



# Housing And Civil Enforcement Cases Documents

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Case No.:

Plaintiff

CITY OF HOLLYWOOD, FLORIDA

Defendant.

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## COMPLAINT

Plaintiff, the United States of America, files this complaint and alleges:

1. This action is brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc et seq.
2. This Court has jurisdiction over this action under 28 U.S.C. § 1345. 3. Venue is proper because the claims alleged herein arose in the Southern District of Florida. 28 U.S.C. § 1391.
4. Defendant City of Hollywood--including but not limited to the City Commission, the Development Review Board (formerly known as the Board of Appeals & Adjustment), the

Department of Building and Engineering Services, the Department of Economic Development Administration, the Department of Design and Construction Management, and the Office of the City Manager--has the authority to regulate and restrict the use of land and structures within its borders, including granting special exception permits.

5. Under Florida law, Defendant City of Hollywood has the power to sue and be sued. Fla. Const. art. VIII, § 2(b); Fla. Stat. ch. 166.021 (1994).

6. For purposes of RLUIPA, Defendant constitutes a "government." 42 U.S.C. § 2000cc-5(4)(A)(i), (ii).

7. Hollywood Community Synagogue (HCS) was founded approximately 12 years ago. Its members are adherents of a branch of Hasidic Judaism known as the Chabad-Lubavitch movement. Before moving to its present location, HCS rented space in the Post Haste Plaza on Sheridan Street. It moved out of the Post Haste Plaza approximately four years ago.

8. For purposes of RLUIPA, HCS constitutes a "religious assembly or institution." 42 U.S.C. § 2000cc(2)(b)(1).

9. HCS is currently located at 2215 and 2221 North 46th Avenue, one block south of Sheridan Street. Both of these properties are located in a single-family residential district.

10. HCS holds prayer services every morning and evening at 2215 North 46th Avenue. Each service requires the presence of a minyan, which is a quorum of ten males over the age of thirteen. Approximately twenty to thirty individuals attend the Friday and Saturday evening services. Approximately fifty to sixty individuals attend the Saturday morning service.

11. For purposes of RLUIPA, HCS's use of the property located at 2215 and 2221 North 46th Avenue constitutes "religious exercise." 42 U.S.C. §§ 2000cc-5(7)(A)-(B).

12. In 2000, the City began granting HCS building permits that would allow it to make substantial changes to the property, such as expanding the existing great room, enclosing the existing patio, and filling in the existing swimming pool.

13. In or around February 2001, Defendant's Building Division issued a stop-work order to HCS and informed HCS that it would have to obtain a special exception (SPEX) if it wished to operate as a house of worship.

14. For purposes of RLUIPA, Defendant's processes and requirements regarding the grant or denial of a special exception constitute "land use regulation[s]." 42 U.S.C. § 2000cc-5(5).

15. On February 14, 2001, HCS applied for a special exception for the first time. The application requested that HCS be allowed to use 2215 and 2221 North 46th Avenue as a place of worship.

16. Hollywood's Zoning and Land Development Regulations (ZLDR) state that the Development Review Board (formerly known as the Board of Appeals & Adjustment (BAA)) may grant a petition for a special exception if it makes the following four findings:

- a. That the use is compatible with the existing natural environment and other properties within the vicinity;
- b. That there will be adequate provision for safe traffic movement, both vehicular and pedestrian, both internal to the use and in the area which will serve the use;
- c. That there are adequate setbacks, buffering, and general amenities in order to control any adverse effects of noise, light, dust and other potential nuisances; and
- d. That the land area is sufficient, appropriate and adequate for the use as proposed.

ZLDR § 5.2G.1. The ZLDR also state that the DRB is authorized to impose conditions on a special exception. See *id.* at § 5.2G.2.

17. On May 10, 2001, the BAA granted HCS a conditional special exception by a 3 to 1 vote. In granting the special exception, the BAA found that the application satisfied all four criteria for a special exception.

18. On May 21, 2001, City Commissioner Sal Oliveri appealed the BAA decision. The City Commission heard the appeal on September 12, 2001.

