MAC WARNER
Deputy Assistant Attorney General
MICHAEL E. GATES
Deputy Assistant Attorney General
Civil Rights Division
CARRIE PAGNUCCO
Chief, Housing and Civil Enforcement Section
NOAH D. SACKS
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
150 M. Street NE
Washington, D.C. 20001
Telephone: (202) 598-6366
Email: noah.sacks@usdoj.gov

JOSEPH T. MCNALLY
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
AMY XU (Cal. Bar No. 330707)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-2464
Email: Amy.Xu@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ANCHOR STONE CHRISTIAN CHURCH, a California non-profit religious corporation,

Plaintiff,

v.

CITY OF SANTA ANA, a California municipality, and SANTA ANA CITY COUNCIL

Defendants.

Case No. 8:25-cv-215

STATEMENT OF INTEREST IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Date: March 28, 2025
Time: 9:00 a.m.
Courtroom: 9-D

Hon. John W. Holcomb
United States District Judge

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. STATEMENT OF INTEREST OF THE UNITED STATES

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." The United States is responsible for enforcing the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc-2(f), and accordingly has an interest in how courts apply and interpret the statute. To help ensure the correct and consistent interpretation of RLUIPA, the United States has filed many statements of interest in RLUIPA cases with district courts, including this court, as well as amicus briefs with the courts of appeal.[1]

Santa Ana's Zoning Code violates RLUIPA's equal terms provision on its face because it treats religious assembly uses less favorably than nonreligious assembly uses. More specifically, section § 41-313 of the Zoning Code requires that, in the "Professional" district, churches must obtain a conditional use permit (CUP), an

---

[1] *See, e.g.*, *Hope Rising Community Church v. Borough of Clarion*, No. 2:24-cv-01504-WSH, ECF No. 47 (W.D. Pa. Mar. 3, 2025); *Gethsemani Baptist Church v. City of San Luis*, No. 2:24-cv-00534-GMS, ECF No. 39 (D. Az. July 29, 2024) (decision at 2024 WL 4870509 (D. Az. Nov. 22, 2024)); *Chabad Jewish Center of the Big Island v. County of Hawaii*, No. 1:24-cv-68-DKW-WRP, ECF No. 37 (D. Haw. Mar. 29, 2024); *Micah's Way v. City of Santa Ana*, No. 8:23-cv-00183-DOC-KES, ECF No. 25 (C.D. Cal. May 9, 2023) (decision at 2023 WL 4680804 (C.D. Cal. June 8, 2023)); *Christian Fellowship Centers of New York, Inc. v. Village of Canton*, No. 8:19-cv-00191-LEK-DJS, ECF No. 27 (N.D.N.Y. Mar. 26, 2019) (decision at 377 F. Supp. 3d 146); *Hope Lutheran Church v. City of St. Ignace*, No. 2:18-cv-0155-PLM-TLG, ECF 34 (W.D. Mich. Mar. 19, 2019); *Ramapough Mountain Indians, Inc. v. Township of Mahwah*, No. 2:18-cv-9228 (CCC) (JBC), ECF No. 82 (D.N.J. Mar. 18, 2019); *Congregation Etz Chaim v. City of Los Angeles*, No. CV10-1587 CAS EX, ECF No. 134 (C.D. Cal. Apr. 28, 2011) (decision at 2011 WL 12472550 (C.D. Cal. July 11, 2011)); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279 (5th Cir. 2012); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163 (9th Cir. 2011); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3d Cir. 2007); *Guru Nanak Sikh Soc'y of Yuba City* v. *Cnty. of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004).

expensive, lengthy and discretionary review process, while comparable secular assemblies like museums, science centers, and art galleries, are allowed to operate there by right without a discretionary permit. Plaintiff Anchor Stone Christian Church (the "Church") sought a CUP for a modest 99-seat church in the Professional district, which the City of Santa Ana (the "City") denied. Nothing in the Zoning Code, the City's recently revised General Plan, or the City's denial of the Church's CUP justifies this unequal treatment. Because the City's Zoning Code violates RLUIPA on its face, the Church has established a likelihood of success on the merits of its RLUIPA equal terms claim.[2]

