materially different and inconsistent with the surrounding area and the adopted city master plan, for the sole benefit of the owner of that property and to the detriment of the rights of other property owners.

"Stable, private" means a detached building for the keeping of horses owned by the occupants of the premises and not kept for remuneration, hire or sale.

"Stable, public" means a building or land where animals are kept for remuneration, hire, sale, boarding, riding or show.

"Store, conventional department" means a retail business which offers a broad range of merchandise lines at moderate level price points, consisting of primarily apparel and home goods. No merchandise line predominates and goods are displayed in a departmentalized format. Customer assistance is provided in each department, but checkout facilities can be either departmentalized or centralized. These stores are typically over one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, Kohls, J.C. Penney and Mervyn's, as such stores are typically configured as of January 13, 2004.

"Store, fashion oriented department" means a retail business which offers more specialized lines of merchandise than conventional department stores, with an emphasis on apparel merchandise. The merchandise is displayed in separate departments, with over forty percent (40%) of sales area devoted to the sale of apparel, shoes, cosmetics and accessories related to personal care and appearance. Fashion oriented department stores sell goods which are primarily nationally advertised brands, they may sell appliances which are usually serviced by other companies, and often offer limited lines of merchandise through seasonal or special catalogs. These stores provide checkout service and customer assistance (salespersons) within each department. These stores are typically over one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, Meier & Frank, Bloomingdales, Macy's, Dillards, Marshall Fields, Bon Marche, Broadway, Broadway Southwest, Robinsons/May, as such stores are typically configured as of January 13, 2004.

"Store, mass merchandising" means a retail business selling a variety of merchandise, including apparel and home goods, at generally lower price points. Mass merchandising stores have fast turnover and high volume retailing with centralized checkout stations. Generally, shopping carts are available to customers and there is reduced customer assistance within each department but customer assistance may occur in departments for special promotions or where appropriate for product demonstration, legal compliance or security purposes. These stores typically exceed eighty thousand (80,000) square feet in size. Examples include, but are not limited to, Wal-Mart, K-Mart, Target, Fred Meyer and ShopKo, as such stores are typically configured as of January 13, 2004.

"Store, specialty" means a retail business specializing in a broad range of a single category of goods at competitive prices. The categories usually included are home improvement,

consumer music and electronics, office supply, auto aftermarket, computers, toys, books, home/bed/bath, pet supply, craft/ hobby, or sporting goods. They often have departments, centralized and/or exit checkout stations and operate in various physical formats. These stores typically range from twenty thousand (20,000) to one hundred thousand (100,000) square feet in size. Examples include, but are not limited to, The Home Depot, OfficeMax, Toys 'R' Us, PetsMart, Michaels, Bed, Bath & Beyond, Borders Books, Barnes & Noble, Circuit City, Galyan's, Sports Authority, Pep Boys, and CompUSA, as such stores are typically configured as of January 13, 2004.

"Store, specialty fashion department" means a retail business which specializes in high end merchandise in the categories of apparel, fashion accessories, jewelry, and limited items for the home and housewares. These stores feature exclusive offerings of merchandise, high levels of customer service and amenities, and higher price points. Specialty fashion department stores provide checkout service and customer assistance (salespersons) within each department and often offer specialized customer services such as valet parking, exclusive dressing rooms and personal shoppers. These stores typically range from eighty thousand (80,000) to one hundred thirty thousand (130,000) square feet in size. Examples include, but are not limited to, Lord & Taylor, Neiman Marcus, Nordstrom, Saks Fifth Avenue, as such stores are typically configured as of January 13, 2004.

"Store, superstore and hypermarket" means a retail business primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture, and appliances, sold at discount prices. They have centralized exit checkout stations, and utilize shopping carts for customers. These stores typically range from one hundred twenty thousand (120,000) to one hundred eighty thousand (180,000) square feet in size. Examples include, but are not limited to, Wal-Mart Supercenter, Meijer's, Fred Meyer (with grocery) and Super Target, as such stores are typically configured as of January 13, 2004.

"Store, warehouse club" means a retail business requiring patron membership, and selling packaged and bulk foods and general merchandise. They are characterized by high volume and a restricted line of popular merchandise in a no frills environment. They have centralized exit checkout stations, and utilize shopping carts for customers. These stores typically range from one hundred twenty thousand (120,000) to one hundred fifty thousand (150,000) square feet in size. Examples include, but are not limited to, BJ's Wholesale Club, Costco, and Sam's Club, as such stores are typically configured as of January 13, 2004.

