APPEAL FROM CITY OF VENTURA PLANNING COMMISSION
TO CITY OF VENTURA CITY COUNCIL
PROJ-5968 HARBOR COMMUNITY CHURCH

HARBOR COMMUNITY CHURCH’S
STATEMENT OF GROUNDS FOR APPEAL

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INTRODUCTION

Harbor Community Church appeals the Planning Commission’s denial of a permit for it to minister to low-income congregants at 3100 Preble Avenue. The Commission’s action violates the law and is unsupported by the facts. Harbor therefore asks this Council to reverse the denial, and, consistent with the previous recommendations of planning staff, allow a permit to issue without delay. From the beginning, Harbor has remained open to legally appropriate permitting conditions that are necessary to meet legitimate concerns of neighbors but still ensure the continued religious freedom of the church and its congregation.

Federal law protects as valid forms of religious exercise Harbor’s daily acts of worship and pastoral care—including prayer and spiritual support, breaking bread, and the provision of clean clothes and a hot shower. It would allow the city to criminalize such acts only under the most extreme circumstances. Defying the recommendation of its professional staff and the urging of its lone lawyer member, however, the Planning Commission erroneously pronounced that Harbor’s ministry is not in fact religious exercise but secular social service. Consequently, the Commission found the church’s permit application should be treated like any other zoning matter. Regardless of whether the Commission administered city zoning rules properly—something we also dispute below—its refusal to apply binding federal law to such rules produced an untenable decision.

The Religious Land Use and Institutionalized Persons Act (RLUIPA), which Congress adopted unanimously in 2000, includes within its broad ambit sincere manifestations of faith like Harbor’s. And RLUIPA safeguards land uses for such purposes to the maximum extent allowed by the U.S. Constitution, requiring municipalities to justify any land use ruling that substantially burdens religious practice, like denial of a permit, by showing the restriction is the only way to
serve a vital public interest. If alternatives exist, the government must pursue them. And the law’s protections are not limited to Sunday worship; rather, RLUIPA covers any religiously-motivated practice. This naturally includes Harbor’s acts of love and mercy for the poor.

Harbor and its congregation believe God commands them to minister to and include in their flock the homeless and disadvantaged. They are guided by God’s command to “share your food with the hungry” and “clothe” the naked.\(^1\) Harbor’s congregation seeks to emulate the God of the Bible who “defends the cause of the fatherless and the widow, and loves the foreigner residing among you, giving them food and clothing” and who, in Jesus Christ, literally bathed the unclean and called His followers to serve “the least of these” lest they be condemned.\(^2\) To fulfill its call, Harbor’s pastoral ministry, called Operation Embrace, offers men, women, and children daily worship, fellowship, food and clothes, and access to showers and laundry.

Harbor began worship at 3100 Preble in 2004, after purchasing the property from another group that had worshipped there in a large building zoned for church and daycare use. Harbor developed as a church that welcomed everyone in the city, and in particular the poor and homeless, into its congregation. Although the church operated without apparent problems for years and with the city’s open support, several recent events—including the economic downturn and a nearby homeless camp “sweep”—caused its daily congregation to swell. Its numbers have since stabilized, but in apparent response to neighbor complaints, city staff approached Harbor late last year to ask it to apply for a new permit. Although Harbor has always understood all it does to be legally protected religious exercise, it complied.

Neighbors who found the church’s location undesirable saw the opportunity to mount a vigorous campaign to curtail the church’s ministry. So when city staff sought public feedback,

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\(^1\) Isaiah 58:7.  
\(^2\) Deuteronomy 10:18; John 13:1-10; Matthew 25:34-46.
they blamed a cornucopia of perceived ills on the church’s ministry, regardless of whether Harbor or its congregants were in fact responsible. Notwithstanding these objections, city staff recommended approval of Harbor’s permit—albeit subject to enumerated conditions. Among other things, staff stressed that Harbor could continue its ministry at 3100 Preble and that, working together, the church and city could adequately address neighbor concerns.

Nevertheless, the Commission rejected the staff recommendation and denied the permit outright. In its resolution, the Commission refused to apply RLUIPA at all, declaring that Operation Embrace is not religious exercise. The Commission also refused to analyze in any detail the conditions proposed by staff, concluding instead that Harbor’s objections to some of those conditions meant Harbor would not obey them.

But, as we demonstrate below, Harbor’s ministry is protected by RLUIPA as a form of religious exercise. And, contrary to the Commission’s understanding, an applicant’s objections to permitting conditions, as in Harbor’s case, does not mean it will not follow them were they law. Indeed, it is difficult to imagine the point of the city’s process for objecting to proposed permit conditions were such objections used as grounds for rejecting the permit.

Harbor requests that the Council reverse the Planning Commission’s unlawful denial of its conditional use permit application and grant it a permit for all reasons stated here, in its application, and the record. It remains open to all legal and reasonable conditions.

STATEMENT OF THE CASE

A. The Society of Friends founds a church at 3100 Preble Avenue in the late 1950s, and later secures a permit to feed and care for 150 children per day.

3100 Preble Avenue has been a church since the late 1950s, when it was owned and operated by the Society of Friends, also known as the Quakers. The church has always operated as a place of communal worship. In addition, in 1968, the Quaker congregation acquired a
conditional use permit for daycare operations on the site for up to 64 children. In 1979, the city amended that permit to allow daycare operations at the site for up to 150 children. The last of these permits was later extended for an unlimited time period.

B. In 2004, Harbor Community Church makes 3100 Preble its home and welcomes all Venturans, particularly the poor and homeless, to be part of its worship family.

Harbor purchased the property from the Quakers in 2004, and Sam Gallucci became head pastor in 2008. From the start, Sam understood God wanted Harbor to focus its ministry on the outcast. He first sought to bring God’s word to the homeless by visiting them in parks, but he soon realized a physical connection to the church building and its community was essential. To share Christ’s love with lower-income individuals in the way demanded by their faith, therefore, Harbor’s congregation invited the poor and homeless to the church. Soon, poor and homeless men, women, and children joined the community seeking prayer, rest, support, and nourishment.