II. BACKGROUND

A. The City's Zoning Regulations

The zoning provisions ("Zoning Code") of Santa Ana's Municipal Code ("Municipal Code") divides the City into several districts and prescribes the uses permitted as of right and which uses require a CUP in each district. *See* Municipal Code §§ 41-184, 41-200 *et seq*. A CUP application is heard by the Planning Commission, which considers several discretionary criteria, including "[t]hat the proposed use will not . . . be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity" and "that the proposed use will not adversely affect the general plan of the city or any specific plan applicable to the area of the proposed use." *See id.* §§ 41-630-638. If the Planning Commission denies a CUP, the applicant may appeal to the City Council. *Id.* § 41-645.

The property at issue in this case is in the City's "Professional" district. Among other uses, the "Professional" district permits, by right, professional, business, and administrative offices, banks, medical offices, daycares, and print and copy services.

[2] In this Statement of Interest, the United States does not address the other elements of a preliminary injunction or the other claims for relief brought by Plaintiff.

Municipal Code § 41-313.[3] It also permits by right "art galleries" and "museum and science centers." *Id.*[4] If an art gallery, museum or science center wants to "carr[y] on" additional "recreational or entertainment uses," for "compensation" for example, "carnivals, circuses, amusement parks, golf course, bowling alleys, billiard parlors, pool halls, sports stadiums, dance halls, and game arcades," *id.* § 41-142, it would need to apply for and obtain a CUP. Municipal Code § 41-313.5(e). Churches, however, *always* need a CUP. *Id.* § 41-313.5(n).

Land use in Santa Ana is also regulated by the City's General Plan. The property at issue is in what the General Plan, which was completely overhauled in 2022, now identifies as the Industrial/Flex-Medium Density designation (Flex-3) within the "55 Freeway/Dyer Road" focus area. *See* ECF No. 5-8 at 3; ECF No. 5-14 at 23, 63. The 55 Freeway/Dyer Road focus area "will transition from a portion of the city that is almost exclusively focused on professional office jobs to one that supports a range of commercial, industrial/flex, and mixed-use development." *Id.* at 61. The Flex-3 area "allows for clean industrial uses that do not produce significant air pollutants, noise, or other nuisances typically associated with industrial uses, including office-industrial flex spaces, small-scale clean manufacturing, research and development and multilevel corporate offices, commercial retail, artist galleries, craft maker spaces, and live-work units." *Id.* at 29.

---

[3] "A professional, business, or administrative office is an establishment providing direct, 'over-the-counter' services or business services to consumers or clients (e.g., insurance agencies, real estate offices, travel agencies, utility company offices, etc.) and office-type facilities occupied by businesses providing professional services and/or engaged in the production of intellectual property." *Id.* § 41-127.5

[4] Museums and science centers are defined as "facilities which specialize in scientific, cultural or artistic exhibits" and may include, as ancillary uses, "eating establishments, gift shops, theaters, *assembly rooms*, and similar activities to support the primary operation and activities of the facility." *Id.* 41-122 (emphasis added).

B. The Church

Plaintiff Anchor Stone Christian Church is a Chinese- and Taiwanese-American Christian church with approximately 50 members. ECF No. 5-2, Decl. of Steven Lee ("Lee Decl.") ¶ 2. It began as an in-home prayer group but quickly grew. *Id.* ¶ 4. In 2022, it sought a permanent home for its congregation. It ultimately found a building at 2938 Daimler Street in the City's Professional district that met the congregation's needs, including sufficient office space for the Church's staff. *Id.* ¶ 5.

