

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:16-cv-14366

Hon. Gershwin A. Drain

-VS-

CITY OF STERLING HEIGHTS,

Defendant.

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CONSENT ORDER

I. INTRODUCTION

1. This Consent Order (“Order”) is entered between the United States of America (“United States”) and Defendant City of Sterling Heights, Michigan (“Sterling Heights” or “the City”).

2. The United States brought this action alleging violations by the City of provisions of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc-5, *et seq.* This Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2.

3. The City is a municipal corporation and political subdivision of the State of Michigan. The City has a Council-Manager form of government. The City Council has seven members, including the Mayor.

4. Sterling Heights’ zoning districts and the uses permitted within those districts are codified in the Sterling Heights, Michigan Zoning Ordinance (“Zoning Ordinance”). The City has the authority to regulate and restrict the use of land and structures within its borders, including granting and denying Special Approval Land Use applications. Under the Zoning Ordinance, religious assemblies and institutions are permitted in ten of the City’s zoning districts, subject to Special Approval Land Use.

5. To use a property for a place of worship in a residential zone, the Zoning Ordinance requires that an entity seek Special Approval Land Use from the Sterling Heights Planning Commission. The members of the Planning Commission are appointed by the Mayor with ratification by the City Council.

6. Many religious assemblies have received approval for places of worship in Sterling Heights. There are currently over 58 places of worship in Sterling Heights.

7. The American Islamic Community Center, Inc. (“AICC”) is a non-profit organization serving the religious, social, educational, and cultural needs of the Shia Muslim community.

8. The AICC does not have a place of worship within the City and currently operates out of a building in the neighboring city of Madison Heights. The United States alleges that the AICC’s current building is inadequate for its needs. The AICC wishes to relocate to the City to land containing an approximate 4.35 acres and located at 4939-5085 15 Mile Road (“Property”), which is zoned R-60 Residential.

9. On July 8, 2015, Chehab, on behalf of AICC, submitted a Special Approval Land Use application (“the Application”) to the City Planning Commission to use the Property for a mosque. The Application included a proposal to construct a building of approximately 20,500 square feet, containing a worship

area of 3,205 square feet, with 130 parking spaces. The building included a dome 58 feet in height, as well as two spires, each 66 feet in height.

10. The City Planning Office placed the Application on the agenda for the August 13, 2015 City Planning Commission meeting. On August 13, 2015, the City Planning Commission voted to postpone its decision on the Application to its September meeting. The Planning Commission instructed Chehab and AICC to address the issues raised by the Planning Commission.

11. After the August 13 meeting, the AICC revised the Application by reducing the height of the spires on the proposed building from 66 feet to 57 feet and increasing the height of the dome from 58 feet to 65 feet.

12. On September 10, 2015, the City Planning Commission unanimously voted to deny the revised Application.

13. The United States alleges that the Planning Commission's denial of the Application 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" in which the AICC has a property interest or a contract to acquire such an interest, within the meaning of RLUIPA. *Id.* § 2000cc-5(5). The City specifically denies those allegations.

14. The AICC seeks to construct a mosque on the Property for the purpose of religious exercise, within the meaning of RLUIPA. *Id.* § 2000cc-5(7).

15. The AICC is a religious “assembly or institution” within the meaning of RLUIPA. *Id.* § 2000cc-(a)(1), (b)(2).

16. The City of Sterling Heights constitutes a “government” within the meaning of RLUIPA. *Id.* § 2000cc-5(4)(A)(i), (ii).

17. Sterling Heights’ processes and requirements for granting or denying a Special Approval Land Use application constitute a “land use regulation” under RLUIPA. *Id.* § 2000cc-5(5).

18. The United States’ Complaint alleges that the City’s denial of AICC’s application for Special Land Use Approval violated § 2000cc(a) and § 2000cc(b)(2) of RLUIPA. The City specifically denies those allegations.

19. The Parties agree, and the United States believes that it is in the public’s best interest, that the controversy should be resolved amicably and without further litigation.

20. Nothing in this Consent Order constitutes nor should be considered to constitute any admission of wrongdoing or liability by the City of Sterling Heights and the City of Sterling Heights specifically denies any and all allegations of wrongdoing or liability.

Therefore, it is hereby **AGREED between the parties** as follows:

II. AICC'S USE OF THE PROPERTY FOR A MOSQUE

21. The City agrees to abide by the terms of the Consent Judgment filed in the case titled *American Islamic Community Center, Inc. v. Sterling Heights*, 2:16-cv-12920 (E.D. Mich.), which includes the right of the AICC to build a place of worship on the Property subject to the terms of that Consent Judgment.