C. Harbor feels called to develop its worship in service to the city and its neighbors.

At the same time Harbor was developing its ministry in accordance with God’s call, the city was approaching local churches and seeking their help in what it called a ten-year strategy to end homelessness. Harbor took the city’s invitation to heart and further prayer. The answer to that prayer was a coordinated effort with the city, fellow churches, and its neighbors. The need was evident, as Harbor could feel God’s love for the poor compelling it to serve them and their city. As Harbor began its ministry in 2008, therefore, it joined more than a dozen other churches also committed to homeless ministry. Like Harbor, many of these churches were located in residential neighborhoods.

Harbor called its ministry “Operation Embrace” because its chief objective was (and is) to embrace these brothers and sisters with the love of Jesus Christ and to help them overcome
their challenges. Harbor reached out to these people, welcomed them into its congregation, and helped them find hope and faith in a world that seemed dark. From the start, all elements of Operation Embrace have been part of Harbor’s worship, as Harbor follows Christ’s command to feed, clothe, and minister to the “least of these.” Operation Embrace is also instrumental in the city’s own mission to help the homeless. Harbor’s religious ministry became, in a way, part of the solution to the city’s problem. As a result of the church’s efforts and God’s grace, Harbor has helped hundreds off the street who have since become contributing members of society.

D. Harbor’s homeless ministry flourishes, with the city’s support and encouragement.

During its early years, the church enjoyed the city’s warm support and cooperation. For example, at an open house Harbor held in 2008, church leaders shared its vision with prominent members of the community—including key city officials. Harbor’s leaders explained Operation Embrace’s mission and methods, and the city was well informed about the ministry. Later, in 2009, Harbor worked diligently with the city to update the church and make it code-compliant. Around the same time, Harbor hired a full-time security guard to ensure safety on its premises. The purpose of these upgrades was to enable Harbor to continue operating. Between 2009 and 2011, city council members and the two mayors visited and praised the ministry.

Harbor also enjoyed good relations with the Ventura Police Department, as police officers regularly referred the city’s homeless to Harbor for needed succor. Moreover, Harbor was identified specifically in the city’s printed materials as a part of the solution to the epidemic homelessness in the area and the city even kept a portable storage unit on the church’s property as part of the city’s homeless services. In 2010 and 2011, the city awarded the church a sizable grant to help offset the church’s food distribution costs. By all appearances, the city genuinely appreciated the good work, and good results, of Operation Embrace.
E. Due to a series of events beyond Harbor’s control, public support for its ministry and the homeless in Ventura begins to suffer.

Three recent events appear to have contributed to current neighbor opposition to Harbor’s ministry at 3100 Preble, all of which are beyond the church’s control: the economic downturn, a change in the city’s homeless policy, and the city’s “river bottom sweeps.” Each of these factors caused a temporary, yet noticeable spike in the number of those seeking sanctuary at Harbor. Naturally, this growth increased the visibility of disadvantaged people in the neighborhood and, unfortunately, caused a corresponding increase in opposition to the church’s ministry.

The first factor that led to more homeless visiting Harbor was the widespread economic downturn. Many men, women, and families in Ventura caught in the wake of the crisis had been accustomed to a middle-class lifestyle, but due to rampant unemployment suddenly found themselves homeless or on the brink of homelessness. Some of them turned to Harbor for help.

The second factor was a 2011 change in the city’s grant policy for homeless efforts. As a result of the change, the city’s three leading homeless-service providers—Project Understanding, Salvation Army, and Turning Point—shut down their walk-in centers. Consequently, many of the poor and homeless Venturans turned to Harbor and, as a result, its congregation grew.

The final factor was the city’s well-documented sweep of the Ventura River bottom in late 2012. Overnight, scores of homeless men, women, and children were forced to evacuate their temporary homes. The sudden disturbance of these individual’s environments contributed to the increase in church attendance.

As these three factors converged in late 2012, the number of poor Venturans attending Harbor grew and the church’s visibility increased. Around the same time, several neighbors put pressure on the city to banish what had now become a less popular religious practice there.
F. City staff asks Harbor to apply for a new conditional use permit in connection with its homeless ministry. Harbor complies with staff’s request.

In December 2012, Community Development Planning Manager Dave Ward wrote to Harbor inquiring about the nature of its ministry and corresponding land use. Harbor responded on December 18, 2012, detailing its operations and explaining that everything it does is consistent with its current approvals and legal rights. On January 8, 2013, Mr. Ward replied that certain “changes” in the church’s use required a new conditional use permit that must be applied for and approved by the Planning Commission. Mr. Ward’s second letter indicated that, like “church” use generally, Operation Embrace fell “under Community Meeting, as defined by our Municipal Code,” and could be approved under that category.

Although it did (and does) not believe a further use permit is necessary for it to practice its religion, Harbor complied with Mr. Ward’s request to apply for a new conditional use permit on February 21, 2013. Harbor submitted the application and fee along with an addendum on the project’s background, uses, and purpose, a RLUIPA summary, floor and site plans, and photos.

On March 21, 2013, Associate Planner Elizabeth Richardson wrote Harbor requesting additional information. On April 8, 2013, Harbor’s counsel met with Ms. Richardson and other staff to discuss and clarify her request. On April 12, 2013, Harbor submitted the requested supplemental information and staff deemed its application complete.

Following the completion of its permit application, Harbor continued to answer all staff questions and fulfill all requests in a timely manner. Harbor staff and counsel also met with City Manager Mark Watkins and, on several occasions, met with concerned neighbors in an effort to dispel misunderstandings and reaffirm the church’s commitment to the neighborhood and city.
G. **Staff recommends the Planning Commission grant Harbor a use permit, concluding that any negative impacts arising from its homeless ministry can be addressed through operational and structural conditions.**

After studying Harbor’s application and analyzing feedback from the public and other city agencies and constituencies, planning staff recommended that, subject to certain conditions, the Planning Commission grant Harbor the requested permit as its ministry is “consistent with the community meeting land use type.” The proposed conditions included check-in and background check procedures, security measures at or near the church, higher fencing and the installation of security cameras, neighborhood escorting, staff training, disturbance reporting, and continued coordination with the neighboring school for arrivals and departures.

Staff found that, subject to conditions, Harbor’s ministry was fully compatible with and would not adversely affect or be materially detrimental to surrounding uses or the environment. The proposed conditions were sufficient, in staff’s view, “to minimize or prevent effects of the proposed use on neighborhood safety, conflicts between homeless and the neighborhood, conflicts with the school operations, and child safety.” Furthermore, staff noted, although police and fire calls had increased in the neighborhood, these calls had “been accommodated within the parameters of normal police and fire service call operations.” Thus, staff found, “no new police facilities, or alteration to police facilities would be needed.”