On July 19, 2023, the Church applied for a CUP. Lee Decl. ¶ 21. Plaintiff did not believe the City would object to the CUP, especially because in August 2022, the City granted a CUP to another church across the street from Anchor Stone's requested location in the same zoning district. *See* ECF No. 5-6 (August 22, 2022 City Council Resolution Approving Compass Bible Church's CUP). On September 11, 2023, the Planning Commission held a hearing on the Church's CUP application, where the City's planning staff recommended denial of the CUP, informing the Planning Commission that the General Plan's Flex-3 designation "does not allow community assembly uses such as the subject church." *See* ECF 5-10 at 2. The Planning Commission denied the CUP, finding that the proposed church was inconsistent with the Flex-3 designation and 55/Dyer Road focus area. *Id.* at 3-6. The City Council affirmed the denial, finding that the Church's CUP application was inconsistent with the Flex-3 designation. The City Council stated that "assembly-type uses" were not "permissible under the land use designation," but noted that the denial "leaves in effect the permitted office uses, allowed by right under SAMC Section 41-313." ECF No. 5-12 at 4, 7-8.

III. ARGUMENT

RLUIPA's equal terms provision prohibits a local government from "impos[ing] or implement[ing] 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." 42 U.S.C. § 2000cc(b)(1). A facial equal terms RLUIPA claim—like the kind brought by the Church—challenges whether the land use regulation imposed by a government, *on its*

face, treats religious assembly uses less favorably than secular assembly uses. *New Harvest Christian Fellowship v. City of Salinas*, 29 F.4th 596, 604-05 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 567 (2023).

To establish a prima facie RLUIPA equal terms claim in the Ninth Circuit, a plaintiff must show "that the challenged regulation makes an express distinction between religious and nonreligious assemblies, regardless of whether those assemblies are similarly situated." *Id.* at 606 n.10 (citing *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 291-93 (5th Cir. 2012)). Once that showing is made, the burden shifts to the local government to establish that there is a justifiable reason for treating religious assemblies less favorably than nonreligious ones based on "an accepted zoning criterion." *New Harvest*, 29 F.4th at 607; *see also* 42 U.S.C. § 2000cc-2(b) ("If a plaintiff produces prima facie evidence to support a claim alleging a violation of . . . [RLUIPA's equal terms provision], the government shall bear the burden of persuasion on any element of the claim."). Given the uses allowed by right in the Professional district, the intent of the General Plan and the Flex-3 designation, and the lack of accepted, identifiable zoning criteria, the City has not satisfied and cannot satisfy this burden. Thus, the Church has established a likelihood of success on the merits for its RLUIPA equal terms claim.

A. On Its Face, the City's Zoning Code Violates RLUIPA Because It Treats Religious Assemblies On Less Than Equal Terms With Secular Assemblies.

The Church has established a prima facie RLUIPA equal terms violation by showing that the Municipal Code's Professional district "draws an 'express distinction' between religious assemblies and nonreligious assemblies." *New Harvest*, 29 F.4th at 605 (citing *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1171 (9th Cir. 2011)). In the Professional district, a church is only allowed as a conditional use, subject to discretionary approval, while nonreligious assemblies like "art galleries," and "museums and science centers" are allowed as of right. Municipal Code §§ 41-313 and 313.5. Art galleries, museums, and places of worship are all defined as

"assembly uses" by the California Building Code. *See* Cal. Bldg. Code § 303.4, Assembly Group A-3 ("Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement" including: "Art galleries," "Exhibition halls," "Lecture halls," "museums" and "Places of religious worship.").[5] If there was any doubt, the Municipal Code defines museums and science centers as "facilities which specialize in scientific, cultural or artistic exhibits," and which may include "assembly rooms." Municipal Code § 41-122. And the Municipal Code's parking ordinance also contemplates that "museums, art galleries, amusement attractions and libraries" are "assembly" uses, requiring them to each provide a parking space for each 200 square feet of floor area "open to the public including *assembly* or conference facilities." *Id.* § 41-1403 (emphasis added).