"Story (floor)" means the vertical distance between the finished floor of one level and the finished floor of the level above or below.

Story, Half: "Half story" means the portion of a building which contains habitable living space within the roof structure of a shed, hip or gable roof. The portion of a building which contains habitable living space within the roof structure of a mansard, gambrel or flat roof constitutes one full story, not one-half (1/2) story.

"Street" means a vehicularway which may also serve for all or part of its width as a way for pedestrian traffic, whether called street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, lane, place, alley, mall or otherwise designated.

"Street frontage" means all of the property fronting on one side of the street between intersecting streets, or between a street and a waterway, a dead end street, or a political subdivision boundary, and having unrestricted vehicular and pedestrian access to the street. For the purpose of regulating signs or flags, "street frontage" means an entire lot fronting on a portion of the street.

"Street trees" means trees located in the landscape area within a public way located between the back of the street curb and the sidewalk, or in absence of the sidewalk, the right of way line.

"Structural alteration" means any change in the supporting members of a structure, such as foundations, bearing walls or bearing partitions, columns, beams or girder, or any substantial change in the roof.

"Structure" means anything constructed or erected with a fixed location on the ground or in/over the water bodies in the city. Structure includes, but is not limited to, buildings, fences, walls, signs, and piers and docks, along with any objects permanently attached to the structure.

Structure, Accessory: See definition of Accessory building or structure.

"Subdivision" means any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

TV Antenna: See definition of Antenna, TV.

"Tavern" means any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that includes beer bars, parlors, lounges, cabarets and nightclubs.

"Temporary use" means a use intended for limited duration as defined for each type of temporary use in part IV, chapter 21A.42 of this title.

"Testing laboratory" means a use engaged in determining the physical qualities of construction, medical or manufactured materials. This use does not include research laboratories engaged in scientific experimentation.

Transitional Treatment Home, Large: "Large transitional treatment home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. Such programs provide supervision, counseling and therapy through a temporary living arrangement and provide specialized treatment, habilitation or rehabilitation services for persons with emotional, psychological, developmental, behavioral dysfunctions or impairments. A large transitional treatment home shall not include any persons referred by the Utah state department of corrections.

Transitional Treatment Home, Small: "Small transitional treatment home" means a

residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah, that provides twenty four (24) hour staff supervision and a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. Such programs provide supervision, counseling and therapy through a temporary living arrangement and provide specialized treatment, habilitation or rehabilitation services for persons with emotional, psychological, developmental, behavioral dysfunctions or impairments. A small transitional treatment home shall not include any persons referred by the Utah state department of corrections.

Transitional Victim Home, Large: "Large transitional victim home" means a residential facility for seven (7) or more unrelated persons, exclusive of staff, and licensed by the state of Utah as a residential support facility. A large transitional victim home provides twenty four (24) hour care and peer support to help victims of abuse or crime. A large transitional victim home arranges for or provides the necessities of life and protective services to individuals or families who are experiencing a temporary dislocation or emergency which prevents them from providing these services for themselves or for their families. Treatment is not a necessary component of residential support services, however, care shall be made available on request.

Transitional Victim Home, Small: "Small transitional victim home" means a residential facility for up to six (6) unrelated persons, exclusive of staff, and licensed by the state of Utah as a residential support facility. A small transitional victim home provides twenty four (24) hour care and peer support to help victims of abuse or crime. A small transitional victim home arranges for or provides the necessities of life and protective services to individuals or families who are experiencing a temporary dislocation or emergency which prevents them from providing these services for themselves or for their families. Treatment is not a necessary component of residential support services, however, care shall be made available on request.

"Trellis" means a frame of latticework designed to support plants.

Truck Repair, Large: "Large truck repair" means a use engaged in the repair of trucks that are in excess of one ton in size.

Two-Family Dwelling: See definition of Dwelling, Two-Family.

"Undevelopable area" means the portion of a lot that is unusable for or not adaptable to the normal uses made of the property, which may include areas covered by water, areas that are excessively steep, included in certain types of easements, or otherwise not suitable for development, including areas designated on a plat as undevelopable.

"Unique residential population" means occupants of a residential facility who are unlikely to drive automobiles requiring parking spaces for reasons such as age, or physical or mental disabilities.

"Unit" means the physical elements or space or time period of a condominium project which are to be owned or used separately, and excludes common areas and facilities as defined in section 57-8-3, Utah Code Annotated, 1953, as amended, or its successor. (See part V, chapter 21A.56 of this title.)