As part of its analysis, staff included a summary of RLUIPA. Staff briefly described various provisions of the statute, including the substantial burden test. Staff noted that RLUIPA defines religious exercise to include “a wide range of activities beyond church services and assemblies.” Staff continued, explaining that while requiring churches to comply with a permit application process did not necessarily constitute a substantial burden under RLUIPA, courts are
divided over whether approval with onerous conditions, or outright denial, constitutes a substantial burden.

H. Harbor objects to some conditions proposed by staff, but embraces staff’s recommendation for a permit and remains open to legal and reasonable conditions.

In its July 24, 2013 comment on the staff’s report, Harbor underscored its willingness to address concerns, but also raised objections to certain conditions suggested by staff. These objections fell into two categories: one category addressed concerns about the seeming infeasibility and extraneousness of some of the proposed conditions, while the other category represented more robust objections to proposed conditions that might violate privacy or religious liberty rights. The first category included, but was not limited to: Condition 9 – Parking (requiring four more spaces); Condition 12 – Deadline for Physical Construction (requiring that all building modifications, including costly renovations, be made in 60 days and not the typical 12 months); Condition 23 – Fences (requiring additional, expensive fences be built); Condition 24 – Gates (requiring expensive gates be installed across vehicle entrances); and Condition 34 – On-Street Parking (barring daily on-street parking).

Harbor also objected to proposed conditions that fell into the second category of potentially burdening religious liberty or privacy. Conditions 16-18 (and 22) – Escorting (requiring escorting homeless congregants to and from the church from a quarter-mile away), for example, presented both feasibility and religious liberty problems. Practically, Harbor can only make best efforts to control congregants after they leave the church. Harbor also noted it was the only organization in Ventura that would be required to do this, resulting in a potential religious discrimination problem. Condition 20 – Log-In List (requiring Harbor to share with the city its list of congregants) likewise raised privacy issues the church felt compelled to object to. Harbor
happily consented to reporting the number of daily attendees to the city, but feared that releasing names of worshippers violated those individuals' privacy and associational interests. Similarly, Harbor objected to Condition 22 – Mandatory Stay (prohibiting congregants from leaving the church until services ended at 2 p.m.) because it likely contravened personal liberty. Harbor felt uncomfortable agreeing, in essence, to force individuals to participate in its religious services.

Notwithstanding these and similar objections, however, Harbor emphasized its willingness to comply with valid conditions and the law. In its July 24, 2013 comment, Harbor “stresse[d] its commitment to being a good neighbor and its openness to doing whatever it can to help ensure a safe and healthy Ventura.” Harbor likewise stated in an August 20 letter that its “objection to the permitting process and some conditions proposed by staff does not mean it is unwilling to abide by these or other adjustments to its ministry if necessary.” And in a September 5 letter, Harbor reiterated that it had been and would be open “to all reasonable solutions to issues raised by neighbors.” Finally, in an October 3 letter, Harbor stressed that “were the church legally required to abide by conditions to continue its ministry,” it would do so.

I. **The Planning Commission holds a public hearing, where those opposed to Harbor speak but offer no reliable proof its congregants broke any laws.**

On July 29, 2013, the Planning Commission conducted a public hearing to discuss Harbor’s application. The meeting was well attended. About 85 participants opposed to Harbor’s ministry spoke, while around 50 participants spoke in defense of Harbor.

The participants opposed to Harbor’s ministry discussed a perceived increase in criminal activity, littering, and alleged unlawful behavior in the adjacent Blanche Reynolds Park. At no point, however, did these participants demonstrate Harbor congregants in fact caused these ills. They submitted pictures allegedly depicting homeless people roaming the Preble neighborhood.
However, speaking in support of the church, Harbor volunteer Krysta Christensen, an African American, indicated many images were of her and she is not homeless. Mrs. Christensen cited one photo posted at the hearing, “I was in one of the photos there (...) presented as homeless” but “I certainly am not.” Likewise, painfully few comments distinguished between Harbor congregants and individuals who walk the public streets or go to the neighboring park.

The neighboring school was also a recurring theme at the July hearing. Harbor opponent James Calhoun, for example, declared, “[m]any parents have chosen not to enroll their children at Blanche Reynolds solely because of the risk associated with the services provided by 3100 Preble.” And yet, the school board later clarified Blanche Reynolds School has “not experienced a disproportionate number” of transfer requests or a “decline in enrollment.”

Additionally, Jason Benites opined, “I believe I frequently see persons, whom based upon my experience, are possibly engaging in illegal activity.” And other speakers described homeless people as uniformly mentally ill, substance-addicted and sexually depraved based on unrelated national statistics that are not reflective of any actual hard data about Harbor’s congregation.

Assistant Police Chief Dave Wilson responded to general questions about crime in the neighborhood at the July hearing. Officer Wilson acknowledged that many statistics had been offered on both sides, but these should not be held out as definitive because “you can’t always trace back things absolutely to a certain point.” Officer Wilson confirmed that the police had

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3 Some commenters also referred to a homeless person trespassing on school property. Former County Planner Scott Ellison clarified, however, that the incident was a misunderstanding: “In regard to the single anecdotal incident of potential trespass, a homeless person who was not a project participant did not know how to get to Valmore Avenue from the park; consequently he tried to use a gate between the park and the school. However, once he was shown the correct route to take, he was more than happy to go around the school.” The allegedly significant incident was also not mentioned by the school board in its August 2013 resolution responding to neighbor concerns.

4 At points, testimony by Harbor’s opponents veered from the unsubstantiated to the bizarre. For example, one such opponent, Carolyn Brodersen, attempted to blame dogfight on the church. She described a pit bull, allegedly belonging to “a transient seeking services at the Harbor,” attacking her own leashed pet who had the good sense to submit “to the death grip on her neck without moving a muscle.” From the testimony, it seems the pet was unharmed.
received more complaint calls than years prior, but that in Reporting District 59, the reporting
district where the church is located, calls had actually decreased (albeit less than the city
average). Officer Wilson likewise explained that vagrancy is often correlated with public
parks—like Blanche Reynolds.