The Ninth Circuit has repeatedly found this same type of "express distinction" to constitute a "prima facie case of facially unequal treatment." *New Harvest*, 29 F.4th at 605. For example, in *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, the Ninth Circuit found that the City of Yuma violated RLUIPA's equal terms provision when it permitted "membership organizations" to operate in the City's downtown business district, but required churches and other religious organizations to obtain a conditional use permit. 651 F.3d 1163, 1171 (9th Cir. 2011). Similarly, in *New Harvest*, the Ninth Circuit found the plaintiff, a church seeking to operate on the ground floor of a building in the downtown area of the City of Salinas, successfully established a prima facie equal terms violation by pointing to the City's "express distinction between '[c]lubs, lodges, and places of religious assembly, and similar assembly uses' on the one hand, and all other nonreligious assemblies, on the other hand." *New Harvest*, 29 F.4th at 605. While certain nonreligious assemblies, "such as theaters," could operate on the first floor of buildings in the downtown area as of right, religious assemblies were

[5] *See* https://www.iccsafe.org/wp-content/uploads/errata_central/2022-CA_Bldg-Vol-1_July24-Supp_COMPLETE.pdf (last visited Feb. 16, 2025).

completely prohibited from operating at all on the first floor. *Id.* at 605, 607. When confronted with similar factual scenarios, many other courts have ruled the same.[6] The Church has therefore established a prima facie case of a RLUIPA equal terms violation.

In its opposition to Plaintiff's Motion for Preliminary Injunction, the City argues that museums and art galleries are not "traditional assembly uses" like "clubs, fraternities and lodges" and therefore not apt comparators. *See* ECF No. 51 at 14 (citing *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1235 (11th Cir. 2004)). However, the City cites no case—including *Midrash Sephardi*—which limits RLUIPA's equal terms protections to cases involving clubs, fraternities or lodges. In *Midrash Sephardi,* the Eleventh Circuit did not determine, as matter of law, that only clubs and lodges could serve as secular assembly comparators. Instead, it broadly defined an assembly as "'a company of persons collected together in one place [usually] and usually for some common purpose (as deliberation and legislation, worship, or social entertainment),'" and then found that "private clubs" were apt comparators because they "are places in which groups or individuals dedicated to similar purposes—whether social, educational,

---

[6] *See, e.g.*, *Opulent Life*, 697 F.3d at 293 (requirement that churches "obtain discretionary approval" but not nonreligious institutions like libraries, museums, and art galleries "plainly violated the Equal Terms Clause" and "were unlawful under RLUIPA."); *United States v. City of Troy*, 592 F. Supp. 3d 591, 606 (E.D. Mich. 2022) (prima facie case established because of "requirement that places of worship apply for and obtain a special permit to operate in the City's Community Facilities district" while "institutions such as fine and performing arts facilities, recreational facilities, and primary, secondary, and post-secondary schools" are "permitted by right"); *Chabad of Nova, Inc. v. City of Cooper City*, 533 F. Supp. 2d 1220, 1221-23 (S.D. Fla. 2008) (awarding judgment on the pleadings because city land use code on its face permitted "other land uses that met the definition of an ' assembly' or 'institution'" such as "places where people may gather for meetings and/or business related to trade associations or unions," but banned "religious assemblies or institutions"); *Vietnamese Buddhism Study Temple In Am. v. City of Garden Grove*, 460 F. Supp. 2d 1165, 1174 (C.D. Cal. 2006) ("The [zoning ordinance], on its face, treats churches and religious centers on less than equal terms than it treats private clubs and other secular assemblies. It allows private clubs to operate without a CUP in the office professional zone, while religious assemblies are banned from that zone entirely.").

