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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF WALNUT, CALIFORNIA, Defendant.	Case No. 2:10-cv-06774-GW (MAN) **AGREED ORDER** The Hon. George H. Wu

I. INTRODUCTION AND BACKGROUND

1. This Agreed Order is entered into between the United States of America ("United States" or "Plaintiff") and the City of Walnut, California ("City" or "Defendant").

2. The United States brought this action on September 13, 2010, to enforce provisions of the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc – 2000cc-5. Specifically, the United States alleged that Defendant, in denying a Conditional Use Permit sought by the Association to construct a Buddhist house of worship in the City of Walnut, (a) discriminated against the Association on the basis of religion or religious denomination, (b) treated the Association on less than equal terms with non-religious assemblies and institutions, and (c) imposed a substantial burden on the Association's exercise of religion absent a compelling governmental purpose.

3. The United States' allegations arise out of Defendant's denial of the Association's application for a Conditional Use Permit to construct a new Buddhist house of worship on a parcel of land it owned, located at 20836 Marcon Drive in Walnut. Under the Walnut Code, houses of worship may operate in this area if granted a Conditional Use Permit. Defendant has approved such permits for the construction or expansion of numerous other houses of worship in the immediate area, and has not denied a permit for a house of worship since at least 1980, until its denial to the

Association. Defendant also constructed a new Civic Center project with four large public buildings one block from the Marcon Drive property.

4. As a result of the denial of its Conditional Use Permit application, the Association sold the Marcon Drive property and relocated to Pomona, where it now operates a house of worship that also serves residents of Walnut.

5. On November 18, 2010, Defendant filed a Motion to Dismiss on grounds that the Association had failed to exhaust its administrative remedies. The United States opposed this Motion, which the Court denied in a written opinion on January 13, 2011. Defendant then filed an Answer in which it denied violating RLUIPA.

6. On February 3, 2011, the Association filed a Motion to Intervene and a proposed Complaint in Intervention, which raised independent claims under RLUIPA as well as the Fair Housing Act, 42 U.S.C. §§ 3601 – 3619, and 42 U.S.C. § 1983. Both the United States and Defendant filed statements of non-opposition to this Motion, which the Court granted on March 3, 2011. The Association filed its Complaint in Intervention on March 8, 2011, and Defendant filed an Answer on March 18, 2011.

7. The United States and Defendant agree that the United States' claims should be resolved amicably and without protracted, expensive and unnecessary litigation. Accordingly, the United States and Defendant agree to the terms of and entry of this Consent Order, as indicated by their signatures below.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. JURISDICTION

8. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 2000cc-2.

9. Defendant is a "government" within the meaning of RLUIPA, 42 U.S.C. § 2000cc(2)(b)(1).

10. The Association is a "religious assembly or institution" within the meaning of RLUIPA, 42 U.S.C. § 2000cc-5(4)(A)(i).

11. The Association's proposed use of the property at 20836 Marcon Drive in Walnut constitutes "religious exercise" pursuant to RLUIPA, 42 U.S.C. § 2000cc-5(7)(A)-(B).

12. Defendant's processes and requirements regarding the grant or denial of a Conditional Use Permit constitute a "land use regulation" pursuant to RLUIPA, 42 U.S.C. § 2000cc-5(5). Defendant's denial of the Association's Conditional Use Permit application constitutes an "individualized assessment" undertaken under this "land use regulation." See id. § 2000cc(a)(2)(C).

III. GENERAL INJUNCTION

13. For the term of this Order, Defendant shall not:

a. Impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution;

b. Impose or implement a land use regulation in a manner that discriminates against any assembly or institution on the basis of religion or religious denomination;

c. Impose or implement a land use regulation in a manner that imposes a substantial burden on the exercise of religion, unless such burden is the least restrictive means of furthering a compelling governmental interest;

d. Treat the Association on less than equal terms from any other house of worship located in the City of Walnut, or impose less than equal standards on it than on any other such house of worship, including the standards required to obtain a Conditional Use Permit; or

e. Otherwise engage in any conduct that violates RLUIPA.

IV. CONDITIONAL USE PERMIT PROCESS

14. Upon receipt of a Conditional Use Permit application to build or expand a house of worship, Defendant shall promptly provide the applicant with a copy of the Walnut zoning code provisions that govern Conditional Use Permits, as well as a form that describes the applicant's rights under RLUIPA. The language of this form shall conform to Appendix A.

15. In evaluating whether any Conditional Use Permit application that proposes to build or expand a house of worship should be approved, Defendant shall not:

a. Impose requirements that are more stringent than the applicable standards and criteria set forth in Title 25 of the Walnut Municipal Code, including, but not limited to, (i) requiring a house of worship to provide more off-street parking spaces than is required under the Walnut Code, and (ii) imposing height restrictions that are lower than those required under the Walnut Code;

b. Use the size, attendance, appearance, experiences, activities or reputation of other houses of worship of the same religion or denomination as the basis, in whole or in part, for denying the application;

c. Consider whether persons expected to attend religious services or events are, or are not, residents of the City of Walnut; or

d. Impose or apply standards or criteria that differ significantly from those applied to other houses of worship or assembly, including, but not limited to, aesthetic standards, traffic analysis and projected attendance.