"Unit legalizationdimensional zoning violations" means the violations of the city's zoning code related to side yards, rear yards, front yard setbacks, lot area and width, usable open space, building height and other violations.

"Unit legalizationimplied permit" means a permit for construction which either specifically is for the construction of a particular number of units in excess of what should have been allowed or which references that the structure has a number of units in excess of what should have been allowed or the city's continuous issuance of an apartment business revenue license for a number of units in excess of what should have been allowed.

"Unit legalizationnondimensional zoning violations" means violations not related to dimensional zoning violations, including the existence of illegal signs, front and side yard parking, hard surface driveways, fences, accessory buildings and similar such violations.

"Unit legalization permit" means a permit issued for construction by the city.

"Unit legalizationsubstantial compliance with life and safety codes" means all units, and the building in which they are located, are constructed and maintained in such a manner that they are not an imminent threat to the life, safety or health of the occupants or the public.

"Upholstery shop" means a business specializing in the upholstery of furniture for individual customers for residential, office or business use, but excluding upholstery for automobile use.

Use, Principal: "Principal use" means the main use of land and/or buildings on a lot as distinguished from an accessory use.

Use, Unique Nonresidential: "Unique nonresidential use" means the nonresidential use of a building resulting in a documented need for fewer parking stalls than would otherwise be required by chapter 21A.44 of this title, due to the building's particular design, size, use, or other factors and unique characteristics.

"Used or occupied" include the words intended, designed or arranged to be used or occupied.

"Vacant lot" means a lot in an established area or neighborhood which at the present time contains no structures or other aboveground improvements. In new residential subdivisions, lots which contain no structures or other aboveground improvements shall be considered vacant, as opposed to undeveloped land, when ninety percent (90%) or more of the total number of lots in the subdivision have been built upon and the remaining lots are scattered throughout the subdivision.

"Vanpool" means a mode of transportation where two (2) or more persons share a ride in a van to or from work.

Vanpool, Employer Sponsored: "Employer sponsored vanpool" means a program offered by a business or in conjunction with the Utah transit authority to provide a multipassenger van for employee transportation.

"Variance" means a reasonable deviation from those provisions regulating the size or area

of a lot or parcel of land, or the size, area, bulk or location of a building or structure under this title and authorized according to the procedures set forth in part II, chapter 21A.18 of this title.

"Vegetation" means living plant material including, but not limited to, trees, shrubs, flowers, grasses, herbs and groundcover.

"Vending cart" includes any nonmotorized mobile device or pushcart from which limited types of products, as listed in title 5, chapter 5.65 of this code, are sold or offered for sale directly to any consumer, where the point of sale is conducted at the cart, where the duration of the sale is longer than fourteen (14) days and where the vending cart meets the requirements of title 5, chapter 5.65 of this code for the conducting of business in a specified permit operating area approved by the city.

"Vertical clearance" means clear space between floor grade level and ceiling height.

Veterinary Office, Large: "Large veterinary office" means a veterinary facility that serves large animals, either wild or domesticated, such as sheep, goats, cows, pigs, horses, llamas, wildcats, bears or other similarly sized animals.

Veterinary Office, Small: "Small veterinary office" means a veterinary facility that serves only small animals such as dogs, cats, birds, rabbits, reptiles, rodents and other similarly sized animals.

"Warehouse" means a structure, or part thereof, or area used principally for the storage of goods and merchandise.

"Waterbody/waterway" means a natural or manmade body of water such as a lake, river, creek, stream, canal, or other channel over which water flows at least periodically.

"Wholesale distributors" means a business that maintains an inventory of materials, supplies and goods related to one or more industries and sells bulk quantities of materials, supplies and goods from its inventory to companies within the industry. A wholesale distributor is not a retail goods establishment.

"Yard" means on the same zoning lot with a use, building or structure, an open space which is unoccupied and unobstructed from its ground level to the sky, except as otherwise permitted herein. A yard extends along a lot line, and to a depth or width specified in the yard requirements for the zoning district in which such zoning lot is located.

Yard, Corner Side: "Corner side yard" means a yard on a corner lot extending between front yard setback line and the rear lot line and between the corner side lot line and the required corner side yard setback line.

Yard, Front: "Front yard" means a yard extending between side lot lines and between the front lot line and the required front yard setback line.

Yard, Interior Side: "Interior side yard" means a yard extending between the front and rear yard setback lines and between the interior side lot line and the required interior side yard setback line.