III. NOTICE TO THE PUBLIC AND FUTURE RELIGIOUS USE APPLICATIONS

22. Within 60 days after the date of entry of this Order, Sterling Heights shall do the following:

a. *Signage.* For the duration of this Order, the Sterling Heights Planning Office shall post and maintain printed signs within sight of the public counter(s)/desk(s) where applications and information related to land-use are provided. The signs, which shall be no smaller than 10 inches by 14 inches, shall conform to Appendix A;

b. *Internet Posting.* The City shall post and maintain on the first page of its Internet home page (<https://www.sterling-heights.net/>) for not less than 180 days a notice stating the following in type equivalent in size to the majority of other type on the page, in capital letters: "Consistent with the United States Constitution and the Religious Land Use and Institutionalized

Persons Act of 2000 (“RLUIPA”), Sterling Heights does not discriminate against religious exercise, or violate the other protections of RLUIPA. Information about RLUIPA is available here.” The words “available here” shall contain a link that connects interested persons to the Department of Justice’s RLUIPA page, at “www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act.” The notice will also provide a link to a separate page that contains the following message: “Consistent with the United States Constitution and the Religious Land Use and Institutionalized Persons Act of 2000, the City of Sterling Heights does not apply its zoning or land use laws in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless it is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest; does not apply its zoning or land use laws in a manner that treats religious assemblies or institutions on less than equal terms than nonreligious assemblies or institutions; and 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.”

- c. *Future Religious Use Applicants.* The City will act on any and all applications or inquiries about a Rezoning, Variance, Special Approval Land Use, or other land use determination concerning the religious use of property in the same manner as the City would regarding any other applicant, but taking any and all such different or additional actions as may be necessary to satisfy all provisions of RLUIPA. The City will attach Appendix A, which notifies religious use applicants of their rights under RLUIPA, to its application forms for use variances, rezoning, and special approval land uses.
- d. *Application of City Code.* The United States recognizes that the City has the right to apply its lawful Code provisions to a religious use located in the City consistent with the requirements of RLUIPA.

IV. TRAINING

23. Within 90 days after the entry of this Order, each person with responsibilities relating to the implementation and enforcement of any zoning or land use regulations within the City shall be given a copy of, and be required to read,

this Order, and shall sign the statement appearing at Appendix B. Each such individual that commences responsibilities relating to the implementation and enforcement of any zoning or land use regulations within the City any time after 90 days after the entry of this Order shall be given a copy of, and be required to read, this Order, and shall sign the statement appearing at Appendix B, within 10 days of the commencement of such responsibilities.

24. Within 90 days after the entry of this Order, the City shall provide training on the requirements of RLUIPA to the City Manager, Assistant City Manager, all members of the City Council, all members of the Planning Commission, all members of the Zoning Board of Appeals, all members of the Board of Code Appeals, all employees of the City's Planning Department (excluding clerical staff), all employees of the City Development Department (excluding clerical staff), and the City's retained legal counsel. The training shall be conducted by a qualified person or organization selected by the City Attorney and approved by the United States, which approval shall not be unreasonably withheld. Within 120 days after the entry of this Order, the City shall secure and deliver to counsel for the United States a written certification of each individual's attendance at the RLUIPA training, together with a copy of all training materials, including but not limited to a course syllabus, outline, or other written handouts. The City shall pay all training costs.

V. REPORTING, RECORD-KEEPING, AND MONITORING

25. Within 180 days after the date of entry of this Order, and every six months thereafter, the City shall send a report evidencing its compliance with this Order to counsel for the United States,¹ except that the last report shall be filed 60 days prior to the fifth anniversary of the Order.

26. The City shall further notify the United States in writing within 60 days of all amendments to the City's zoning code that have been approved during the duration of this Order by the City and that affect religious land use. The notification shall include copies of all such approved amendments, which copies shall be maintained by the City.

27. The City 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 rezoning, variances, building permits, special land use permits, renewals of permits, and zoning text amendments. The City shall advise the United States in writing within 30 days after the disposition of any such application. The City may maintain such copies in the manner that it would maintain copies of written applications for any other land use

¹For purposes of this Order, all submissions to the United States or its counsel should be submitted to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Attn: DJ# 210-37-11, FAX: 202-514-1116, or as otherwise directed by the United States.

application for any other purposes, but must retain them for the duration of this Order.

28. The City shall maintain copies of all written complaints it receives concerning any alleged restriction or prohibition by the City of, or interference with, the use of land in the City for religious purpose throughout the duration of this Order. If the complaint is oral, the City shall request the complainant make the complaint in writing. The City shall advise the United States within 15 days after receipt of any such written complaint.