Commenting on the lack of causation, Commission Chairman Long later observed, “I
think that there’s a lot of calls because the neighbors are really keeping an eye and trying to get
more calls in order to show that this is a problem.” He added, “I don’t think there’s facts to
show” that “all of those [police] calls were initiated from people that had gone to” Harbor.
Commissioner Ferrin likewise observed, the “police data and evidence submitted . . . contain
little proof that problems in the neighborhood are primarily due to Harbor. It’s very difficult to
tell if [alleged lawbreakers] are participants.”

On the other side, Harbor supporters lauded its efforts to provide guidance and basic
necessities for the poor and destitute, emphasizing the church’s religious mission. In addition to
testimony from congregants describing life-changing effects of the church’s ministry, numerous
Venturans expressed deep concern about the religious liberty implications of restricting Harbor’s
ministry. Debora Schreiber, a member of Temple Beth Torah, criticized the proposed escorting
requirement as unlawfully restricting the First Amendment rights of the church’s congregants.
Karen Flock likewise bristled at the notion that the city could circumscribe religious activities,
offering, “I find it frightening that the government might tell us we can’t do [our religious
activities].” And President of the Ventura Interfaith Ministerial Association James Ayars warned
that other religious entities “are deeply concerned about the impact” the permit process will have
on “all of our congregations, whether it’s a temple, a mosque, a synagogue, or a church.”
One neighbor, who volunteers and worships at Harbor, offered an alternative explanation for the perceived increase in crime. Kathy Powell observed that there has been “an epidemic of young adults (our neighborhood kids) who have been taking their parents’ medications, opiates, psych meds” and have even “turned to heroin.” She insisted that troubles in Blanche Reynolds Park could be attributed to local teens that go there “to drink, party, have sex and generally do what kids have always done.” Ms. Powell described loud parties, drug use, and domestic disturbances among neighbors, asserting the neighborhood is “not the Mayberry” others portray it to be.

At the end of the July 29 hearing, Chairman Long invited Commissioners to ask staff questions they wanted answered before deliberations. Question topics included other use types, the feasibility of relocation, facts that might be learned from the school board, and responding to a letter from a former county official. Proceedings were continued to September 11, 2013.

J. At the Commission’s request, staff modifies proposed permit conditions but remains resolute in its recommendation that a permit should be granted.

Staff replied to the Commission’s questions in writing. Most of the responses sought to clarify city policy. In response to questions about designating Harbor’s ministry as a community meeting use, staff evaluated other land use types, like dining and retail sales, and insisted that community meeting was the appropriate designation. In response to questions about additional facts from Blanche Reynolds School, staff referred without comment to a recent school board resolution, which stated the school had “not experienced a disproportionate number of issues.”

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5 Although Ms. Powell’s comments were submitted by letter in October, they were incorporated into the record by staff’s September 29, 2013 memorandum to the Commissioners, and thereafter acknowledged by them.
6 The board resolution also recommended Harbor relocate, but its resolution demonstrates that recommendation was rooted more in politics than facts, as the resolution offers no facts to support such action.
In response to a question about alternative locations for Harbor’s ministry, staff answered that a few weeks earlier the city had provided Harbor a list of a handful of industrial properties. Staff added, however, that any relocation would also require a permit and nowhere indicated any financial support in the effort. (Staff shared what was merely an Internet printout of five property listings; Harbor responded that each “would need significant, if not complete, renovation to meet the needs of Harbor’s ministry and would increase its building costs exponentially.”) Staff concluded its response by reiterating its recommendation the Commission approve the permit.

At their September 11 hearing, the Commission began deliberations. The City Attorney reminded the Commission that its findings needed concrete evidence and that, “with all respect to the residents in the area, if they are speculating that certain impacts are caused by parishioners or clients of Harbor Community Church, that’s not enough for you to base a conclusion on. You have to have something more than mere speculation or unsupported opinions.”

Some commissioners abruptly concluded the Commission could dispense with talking about any conditions because compatibility with the surrounding neighborhood could never be found. Commissioner Guthrie said, “the conditions become very secondary if we can’t meet the findings, which I don’t believe we can.” Thus, she moved to deny the permit. Nevertheless, other commissioners believed Harbor’s use might, with conditions, be compatible. They asked to deliberate conditions. Commissioner Beck observed, “I think [compatibility can be] met; so we can move into the conditions.” Commissioner Guthrie’s motion to deny failed in a tie vote (one Commissioner was absent). The Commission, however, did not then collectively deliberate conditions, but moved to continue the hearing to a later date and asked staff to revise conditions based on individual feedback from some commissioners.
Based on this charge, staff’s new recommendation eliminated several conditions: that the church escort congregants within the neighborhood; that it install driveway gates; that its staff patrol the school and park; and that its staff file police reports whenever they think a crime might occur or has occurred. The new recommended permit, however, replaced these conditions with the following: that all participants wear an identification badge in the neighborhood; that Harbor establish a ‘quick response’ hotline; and that it provide quarterly reports to the city.

In responding to staff’s revisions, Harbor expressed concern that requiring worshippers to wear identifying badges might unreasonably burden rights of association, speech, and religion. Harbor asked that, if badges were a necessary condition, its members be permitted to carry the badge in their pockets rather than wear it on their clothing. Still, Harbor reiterated that “were the church legally required to abide by conditions to continue its ministry,” it would do so.

K. The Commission denies the permit outright, declaring Harbor’s ministry not to be religious exercise and refusing to address conditions in any detail.

The Commission reconvened on October 9, 2013 to deliberate. Commissioner Beck began by again proposing the Commission discuss whether a finding of compatibility could be made, given the revised conditions. He stated that, “with [the proposed conditions], finding four [addressing compatibility of the ministry with the area] has been met.” Chairman Long said, “I am happy with the way the conditions are now.” And Commissioner Ferrin added that he thought “finding four c[ould] be made” and that “problems could be mitigated.”

But Commissioner Francis contended that, to grant the permit, the commissioners “have to understand that we have an applicant who will allow us to make the finding by agreeing to the conditions. . . . And I don’t think we’re there.” In response, the City Attorney explained that “it is not unusual at all for an applicant not to agree to conditions” and that agreement was not
necessary to impose and enforce lawful conditions. Notwithstanding his advice, the Commission passed a motion of intent to deny the permit, 6-1, observing that “conditions that were proposed to achieve compatibility” were “not supported by the applicant, and therefore, compatibility cannot be made and consistency cannot be achieved.”