19. After a meeting that lasted through the night, the City Commission granted the special exception to HCS on September 13, 2001. It imposed several conditions on the special exception, however, including a one-year time limit, a maximum of six parking spaces on the property, and a statement that the special exception would be revoked if a Special Master found a violation of any provision of City Ordinance if the violation were not cured within 60 days.

20. Upon information and belief, Defendant had never previously imposed a time limit on a special exception for a religious use, and had only once imposed a time limit on a special exception for a nonreligious use.

21. HCS applied for a second special exception on August 1, 2002. The application requested that its special exception be "renewed."

22. The DRB approved the application in a 4-3 vote on September 12, 2002. Among the conditions it imposed was that the special exception would expire in 180 days. The DRB later passed a resolution clarifying its intent that HCS would keep the special exception for as long as it adhered to the other conditions, which addressed parking or proper maintenance of the property.



23. City Commissioner Oliveri again appealed the DRB's decision to the City Commission. The City Commission conducted a hearing on Commissioner Oliveri's request for review on October 16, 2002. After a hearing, the City Commission denied the request for review.

24. HCS applied for a third special exception on February 10, 2003, asking that its special exception be renewed or made permanent.

25. On March 13, 2003, the DRB heard HCS's request for a third special exception. The DRB voted 4-3 to grant the special exception and imposed several conditions relating to, inter alia, parking and construction. It also ordered HCS to return to the DRB in three years "to determine whether the Special Exception should be revoked."

26. On March 17, 2003, Commissioner Oliveri filed a request for review of the DRB decision. The City Commission granted the request for review by a 4-3 vote on April 9, 2003.

27. On June 4, 2003, the City Commission heard HCS's third application for a special exception. After a lengthy public hearing, the Commission voted 5-2 to reverse the DRB's decision and deny HCS's petition for a third special exception.

28. Upon information and belief, Defendant had never previously denied a request by a place of worship to operate in either a single-family or multiple-family residential zone until it denied HCS's special exception application.

29. Defendant currently permits other religious and nonreligious assemblies and institutions to operate in residential districts in violation of the ZLDR and without being subjected to any enforcement action for such violation.

30. On October 16, 2003, Defendant sent HCS a letter notifying the congregation that it "must desist holding services and other related activities" at its current location as of October 20, 2003.

31. The Department of Justice (DOJ) notified Defendant on October 20, 2003, that it was conducting an investigation pursuant to RLUIPA of Defendant's treatment of HCS.

32. During a July 7, 2004 City Commission meeting, the Commission voted to direct the City Attorney to file a lawsuit to stop further organized religious services from taking place at the HCS property. The Commission took this action despite the fact that the item was not on the agenda and no notice had been given to HCS or the public that such a vote would take place.

33. For purposes of RLUIPA, Defendant's filing of that lawsuit against HCS constitutes the "application" of a "land use regulation" that "limits or restricts a claimant's use or development of land (including a structure affixed to land)." 42 U.S.C. § 2000cc-5(5).

34. Defendant's treatment of HCS's special exception applications and Defendant's action to prevent organized religious services from taking place on the HCS property were based on HCS's religion or religious denomination.

35. Defendant's treatment of HCS's special exception applications and Defendant's action to prevent organized religious services from taking place on the HCS property constitute the imposition or implementation of a land use regulation that treated, and continues to treat, HCS on less than equal terms with a nonreligious assembly or institution, in violation of Section 2(b)(1) of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

36. Defendant's treatment of HCS's special exception applications and Defendant's action to prevent organized religious services from taking place on the HCS property constitute the imposition or implementation of a land use regulation that discriminated, and continues to discriminate, against HCS on the basis of religion or religious denomination, in violation of Section 2(b)(2) of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

WHEREFORE, the United States prays that the court enter an ORDER that:

1. Declares that Defendant's policies and practices, as alleged herein, violate RLUIPA; and
2. Enjoins Defendant, its officers, employees, agents, successors and all other persons in concert or participation with it, from (a) treating HCS on less than equal terms with nonreligious assemblies, and (b) discriminating against HCS on the basis of religion or religious denomination. The United States further prays for such additional relief as the interests of justice may require.

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*Document Filed: April 26, 2005 > >*

**Updated August 6, 2015**

*Updated May 23, 2023*



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