29. The City shall retain all records related to the AICC. These records shall include, but are not limited to:

- a. Correspondence to and from the City concerning the AICC;
- b. Complaints made to the City law enforcement or other enforcement departments concerning the AICC;
- c. Any information concerning alleged or actual harassment or threatening conduct directed at the AICC or its members; and
- d. Any law enforcement or investigative action taken by the City concerning the AICC.

Nothing in this paragraph requires the City to maintain all documents produced in the discovery process in *American Islamic Community Center, Inc. v. Sterling Heights*, 2:16-cv-12920 (E.D. Mich.), but instead this paragraph applies to those

documents existing in the official records of the City as of July 8, 2015, and those above-described documents received by or sent by the City during the duration of this Order.

VI. INSPECTION OF RECORDS

30. For the duration of this Order, upon reasonable written notice, of not less than 30 days, by counsel for the United States to counsel for the City, the City shall permit representatives of the United States to inspect and copy all non-privileged pertinent records of the City referenced in Section V of this Order, provided the United States has not inspected the City's records pursuant to this provision in the previous six (6) months. Any inspection or copying of documents as referenced in this paragraph shall be conducted at a time and place mutually convenient to the parties.

VII. DURATION OF ORDER AND TERMINATION OF LEGAL ACTION

31. The Court shall retain jurisdiction for the duration of this Order to enforce the terms. The duration of this Order shall be a period of five (5) years from the date of its entry. The United States may file a motion with the Court to extend the duration of the Order in the event of noncompliance, whether intentional or not, with any of its terms, or if it believes the interests of justice so require. The City may respond to the motion consistent with the Federal Rules of Civil Procedure and this Court's Local Rules.

32. Any time limits for performance imposed by this Order may be extended by the mutual written agreement of the Parties.

33. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Order prior to bringing such matters to the Court for resolution. If the Parties cannot resolve their differences informally, they may move this Court for relief allowed by law or equity. Each party may seek costs and attorney fees.

VIII. INTEGRATION

34. This Order contains the entire agreement between the United States and the City. No agreements or negotiations, oral or otherwise, between the Parties that are not included herein shall be of any force or effect.

IX. TERMINATION OF LITIGATION HOLD

35. The Parties agree that, as of the date of the entry of this Consent Order, litigation is not “reasonably foreseeable” concerning the matters described above or in the United States’ Complaint. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Consent Order.

X. NO COSTS OR FEES

36. The Parties will bear their own costs and fees associated with this litigation.

XI. MERGER OF CLAIMS

37. This Consent Order binds all parties to the full and final resolution that is described herein of all actual and potential interests, allegations, defenses, claims, and counterclaims relating to the subject matter of the disputes that have been raised or could have been raised in this action.

ENTERED THIS 1st day of March, 2017.

/s/Gershwin A Drain

Gershwin Drain

United States District Court Judge

The undersigned consent to the entry of this Order:

Dated: February 22, 2017

FOR THE UNITED STATES:

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APPENDIX A

NOTICE OF SETTLEMENT BY CONSENT ORDER BETWEEN THE UNITED STATES AND THE CITY OF STERLING HEIGHTS, MICHIGAN

CONSISTENT WITH THE UNITED STATES CONSTITUTION AND THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000 (“RLUIPA”), STERLING HEIGHTS DOES NOT APPLY ITS LAND USE REGULATIONS AND ZONING LAWS IN A MANNER THAT IMPOSE A SUBSTANTIAL BURDEN ON THE FREE EXERCISE OF RELIGION UNLESS IT IS IN FURTHERANCE OF A COMPELLING GOVERNMENT INTEREST AND IS THE LEAST RESTRICTIVE MEANS OF FURTHERING THAT INTEREST, TREAT RELIGIOUS ASSEMBLIES OR INSTITUTIONS LESS EQUALLY THAN NONRELIGIOUS ASSEMBLIES OR INSTITUTIONS, OR DISCRIMINATE ON THE BASIS OF RELIGION.

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

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave. N.W. - G St.
Washington, D.C. 20530
Attn: DJ # 210-37-15
(202) 305-2011

Further information about RLUIPA is available at the Department of Justice's RLUIPA page, at www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act.

APPENDIX B

CERTIFICATION OF RECEIPT OF CONSENT ORDER

I, _____, certify that I have received a copy of the Consent Order entered by the United States District Court for the Eastern District of Michigan in United States v. City of Sterling Heights, Civ. No. 2:16-cv-14366 (E.D. Mich.). I further certify that I have read and understand the aforementioned Consent Order, that all my questions concerning it were answered, and that I understand that my violation of this Consent Order may result in sanctions against the City of Sterling Heights.

(Signature)

(Print name)

(Date)