In denying the permit, the Commission found that Harbor’s ministry was not “religious in nature” and thus did not merit any analysis under RLUIPA. Commissioner Dunbar reflected the Commission’s thinking by observing that Harbor’s ministry was governed according to “what our community designates as community meetings” and not by “what falls under the religious RLUIPA or whatever they’re calling it at this time.” In dissent, Commissioner Beck, the lone practicing lawyer on the Commission, objected to the Commission making “a factual finding of what is and what isn’t a religious practice” because that would “abrogat[e Harbor’s] right as a church.”

In its resolution denying the permit—adopted at its next hearing on November 13—the Commission declared “laundry service, food service, and the provision of showers or clothing are secular land uses” and thus do not constitute religious activity. Then, regarding compatibility (finding four), the Commission found the “homeless outreach program is incompatible with and detrimental to the uses and general character of the surrounding vicinity.” In support, the Commission observed that “many of staff’s proposed conditions, which would tend to mitigate the incompatibility . . . have been rejected by the Applicant” and that these conditions “would be difficult to enforce” and are “not feasible” because of “the Applicant’s refusal to accept the[m].”

This appeal follows.
ARGUMENT

I. THE PLANNING COMMISSION’S ACTION VIOLATES FEDERAL LAW.

A. The Religious Land Use and Institutionalized Persons Act (RLUIPA) governs Harbor’s application for a conditional use permit.

RLUIPA is a federal civil rights law that imposes special requirements on the application of local land use rules to churches. Congress passed RLUIPA in 2000 by unanimous consent, after finding local zoning rules frequently had an undue impact on the ability of religious congregations to act in accordance with their faith, particularly where those acts are unpopular. To provide added protection for religious exercise in the face of burdensome zoning rules, even when those rules say nothing about religion, RLUIPA requires municipalities to prove the imposition of particular rules to a given religious practice is both justified by “a compelling governmental interest” and “the least restrictive means” of satisfying that interest. This is known as “strict scrutiny” and is “the most demanding test” in constitutional law. The “strict scrutiny” bar for justifying government action is in fact so high some scholars call it “fatal.”

The Planning Commission’s outright denial of the conditional use permit to Harbor cannot withstand RLUIPA. Contrary to the Planning Commission’s finding, Harbor’s homeless ministry constitutes protected religious exercise under the statute. The church’s acts of worship and pastoral care are supported by congregants’ personal beliefs, scores of Biblical passages, and centuries of tradition, as well as well-established case law and the federal government’s own position on such matters. Furthermore, the burden on religious exercise is substantial. Harbor

cannot continue its church-based ministry if the Planning Commission’s finding is upheld, and there are presently no other suitable locations for that ministry in the city. Regarding the city’s ability to justify such an extreme result under strict scrutiny, public safety can be a compelling interest. But here, the Commission cannot support its de facto ruling that the alleged negative effects of Harbor’s ministry can never be mitigated. Closing the ministry is not the least restrictive means of ensuring safety.

B. Harbor’s ministry constitutes protected religious exercise under RLUIPA.

As city staff recognized but the Planning Commission ignored, Harbor’s homeless ministry falls well within the wide range of activities that constitute “religious exercise” under RLUIPA. The statute defines religious exercise liberally as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”\(^\text{10}\) And Congress instructed courts to apply RLUIPA “in favor of broad protection of religious exercise.”\(^\text{11}\) Consequently, courts across the nation have regularly recognized homeless outreach as central to religious practice.

Harbor’s daily worship and pastoral care to lower-income congregants exemplify the type of activities Congress enacted RLUIPA to protect. Harbor’s ministry is religiously motivated, as evidenced by its application materials and witness testimony, as well as thousands of years of Christian history and tradition. Although the Planning Commission tried to re-characterize what Harbor does as a secular social service, the law forbids government officials from redefining for believers what they believe. And, contrary to the Commission’s understanding, courts have repeatedly recognized what Harbor does to be religious exercise protected by RLUIPA.

From the beginning, Harbor has emphasized the religious nature of its ministry. In its application, for example, Harbor states that its mission is guided by “a religious duty to serve

\(^{11}\) 42 U.S.C. § 2000cc-3(g).
‘the least of these’ among us . . . based on the Gospel of Matthew.” The application adds that Harbor’s ministry is informed by a belief that “caring for the homeless is a form of divine communion with God.” Pastor Gallucci’s testimony at the public hearing and that of numerous Harbor volunteers and congregants is in full accord.

Christians across the centuries have believed that providing for the poor is central to the faith and, emulating Jesus’ own actions, have emphasized the importance of caring for the “least of these.” In addition to the tradition of Christian charity and almsgiving, the Bible has no less than three hundred verses exploring God’s deep concern for the poor. For example, Scripture describes God’s love for the less fortunate, God’s identification with the poor, God’s demand that the faithful care for the poor, God’s blessings for those who give generously to the poor,

12 Psalm 140:12 (“I know that the LORD will maintain the cause of the afflicted, and justice for the poor.”); Isaiah 41:17 (“The afflicted and needy are seeking water, but there is none, and their tongue is parched with thirst. I, the LORD, will answer them myself, as the God of Israel I will not forsake them.”); Luke 6:20-21 (“Blessed are you who are poor, for yours in the kingdom of God. Blessed are you who hunger now, for you shall be satisfied. Blessed are you who weep now, for you shall laugh.”); Psalm 10:14 (“The unfortunate commits himself to You; You have been the helper of the orphan (...) O LORD, You have heard the desire of the humble; You will strengthen their heart, You will incline Your ear to vindicate the orphan and the oppressed.”); James 2:5 (“Did not God choose the poor of this world to be rich in faith and heirs of the kingdom which He promised to those who love Him?”)

13 2 Corinthians 8:9 (“For you know the grace of our Lord Jesus Christ, that though He was rich, yet for your sake He became poor, that you through His poverty might become rich.”); Proverbs 19:17 (“He who is gracious to a poor man lends to the LORD, and He will repay him for his good deed.”); Proverbs 14:31 (“He who oppresses the poor reproaches his Maker, but he who is gracious to the needy honors Him.”)