Yard, Rear: "Rear yard" means a yard extending between the two (2) interior side lot lines from the rear lot line to the required rear yard setback line. In the case of corner lots, the rear yard shall extend from the interior side lot line to the front yard or corner side yard setback line.

Yard, Side: See definition of Yard, Interior Side.

"Zoning administrator" means the director of the division of building services and licensing of the department of community development or such person as the zoning administrator shall designate.

"Zoning districts" means areas of the city designated in the text of this title in which requirements and standards for the use of land and buildings are prescribed.

Zoning Lot: See definition of Lot.

"Zoning map" means a map or series of maps delineating the boundaries of all zoning districts and overlay districts in the city. (Ord. 68-06 § 1, 2006: Ord. 52-06 § 2, 2006: Ord. 20-06 § 1, 2006: Ord. 13-06 § 1, 2006: Ord. 90-05 § 2 (Exh. B), 2005: Ord. 89-05 § 9, 2005: Ord. 77-05 § 1, 2005: Ord. 76-05 § 10, 2005: Ord. 15-05 §§ 3, 4, 2005: Ord. 72-04 § 2, 2004: Ord. 6-04 § 20, 2004: Ord. 4-04 §§ 6, 7, 2004: Ord. 62-03 § 3, 2003: Ord. 61-03 § 3, 2003: Ord. 6-03 § 4, 2003: Ord. 50-02 § 2, 2002: Ord. 23-02 § 8, 2002: Ord. 5-02 § 4, 2002: Ord. 2-02 § 2, 2002: Ord. 84-01 § 2, 2001: Ord. 64-01 § 4, 2001: Ord. 20-01 § 4, 2001: Ord. 54-00 § 3, 2000: Ord. 20-00 §§ 4, 5, 2000: Ord. 14-00 §§ 16-18, 2000: Ord. 35-99 § 102, 1999: Ord. 30-98 § 7, 1998: Ord. 12-98 § 8, 1998: Ord. 8-97 § 3, 1997: amended during 5/96 supplement: Ord. 88-95 § 1 (Exh. A), 1995: Ord. 84-95 § 1 (Exh. A), 1995: Ord. 26-95 § 2(31-4), 1995)

Tab 8

21A.16.010 Authority:

As described in section 21A.06.040 of this part, the board of adjustment should hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title. (Ord. 90-05 § 2 (Exh. B), 2005: Ord. 26-95 § 2(8-1), 1995)

21A.16.020 Parties Entitled To Appeal:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the board of adjustment. (Ord. 26-95 § 2(8-2), 1995)

21A.16.030 Procedure:

Appeals of administrative decisions to the board of adjustment shall be taken in accordance with the following procedures:

A. **Notice Of Appeal:** Notice of appeal shall be filed within thirty (30) days of the administrative decision. The appeal shall be filed with the zoning administrator and shall specify the decision appealed and the reasons the appellant claims the decision to be in error.

B. **Fees:** Nonrefundable application and hearing fees established pursuant to the fee schedule shall accompany the notice of appeal.

C. **Stay Of Proceeding:** An appeal to the board of adjustment shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination or interpretation was made unless the zoning administrator certifies in writing to the board of adjustment, after the notice of appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. **Public HearingNotice:** Upon receipt of the notice of appeal, the board of adjustment shall give notice and hold a public hearing in accordance with the requirements of chapter 21A.10 of this part.

E. **Action By The Board Of Adjustment:** Following the hearing, the board of adjustment shall render its decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. The board of adjustment may reverse or materially modify the zoning administrator's or the administrative hearing officer's decision only if at least three (3) members of the board of adjustment vote in favor of such an action. A decision by the board of adjustment shall become effective the date the vote is taken.

F. **Notification Of Decision:** Notification of the decision of the board of adjustment shall be sent by mail to all parties of the proceeding within ten (10) days of the board of adjustment's decision. (Ord. 90-05, 2005: Ord. 26-95 § 2(8-3), 1995)

21A.16.040 Appeal Of Decision:

Any person adversely affected by any decision of the board of adjustment may, within thirty (30) days after the decision is made, present to the district court a petition specifying the grounds on which the person was adversely affected. (Ord. 26-95 § 2(8-4), 1995)

21A.16.050 Stay Of Decision:

By a two-thirds (2/3) majority vote at the time of any decision, the board of adjustment may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the district court in any appeal of the decision. (Ord. 26-95 § 2(8-5), 1995)