recreational, or otherwise—can meet together to pursue their interests." *Midrash Sephardi*, 366 F.3d at 1230-31 (quoting Webster's 3d New Int'l Unabridged Dictionary 131 (1993)). Museums and art galleries are also places where people meet for organized social, educational and recreational purposes, like learning about a particular topic, exhibit, artist, or genre of art, and seamlessly fit within *Midrash Sephardi*'s definition of assembly uses. Moreover, as discussed herein, the Ninth Circuit and other courts have repeatedly found that nonreligious assembly uses *other* than clubs and lodges, including museums and art galleries, are indeed valid comparators under RLUIPA's equal terms provision. *See, e.g., New Harvest*, 29 F.4th at 607 (theaters); *Centro Familiar*, 651 F.3d at 1163, 1173 (museums, art galleries, auditoriums); *Opulent Life*, 697 F.3d at 293 (art galleries, museums and libraries); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 272 (3d Cir. 2007) (movie theaters and assembly halls); *City of Troy*, 592 F. Supp. 3d at 606 (fine and performing art facilities and schools); *Christian Fellowship Centers of New York, Inc. v. Vill. of Canton*, 377 F. Supp. 3d 146, 153, 157 (N.D.N.Y. 2019) (theaters and museums).

B. The City Has Not and Cannot Justify The "Less Than Equal" Treatment of Religious Assemblies.

Because the Church has established a prima facie case, the burden shifts to the City to show that preferentially treated nonreligious assemblies are "not similarly situated to a religious assembly with respect to an accepted zoning criterion." *New Harvest*, 29 F.4th at 607. This is "a two-part test, requiring the [local] government to establish: (1) that the zoning criterion behind the regulation at issue is an acceptable one; and (2) that the religious assembly or institution is treated as well as every other nonreligious assembly or institution that is 'similarly situated' with respect to that criterion." *Id.* In other words, the City must establish that there is a legitimate reason, with respect to an accepted zoning criterion, that can justify the "less-than-equal-terms . . . [and] not the fact that the institution is religious in nature." *Centro Familiar*, 651 F.3d at 1172. Defendants have not and cannot do so because nothing in the Zoning Code or

General Plan establishes an acceptable zoning criterion for treating religious assemblies unequally compared to museums or art galleries.

First, the Municipal Code contains no specific purpose for the Professional district, leaving only the permitted uses as a guide to the district's purpose. *See Lighthouse,* 510 F.3d at 272 (finding that "the Ordinance's aims are not well documented" and that "it is not apparent from the allowed uses why a church would cause greater harm to regulatory objectives than an assembly hall"). Those uses run the gamut from "professional, business and administrative offices" and banks and medical offices to daycares, restaurants, museums and science centers and art galleries. There is no evident "accepted zoning criterion" that explains why churches must obtain a CUP while museums and art galleries are permitted as of right. *See Centro Familiar*, 651 F.3d at 1163, 1173 (finding that "no accepted zoning criteria justifies the exception of religious organizations in the as of right ordinance provision," when ordinance permitted nonreligious assembly uses such as "membership organizations," "museums," "art galleries," and "auditoriums"). It cannot be tax revenue since the Professional district allows museums, art galleries and day cares, which could all be non-profit. *See id.* at 1173 (similarly rejecting tax revenue as an accepted zoning criterion). It also cannot be the "street of fun" criterion, since the Professional district allows a host of non-entertainment uses like medical offices, banks, and pharmacies. *Id.*

Further, the Professional district's CUP requirement for museums or art galleries that *also* offer "recreational or entertainment uses" does not alter the analysis. *See* Municipal Code § 41-313.5(e). "Recreational or entertainment uses" are additional forms of entertainment that a museum or art gallery could offer "to the public for compensation," *id.*, and include things like "carnivals, circuses, amusement parks, golf course, bowling alleys, billiard parlors, pool halls, sports stadiums, dance halls, and game arcades." *Id.* § 41-142. Museums and art galleries do not include such uses by default and infrequently do in practice. Only a museum or art gallery that wishes to feature some additional recreational or entertainment use like a "game arcade" or

"amusement park" rides would be required to obtain a CUP, while *all* churches—with or without those uses—require one. Accordingly, the offering of "recreational or entertainment" uses is not a valid zoning criterion.