V. APPEALS TO THE CITY COUNCIL

16. For any application for a Conditional Use Permit to construct or expand a house of worship that is rejected or denied, in whole or in part, by the Walnut Planning Commission, Defendant shall provide the applicant house of worship with a form that sets forth the requirements for appealing this denial to the City Council. This form shall

conform to Appendix B. The failure by the City Council to act on the appeal within ninety (90) days shall be construed as a denial of the appeal.

VI. NOTICE TO THE PUBLIC

17. Within 30 days after the date of entry of this Order, Defendant shall notify the public of this Order by publishing the text of the Order. Acceptable notice shall include the following: (a) posting such notice for no fewer than 180 days at Walnut City Hall in a prominent place where it can be seen and read by members of the public; and (b) including such notice in the San Gabriel Valley Tribune once per week over the next three weeks after this Order is "so ordered" by the Court. In addition, Defendant shall provide a copy of the Order to any person upon request.

18. Within 30 days after the date of entry of this Order, Defendant shall post this Order on Defendant's Internet website (http://www.ci.walnut.ca.us) for no fewer than 180 days.

19. Defendant shall further post and maintain a printed sign within sight of each public entrance to the City's Department of Community Development that states, in bold, block letters of at least one-inch in height, that the City of Walnut does not discriminate against religious exercise in violation of RLUIPA. The text of this sign shall conform to Appendix C.

VII. NOTICE TO CITY OFFICIALS

20. Within 30 days after the date of entry of this Order, Defendant shall provide a copy of this Order to each member of the City Council, the Walnut Planning

Commission, the City Manager, the Director of Community Development, the City Clerk, and any City employee or contractor involved in the review of Conditional Use Permit applications. In the event that new persons are elected or appointed to these positions during the term of this Order, a copy of the Order shall be provided to such persons by Defendant promptly after they take office.

21. Defendant shall ensure that each person who receives a copy of the Order pursuant to Paragraph 20, supra, signs a statement confirming the person has received, has read, and understands the Order and its requirements. The text of this statement shall conform to Appendix D. Defendant shall deliver such statements to counsel for the United States upon receipt thereof.[1]

VIII. TRAINING

22. Within ninety (90) days after the entry of this Order, Defendant shall provide training on the requirements of RLUIPA to each member of the City Council, the Walnut Planning Commission, the City Manager, the Director of Community Development, and any City employee or contractor involved in the review of Conditional Use Permit applications. The training shall be conducted by a qualified person or organization approved by the United States. Defendant shall pay all training costs. Within one-hundred twenty (120) days after the entry of this Order, Defendant

[1] For purposes of this Order, all submissions to the United States or its counsel shall be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, DC 20530, Attn: DJ No. 210-12C-13.

shall secure and deliver to counsel for the United States a written certification of each employee's or official's attendance at the RLUIPA training, together with a copy of all training materials, including but not limited to a course syllabus, if any.

IX. REPORTING, RECORD-KEEPING AND MONITORING

23. Defendant shall maintain copies of all written applications that seek the City's consideration or approval of any land use for religious purposes. Such applications include, without limitation, applications for conditional use permits, variances, building permits, special permits, special use permits, renewals of permits, special exceptions, or zone text amendments. Defendant shall advise the United States in writing within 15 days after receipt of any such application, and within 15 days after the disposition of any such application. Defendant shall further deliver to counsel for the United States copies of the application, any minutes of Planning Commission meetings or hearings, and the final resolution by the Planning Commission.

24. Within 15 days after receipt by Defendant, Defendant shall notify the United States in writing of all amendments to the Walnut zoning code that have been proposed to, or approved by, Defendant. The notification shall include copies of all such proposed or approved amendments, which copies shall also be maintained by Defendant.

25. Defendant shall maintain copies of all written complaints it receives concerning any alleged restriction or prohibition by Defendant of, or interference with, the use of land in Walnut for religious purposes. If the complaint is oral, Defendant

shall prepare a written summary of it, including appropriate information identifying the complainant (unless the complainant is anonymous) and the substance of the complaint. Defendant shall advise the United States in writing within 15 days after receipt of any such written or oral complaint. Defendant shall also notify the United States in writing within 15 days after the Village's response to any such complaint.

X. INSPECTION OF RECORDS

26. Upon reasonable notice by counsel for the United States to counsel for Defendant, Defendant shall permit representatives of the United States to inspect and copy all pertinent records of Defendant, including, but not limited to, those records referred to in this Order.

XI. DURATION AND ENFORCEMENT

27. This Order shall remain in effect for three (3) years after the date of entry by the Court. The Court shall retain jurisdiction for the duration of this Order to enforce its terms and to resolve any disputes arising out of the Order.