14 Deuteronomy 15:7 (“If there is a poor man among you, one of your brothers, in any of the towns of the land which the LORD your God is giving you, you shall not harden your heart, nor close your hand to your poor brother; but you shall freely open your hand to him, and generously lend him sufficient for his need in whatever he lacks.”); Deuteronomy 26:12 (“When you have finished paying the complete tithe of your increase in the third year, the year of tithing, then you shall give it to the Levite, to the stranger, to the orphan and the widow, that they may eat in your towns, and be satisfied.”); Jeremiah 22:3 (“Do justice and righteousness, and deliver the one who has been robbed from the power of his oppressor. Also do not mistreat or do violence to the stranger, the orphan, or the widow; and do not shed innocent blood in this place.”); Luke 12:33 (“Sell your possessions and give to charity; make yourselves purses which do not wear out, an unfailing treasure in heaven, where no thief comes near, nor moth destroys.”); Matthew 5:42 (“Give to him who asks of you, and do not turn away from him who wants to borrow from you.”)

15 Proverbs 22:9 (“He who is generous will be blessed, for he gives some of his food to the poor.”); Deuteronomy 15:10 (“You shall give generously to [your poor brother], and your heart shall not be grieved when you give to him, because for this thing the LORD your God will bless you in all your work and in all your undertakings.”); Proverbs 19:17 (“He who is gracious to a poor man lends to the LORD, and He will repay him for his good deed.”); Jeremiah 7:5-7 (“For, if you truly amend your ways and your deeds, if you truly practice justice between a man and his neighbor, if you do not oppress the alien, the orphan, and the widow, and do not shed innocent blood in this place, nor walk after other gods to your own ruin, then I will let you dwell in this place, in the land that I gave to your fathers forever and ever.”); Isaiah 58:10 (“And if you give yourself to the hungry, and satisfy the desire of the afflicted, then your light will rise in darkness, and your gloom will become like midday. And the LORD will
and God’s displeasure with those who have ignored their poor brothers and sisters.\textsuperscript{16} Apostles James and Paul both warned their readers, members of the early church, about mistreating the poor.\textsuperscript{17}

As courts observe, the argument that this type of “program is an expression of [the church’s] faith is certainly not unique or otherwise difficult to believe,” since the Bible “is replete with passages teaching that the God of the Bible is especially concerned about the poor, that believers must also love the poor, and that this love should result in concrete actions to deal with the needs of the poor.”\textsuperscript{18} In accordance with Christian tradition and teachings, therefore, Harbor’s members believe homeless ministry is an integral part of their religious expression and continually guide you, and satisfy your desire in scorched places, and give strength to your bones; and you will be like a watered garden, and like a spring of water whose waters do not fail.”); Luke 14:12-14 (“When you give a luncheon or a dinner, do not invite your friends or your brothers or your relatives or rich neighbors, lest they also invite you in return, and repayment come to you. But when you give a reception, invite the poor, the crippled, the lame, the blind, and you will be blessed, since they do not have the means to repay you; for you will be repaid at the resurrection of the righteous.”); Luke 12:44 (“Sell your possessions and give alms; make yourselves purses which do not wear out, an unfailing treasure in heaven, where no thief comes near, nor moth destroys. For where your treasure is, there will your heart be also.”)

\textsuperscript{16} Isaiah 10:1-3 (“Woe to those who enact evil statutes, and to those who continually record unjust decisions, so as to deprive the needy of justice, and rob the poor of My people of their rights... Now what will you do in the day of punishment, and in the devastation which will come from afar?”); Luke 6:24 (“But woe to you who are rich, for you are receiving your comfort in full.”).

\textsuperscript{17} James 2:5-7 (“Listen, my dear brothers and sisters: Has not God chosen those who are poor in the eyes of the world to be rich in faith and to inherit the kingdom he promised those who love him? But you have dishonored the poor. Is it not the rich who are exploiting you? Are they not the ones who are dragging you into court? Are they not the ones who are blaspheming the noble name of him to whom you belong?”); 2 Corinthians 8: 1-13 (“And now, brothers and sisters, we want you to know about the grace that God has given the Macedonian churches. In the midst of a very severe trial, their overflowing joy and their extreme poverty welled up in rich generosity. For I testify that they gave as much as they were able, and even beyond their ability. Entirely on their own, they urgently pleaded with us for the privilege of sharing in this service to the Lord’s people. And they exceeded our expectations: They gave themselves first of all to the Lord, and then by the will of God also to us. So we urged Titus, just as he had earlier made a beginning, to bring also to completion this act of grace on your part. But since you excel in everything—in faith, in speech, in knowledge, in complete earnestness and in the love we have kindled in you [a]—see that you also excel in this grace of giving. I am not commanding you, but I want to test the sincerity of your love by comparing it with the earnestness of others. For you know the grace of our Lord Jesus Christ, that though he was rich, yet for your sake he became poor, so that you through his poverty might become rich. And here is my judgment about what is best for you in this matter. Last year you were the first not only to give but also to have the desire to do so. Now finish the work, so that your eager willingness to do it may be matched by your completion of it, according to your means. For if the willingness is there, the gift is acceptable according to what one has, not according to what one does not have. Our desire is not that others might be relieved while you are hard pressed, but that there might be equality.”).

worship. And because Harbor seeks a conditional use permit to continue to serve the poor based on these religious commitments, its activities fall under RLUIPA.

In denying a permit to Harbor, the Commission resolution declares that “laundry service, food service, and the provision of showers or clothing are secular land uses” and thus do not constitute religious activity. In support, Commissioner Francis observed at the October 9, 2013 hearing that the Commission was not treating Harbor in a discriminatory manner but just like it would “laundromats, fast food places, or a private club.”

But, as Commissioner Beck stressed in dissent, RLUIPA forbids government from second-guessing whether a practice is part of a believer’s religious faith. The Supreme Court has declared that governments “are not arbiters of scriptural interpretation.”\(^\text{19}\) Indeed, Congress passed RLUIPA for the very purpose of providing special protection to unconventional or unpopular manifestations of religious belief. The city cannot conclude that Harbor’s ministry to the poor is not central to Christianity just because other churches might not act the same way.