Many courts have found that similar ordinances, which allow assembly uses like museums and art galleries but restrict religious assembly uses, failed the accepted zoning criterion (or similar) test. *See, e.g.*, *Opulent Life*, 697 F.3d at 293-94 (adopting similar "zoning criterion" test and finding that ordinance that banned all religious uses from the Business Courthouse Square District but allowed "libraries, museums, and art galleries" was a prima facie equal terms violation); *Digrugilliers v. Consol. City of Indianapolis*, 506 F.3d 612, 615 (7th Cir. 2007) (finding that zoning ordinance that allowed uses including assembly halls, art galleries, civic clubs, libraries, and museums, but prohibited religious assembly uses violated RLUIPA's equal terms provision); *Christian Fellowship Centers of New York, Inc.*, 377 F. Supp. 3d at 153, 157 (issuing preliminary injunction when ordinance permitted theaters, museums, and "[f]raternal/social clubs/education/charitable or philanthropic" but prohibited religious assembly uses because it "treats religious assemblies less well than secular assemblies that have equivalent impacts on its purposes.").

Moreover, even an appeal to the City's recently revised General Plan cannot save the Professional district's unequal treatment of religious uses. As a threshold matter, the General Plan came into play in this case because the Municipal Code asymmetrically required that religious assembly uses—but not nonreligious assembly uses—in the Professional district apply for a CUP and demonstrate "that the proposed use will not adversely affect the *general plan* of the city or any specific plan applicable to the area of the proposed use." *See* Municipal Code § 41-638(a)(1)(v) (emphasis added). This CUP requirement *is* the facial equal terms violation, and the City should not be permitted to

compound that injury by appealing to the General Plan.[7]

But even if the Church's application was fairly subject to a review of compatibility with the General Plan—and it was not—the General Plan cannot mitigate how religious assembly is treated unequally in the Professional district. In its denial of the Church's CUP, the City, citing the "Flex-3 designation," claims that "the subject site is not suitable for the operation of community assembly" and that "community assembly-type uses" are not "permissible under the land use designation." ECF No. 5-12 at 4. This justification is inaccurate for two reasons. First, as discussed above, this justification ignores that the Professional district in which the proposed church is located *does* allow community assembly uses such as museums and art galleries. Accordingly, this justification—that assembly uses are not allowed in the Flex-3 designation—cannot be an "accepted" zoning criterion because its premise is factually incorrect. *New Harvest*, 29 F.4th at 607.

Second, even ignoring the permitted assembly uses in the Professional district, "artist galleries," which are specifically allowed by the Flex-3 designation, *see* ECF No. 5-10 at 3, are "similarly situated" to religious assemblies (especially a small 90-seat church proposed by the Plaintiff) as to the purported purpose of the Flex-3 designation.[8] ECF No. 5-14 at 29. As discussed above, art galleries are assembly uses as contemplated by the Zoning Code and California Building Code and are "open to the public." Municipal Code § 41-1403; Cal. Bldg. Code § 303.4. Churches are also assembly uses that are "open to the public." *New Harvest*, 29 F.4th at 607 (finding that

---

[7] Indeed, as the City acknowledged in its denial of the Church's appeal, the Church could have engaged in "the permitted office uses, allowed by right under SAMC Section 41-313." ECF No. 5-12 at 7-8. As discussed above, those permitted uses include nonreligious assembly uses like museums and art galleries.