28. The parties to this Order agree to use their best efforts to effectuate the purposes of the Order and to resolve informally any differences regarding interpretation of and compliance with the Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendant to perform in a timely manner any act required by this Order or otherwise to act in conformance with any provision thereof, the United States may move this Court to impose any remedy authorized at law or equity, including, but not limited to, an order requiring performance

of such act or deeming such act to have been performed, and costs and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

XII. INTEGRATION AND MODIFICATION

29. This Order contains the entire agreement between the United States and Defendant. No statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties to this Order or their counsel that are not included herein shall be of any force or effect. This Order may be modified only in writing and with the written consent of the parties to this Order and approval of the Court.

30. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the parties to this Order and do not require Court approval.

XIII. LITIGATION COSTS

31. Except as otherwise stated herein, each party to this Order shall bear its own costs and attorneys' fees.

ENTERED THIS 4TH DAY OF AUGUST, 2011.

THE HON. GEORGE H. WU
UNITED STATES DISTRICT JUDGE

The undersigned apply for and consent to entry of this Order:

Dated: July 22, 2011.

For Plaintiff United States of America:

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21201 La Puente Road
Walnut, CA 91789

APPENDIX A

On _____, 2011, the United States District Court for the Central District of California entered an Agreed Order resolving a religious discrimination lawsuit brought by the United States against the City of Walnut, California under the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). Under the terms of this Order, the City of Walnut is required, among other things, to inform all applicants for a Conditional Use Permit to build or expand a religious house of worship of the applicant's rights under RLUIPA.

Under RLUIPA, no government, including the City of Walnut, may 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 is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. RLUIPA also provides that no government, including the City of Walnut, may apply a land use regulation in a manner that treats a religious institution or assembly (such as a church) on less than equal terms than a non-religious institution or assembly (such as a movie theater or a public building). Finally, RLUIPA provides that no government, including the City of Walnut, may impose a land use regulation in a manner that discriminates against a religious assembly or institution on the basis of religion or religious denomination.

If you believe that any local government or municipality has discriminated against you in the implementation of its zoning or land use laws, please contact the United States Department of Justice at:

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue NW – G Street
Washington, DC 20530
(202) 514-4713

If you would like a copy of the Agreed Order entered in *United States v. City of Walnut*, please contact the City Clerk of the City of Walnut, and you will be provided with a copy free of charge.

APPENDIX B

APPEAL FORM

Instructions

The Walnut Planning Commission has **DENIED** your application for a Conditional Use Permit. The reasons for this denial are set forth in the Planning Commission's Resolution, which is attached to this Appeal Form.

Under the Walnut Municipal Code, you have **15 DAYS** to appeal the denial of the Conditional Use Permit application to the Walnut City Council. The 15 days begins running on the date of the Planning Commission's resolution. Accordingly, you must file your appeal by _____ (date).

To appeal the Planning Commission's denial, please fill out this form and file it with the Walnut City Clerk, at the following address:

Office of the City Clerk
City of Walnut
21201 La Puente Road
Walnut, CA 91789

Appeals may be filed in person, by U.S. Mail, or by facsimile to **(909) 595-6095.** The City Clerk is open **Monday – Thursday** from **7:00 AM** to **6:00 PM.** It is closed Friday. If the 15th day falls on a date when the City Clerk's office is closed, your deadline is the next day the City Clerk's office is open.

This form is available electronically and in alternative formats for persons with disabilities by calling the City Clerk at (909) 595-7543.

Appeal of a Denial of a Conditional Use Permit Application

TO THE MAYOR AND MEMBERS OF THE WALNUT CITY COUNCIL:

I hereby appeal the Walnut Planning Commission's denial of my Conditional Use Permit application.

_____

Applicant Name

_____

Address

_____

Telephone/Fax E-Mail

_____

Conditional Use Permit No.

_____

Planning Commission Resolution No. Date of Resolution

State the grounds for your appeal and any errors you believe the Planning Commission made in denying your application. For example, did the Planning Commission misapply the law in any way or misstate the facts of your proposal? Please use additional pages if necessary.

____

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____

____
Signature

____
Printed Name

APPENDIX C

NOTICE OF NON-DISCRIMINATION POLICY

Consistent with the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, the City of Walnut does not discriminate on the basis of religion in the application of its laws, policies or procedures, including the application of its land use regulations and zoning laws.

APPENDIX D

CERTIFICATION OF RECEIPT OF ORDER

I certify that I have received a copy of the Agreed Order entered by the United States District Court for the Central District of California in *United States v. City of Walnut*, No. 2:10-cv-6774-GW (FMO). I further certify that I have read and understand the Order, that any questions I had concerning the Order were answered, and that I understand that the City of Walnut may be sanctioned or penalized if I violate this Order.

_____
(Signature)

_____
(Printed Name)

_____
(Title)

_____
(Date)