In accordance with federal law, practices similar to Harbor’s are regularly recognized as forms of religious expression. The U.S. Department of Justice’s statement on RLUIPA, which was developed to help people and institutions understand their rights and duties under the law, expressly includes homeless ministry among the activities protected by RLUIPA. The statement provides, “[r]eligious exercise covers a wide range of activities, including operation of homeless shelters, soup kitchens, and other social services; accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar

\(^{19}\) Thomas v. Review Board, 450 U.S. 707, 716 (1981); see also Cutter v. Wilkinson, 544 U.S. 709, 725 n.13 (2005) (RLUIPA “bars inquiry into whether a particular belief or practice is ‘central’ to [an adherent’s] religion); Hernandez v. Comm’r, 490 U.S. 680, 699 (1989) (“It is not within the judicial ken to question the centrality of particular beliefs, or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.”).
functions; operation of a religious retreat center in a house; [and] religious gatherings in homes ...."20

Likewise, courts across the country have found religiously motivated charitable programs similar to Harbor’s to be religious exercise—even if their recipients do not see it that way. For example, in Western Presbyterian Church v. Board of Zoning Adjustment, a church began a program to feed the homeless in response to an upsurge in homelessness in Washington, D.C. The church served meals in its basement and claimed ministering to the needy was a religious function. The court agreed in no uncertain terms: “[u]nquestionably, the Church’s feeding program in every respect is religious activity and a form of worship. It also happens to provide, at no cost to the city, a sorely needed social service. The secular benefits inure to the needy persons who partake of the free breakfasts; the members of the Church benefit spiritually by providing the service.”21 The court added, “the concept of acts of charity as an essential part of religious worship is a central tenet of all major religions.”22 Numerous other courts agree.23

Harbor’s critics claim its ministry is not suited for the current location. But RLUIPA also recognizes the religious significance of permitting churches to operate all their ministries in the

22 Id. at 544.
23 See, e.g., First Vagabonds Church of God v. City of Orlando, Fla., 578 F. Supp. 2d 1353, 1361 (M.D. Fla. 2008) (finding that there was “no question” that feeding the homeless in a public park was religious exercise) (note, First Vagabonds had a later mixed history on other grounds); Family Life Church v. City of Elgin, 561 F. Supp. 2d 978, 986 (N.D. Ill. 2008) (finding that “[p]roviding shelter to the homeless is an essential religious exercise”); Men of Destiny Ministries, Inc. v. Osceola Cnty., Fla., 2006 WL 3219321 at *4 (M.D. Fla. Nov. 6, 2006) (finding that “a residential drug and alcohol rehabilitation program” is religious exercise under RLUIPA); Fifth Ave. Presbyterian Church v. City of New York, No. 01 Civ. 11493 (LMM), 2004 WL 2471406 (S.D.N.Y. Oct. 29, 2004) (explaining that because “plaintiffs’ actions are in fact based upon a sincerely held religious belief, allowing homeless persons to sleep on their property constitutes a proper accessory use”); Stuart Circle Parish v. Bd. of Zoning Appeals, Va., 946 F. Supp. 1225, 1236 (E.D. Va. 1996) (finding that a meal ministry at a local church is religious exercise); St. John’s Evangelical Lutheran Church v. City of Hoboken, 479 A.2d 935, 939 (N.J. Super. Ct. Law Div. 1983) (observing that “housing the homeless in a church is a religious use sanctioned by centuries of scripture and practice”); Greentree at Murray Hill Condominium v. Good Shepherd Episcopal Church, 550 N.Y.S.2d 981, 984 (N.Y. Sup. Ct. 1989) (recognizing ministry to the homeless as a sincerely held religious belief).
same place. In *Jesus Center v. Farmington Hills Zoning Board*, the court explained, "in contrast to secular organizations providing shelter services, The Jesus Center’s program flows out of and is a witness to the love of God for the poor. By serving the homeless at the same location where The Jesus Center adherents worship their God, this witness is greatly facilitated."

In sum, the Planning Commission erred when it determined that Operation Embrace does not constitute a form of religious exercise protected by RLUIPA. Its corresponding refusal to analyze Harbor’s conditional use permit application through the lens of this federal law alone requires reversal.

C. **Denial of the permit is a ‘substantial burden’ under RLUIPA, which triggers an exacting review of the Planning Commission’s reasons.**

Our own U.S. Court of Appeals for the Ninth Circuit has held that a “substantial burden” on religion requiring a local government to justify its action under RLUIPA arises where the action “puts ‘substantial pressure on an adherent to modify his behavior and to violate his beliefs.’”\(^{25}\) A zoning decision requiring a church to stop or relocate its homeless ministry constitutes such a substantial burden. In *Western Presbyterian Church*, for example, the court found that prohibiting a church’s provision of food to the homeless was a substantial burden where the church was otherwise zoned for religious use. The court reasoned that once zoning authorities permitted a church to locate at a particular place, as in Harbor’s case, they cannot restrict religious activity there: “[o]nce the zoning authorities of a city permit the construction of a church in a particular locality, the city must refrain, absent extraordinary circumstances, from


\(^{25}\) *Int’l Church of the Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1067 (9th Cir. 2011) (quoting *Guru Nanak Sikh Soc’y v. Cnty. of Sutter*, 456 F.3d 978, 988 (9th Cir. 2006)).
in any way regulating what religious functions the church may conduct. *Zoning boards have no role to play in telling a religious organization how it may practice its religion.*”

The court in *Jesus Center* likewise rejected as a substantial burden on religious exercise the city’s contention there that the church could relocate its homeless ministry. The court reasoned that relocation would “create an economic burden” on the church, as it would require “the lease or purchase of another facility.”

Additionally, the court observed that forcing the church to divorce its Sunday morning worship services from its homeless ministry would weaken the church’s integrated “witness to the love of God for the poor.”

Under established law, therefore, the Planning Commission’s denial of the conditional use permit substantially burdens Harbor’s ministry, requiring it to be justified under the strict scrutiny test. Harbor views its ministry at 3100 Preble as a form of worship, dictated by prayer and its reading of the Scripture. The Commission’s denial would criminalize Harbor’s chosen worship at its church home. And requiring Harbor to move would place an undue economic burden on the church and weaken its witness.

Indeed, relocation would take years, because of the need to find a suitable alternative location, raise funds and support for the move, obtain necessary conditional use permits, renovate the buildings to meet the ministry’s needs, and move. Moreover, the five properties suggested by the city would need significant, if not complete, renovation to meet the needs of Harbor’s ministry and would increase its building costs exponentially. Finally, as Chairman Long observed at the September 11 hearing, “you’re not going to get a welcome mat anywhere.”