[8] There is no apparent or functional difference between the "art galleries" referenced in the Professional district, Municipal Code § 41-313(e) and "artist galleries" referenced in the General Plan. ECF No. 5-14 at 29.

ordinance which allowed "public assembly uses," but not "private assemblies" or religious assembly uses, violated RLUIPA's equal terms provisions because "[c]hurches . . . are not fairly characterized as private assemblies because they are commonly open to the public."). The Flex-3 designation purports to allow for "clean industrial uses that do not produce significant air pollutants, noise, or other nuisances." ECF No. 5-14 at 29. Churches do no more harm to this purported interest than do art galleries, which could also be used for assembly purposes. As the Third Circuit explained in *Lighthouse*, "it is not apparent from the allowed uses why a church would cause greater harm to regulatory objectives than" an artist gallery "that could be used for unspecified meetings," events, or gatherings. 510 F.3d at 272.

The other General Plan and focus area criteria offered by the City similarly fail. For example, the City's CUP denial explains that the "55 Freeway and Dyer Road Focus area is intended to reflect an urban intensity and design, with inspiring building forms and public spaces." ECF No. 5-12 at 5. But houses of worship, like the proposed church, also foster a sense of wonder, belonging, faith, service, and humility and can be inspiring public places, just as much, if not more than, an artist gallery. *See New Harvest*, 29 F.4th at 607 (in rejecting city's claim that churches are private assemblies, discussing New York's St. Patrick's Cathedral and Washington's National Cathedral as churches that "host hundreds of thousands of visitors annually, only a small fraction of whom are members or guests of the church.")

Similarly, a church serves "Policy 1.1" of the Land Use Element of the General Plan just as much as an artist gallery or a day-care center or museum, which are permitted uses in the Professional district. *See* Municipal Code § 41-313 (identifying permitted uses in the P district). Policy 1.1 "encourages compatibility between land uses enhance livability and promote healthy lifestyles." ECF No. 5-12 at 4. In its denial, the City explained that "introduction of a community assembly use and a Bible school to the existing office complex will generate noise, traffic and queuing, solid waste generation and circulation" and "introduce . . . youth services in close proximity to existing

industrial uses in the area, counter to this General Plan policy." *Id.* at 5-6. But so do artist galleries, which will cause similar amounts of traffic and noise (and probably more, as the latest the proposed church would be open is 7 p.m. on Saturdays). *See* Nov. 21, 2023 Staff Report at 2.[9] And day care centers (and museums), permitted as of right, will guarantee the presence of "youth services" on a much more regular basis than would the proposed church's "bible school during one week of the summer." Nov. 21, 2023 Staff Report at 2; *see Centro Familiar*, 651 F.3d at 1173 (rejecting city's purported zoning criterion because "many of the uses permitted as of right would have the same practical effect as a church . . ..").[10]

A church would have a similar impact on Policy 4.1 of the Land Use element of the General Plan as would the other permitted uses. Policy 4.1 "supports complete neighborhoods by encouraging a mix of complimentary uses, community services, and people places within a walkable area." ECF No. 5-12 at 6. The City found that "the nearest residential community is approximately 0.3 miles away" and the proposed church "would not be compatible with the surrounded uses and will not encourage development of place-making within a walkable area." *Id.* A place of worship is a "community service" and a "people place" and supports a "complete neighborhood" just as much – or more than – a museum, artist gallery, or daycare. Further, there is no "accepted" or principled reason for the City to think that people are less likely to walk 0.3 miles to Church than they would a museum. And the Church proposed "no exterior changes . . . with the project," Nov. 21, 2023 Staff Report at 2, so it is unclear how the Church could have a negative impact on "place-making" any more than any other use

---

[9] Available at https://publicdocs.santa-ana.org/WebLink/1/doc/140296/Page1.aspx (last visited Feb. 17, 2025).

[10] For similar reasons, the presence of a church would not cause any great impact to Policy 1.9 ("avoid[ing] potential land use conflicts", *see* ECF No. 12-5 at 6-7) than would an artist gallery, museum, or daycare, all permitted as of right in the Professional district.

that would have gone into the same building. *See* ECF No. 5-12 at 5.[11]

The City's "business cluster" justification also fails. ECF No. 5-12 at 6 ("[I]ntroducing community assembly does not support the development of mutually beneficial and complementary business clusters at the subject site"). A business cluster is defined as "a geographic concentration of interconnected businesses, suppliers, and associated institutions in a particular field."[12] A small house of worship would not hinder the development of a business cluster any more than a museum or artist gallery, all allowed as of right. *See, e.g., Opulent Life Church*, 697 F.3d 279, 293 (rejecting city's purported "commercial district . . . justification . . . because other noncommercial, non tax-generating uses are permitted in the district"); *see also New Harvest*, 29 F.4th at 609 (rejecting the "City's vibrancy plan" zoning criterion when ordinance prohibited religious assembly use but allowed government offices, funeral services, and laboratories because those uses "would have the same practical effect" as religious assemblies) (quoting *Centro Familiar*, 651 F.3d at 1174).

Finally, the City's purported concerns that allowing the Church would introduce "sensitive receptors" to an industrial area creating "irreconcilable conflicts" misses the mark. *See* ECF No. 5-12 at 5-6. While Santa Ana's General Plan does not appear to define the term, the California Air Resource Board states that "[s]ensitive receptors are children, elderly, asmatics [sic] and others whose are at a heightened risk of negative health outcomes due to exposure to air pollution."[13] The Professional district *and* General Plan permit by right numerous uses catering to children the elderly, and those

---

[11] While a precise definition of "placemaking" does not appear in the General Plan, it does refer to "placemaking," explaining that "Placemaking elements like lighting, street trees, landscaping, and continuous sidewalks make the District Center areas pedestrian friendly." ECF No. 5-14 at 66.

[12] https://thelawdictionary.org/business-cluster/ (last visited Feb. 17, 2025).

[13] https://ww2.arb.ca.gov/capp/cst/rdi/sensitive-receptor-assessment (last visited March 3, 2025).

with medical issues, including museums, art galleries, daycares, medical offices, pharmacies, banks, restaurants, and professional, business, or administrative offices. Municipal Code § 41-313. A daycare, museum, or doctor's office is as likely—if not more likely—to bring in a steady stream of young, old and sick residents, i.e. "sensitive receptors," as a church. Accordingly, this justification also fails. *See New Harvest*, 29 F.4th at 609; *Centro Familiar*, 651 F.3d at 1174.

IV. CONCLUSION

Santa Ana's Zoning Code violates RLUIPA's equal terms provision on its face because the Professional district requires churches to obtain a CUP, while comparable secular assemblies like museums, science centers, and art galleries are allowed by right with no discretionary permit. The Church has therefore demonstrated a prima facie case of unequal treatment, and the City has not justified the unequal treatment with reference to any accepted zoning criterion. Accordingly, the Church has demonstrated a likelihood of success on its RLUIPA equal terms claim.

Respectfully submitted,

Dated: March 14, 2025

FOR THE UNITED STATES:

JOSEPH T. MCNALLY
Acting United States Attorney

DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division

/s/ Amy Xu
AMY XU
Assistant United States Attorney

MAC WARNER
Deputy Assistant Attorney General
MICHAEL E. GATES
Deputy Assistant Attorney General
Civil Rights Division

CARRIE PAGNUCCO
Chief, Housing and Civil Enforcement Section
Civil Rights Division

/s/ Noah D. Sacks
NOAH D. SACKS
Trial Attorney, Housing and Civil Enforcement Section
Civil Rights Division

Attorneys for the United States of America

Certificate of Compliance

The undersigned, counsel of record for the United States, certifies that this brief contains 5104 words, which complies with the word limit of L.R. 11-6.1.

/s/ Noah D. Sacks
NOAH D. SACKS
Trial Attorney, Housing and Civil Enforcement Section
Civil Rights Division