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26 *W. Presbyterian Church*, 862 F. Supp. at 545-46 (emphasis added).
28 *Id.*
D. No ‘compelling interest’ justifies denying the permit to Harbor.

Where, as here, a church has established a substantial burden on its religious exercise, “the burden of proof shifts and the City must then show that the restrictions are narrowly tailored to accomplish a compelling government interest.” 29 Compelling interests are “interests of the highest order.” 30 Thus, “only the gravest abuses, endangering paramount interest, give occasion for permissible limitation” of religious liberty. 31 General appeals to public safety, health, traffic, and property values do not suffice, even if such reasons might otherwise be sufficient for zoning purposes under a municipal code. 32 Rather, the compelling interest test is a “focused inquiry” that examines the application of the particular rule to the particular party. 33

The Planning Commission has not provided a compelling reason for denying the permit. Its resolution accuses Harbor’s ministry of having a negative impact on the community based on undesirable people attracted to and remaining near the site (which neighbors a park and school); public use of drugs and alcohol; increased crime and police contacts; a man entering the school playground; waste and vandalism; and a detrimental effect on property values. But the evidence fails to either establish these problems or reliably attribute them to Harbor. As Commissioner Ferrin noted, the “evidence . . . contain[s] little proof that problems in the neighborhood are primarily due to Harbor. It’s very difficult to tell if [alleged law-breakers] are participants.” Chairman Long added, “I think that there’s a lot of [police] calls because the neighbors are really keeping an eye and trying to get more calls in order to show that this is a problem . . .”

29 Int’l Church of the Foursquare Gospel, 673 F.3d at 1067.
32 See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 431 (2006) (in strict scrutiny analysis, courts must look “beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[ ] the asserted harm of granting specific exemptions to particular religious claimants”).
33 Id. at 430-32.
Regarding evidence of increased crime in the neighborhood, the lone police witness at the July 29, 2013 hearing did not blame Harbor but instead emphasized impacts from the adjacent park, described problems in the area as “off and on,” and called the department’s relationship with the church a “success[ ].” Likewise, after having studied the matter and reviewing available police data, planning staff observed in advance of the hearing that, with proper conditions, “no new police facilities, or alteration to police facilities would be needed” for Harbor’s ministry to continue. And notwithstanding the vague story about a man entering the school playground, the school board informed the Commission, “Blanche Reynolds Elementary School has not experienced a disproportionate number of issues as a result of the Harbor Church” and nowhere mentions the incident in its resolution response to the Commission’s request for input.\(^{34}\)

None of this is to say Harbor’s neighbors are lying about neighborhood problems. When it comes to shutting down a church’s vital ministry, however, precision is important. As the Supreme Court has observed, “[w]e do not doubt the validity of . . . the general interest in promoting public health and safety . . ., but under [strict scrutiny,] invocation of such general interests, standing alone, is not enough.”\(^ {35}\) At a minimum, and as we discuss below, the denial was premature based on the alleged negative impacts alone because the Commission failed to adequately consider whether the proposed conditions could in fact render the use compatible.

Finally, the Commission states as its last reason for denial that Harbor’s ministry “would be detrimental to property values.” Courts, however, have roundly rejected assertions that property values constitute a compelling interest that justifies abridging religious liberty.\(^ {36}\) Indeed,

\(^{34}\) Commissioner Ferrin in fact argued that parks or schools themselves could be exposed to similar complaints about neighborhood disruption, observing that one “could very easily argue that a school or a park is an incompatible use in a neighborhood.” He elaborated, “Parks have noise. Parks have people that sleep in the parks. Kids that play ball. Some mischief. A lot happens in uses like that that one could argue is incompatible.”

\(^{35}\) Gonzales, 546 U.S. at 438.

\(^{36}\) See, e.g., Irshad Learning Ctr. v. Cnty. of Dupage, 937 F. Supp. 2d 910, 953 (N.D. Ill. 2013) (“Denial of a proposed use involving the fundamental right to free exercise of religion is not warranted based on inconclusive
such financial considerations fly in the face of the Congressional purpose behind RLUIPA, which was designed to combat class-based bias against unpopular religious practices. Moreover, this assertion lacks support in the facts; indeed, there was little, if any, evidence offered to the Planning Commission that property values in the neighborhood have in fact declined since Harbor’s ministry began, or that a decline, if any, was caused by Harbor’s congregants.

E. Even if a compelling interest existed, the Commission’s decision still violates RLUIPA because denying the permit outright and criminalizing Harbor’s ministry is not the ‘least restrictive means’ of satisfying a public interest.

Even if a compelling governmental interest could justify the Commission in regulating Harbor’s ministry (it doesn’t), its outright denial of a use permit still violates RLUIPA under the strict scrutiny test’s “least restrictive means” prong. Not only are less onerous options available, but the Commission failed to even address them based on a gross misinterpretation of Harbor’s objections to certain conditions as constituting an unwillingness to obey the law. To satisfy RLUIPA, the applicable burden on religious exercise—here, the permit denial—must be the “least restrictive” means of satisfying the stated compelling interest.\(^{37}\) The Commission resolution’s outright denial of Harbor’s application and its failure to make any substantive consideration of permit conditions does not represent the least restrictive means.

On three separate occasions—before the July, September, and October 2013 hearings—planning staff stressed that any public safety or other concerns could be satisfactorily addressed if the permit were granted subject to conditions. Staff stated in its July report that, with these conditions, Harbor’s ministry was “compatible with, and [would] not adversely affect or be evidence of the effect on adjacent property values.”); *XXL of Ohio, Inc. v. City of Broadview Heights*, 341 F. Supp. 2d 765, 789-90 (N.D. Ohio 2004) (“The ordinance makes clear that the interests served by the ordinance are traffic safety, aesthetics, and the protection of property values and ‘neighborhood character.’ No court has found any of these concerns to be a compelling government interest sufficient to withstand strict scrutiny.”) (internal citations omitted); *W. Presbyterian Church v. Bd. of Zoning Adjustment*, 862 F. Supp. 538, 546 (D.D.C. 1994).

materially detrimental to uses, buildings, or structures in, or the general character of, the surrounding vicinity, and would not cause it to otherwise be inconsistent with the public health, safety, or welfare.” Staff’s recommendation remained unchanged in its follow-up report in September. And in its penultimate analysis in October, staff observed conditions could be crafted to “manage the overall operation of the use that would minimize and/or avoid conflicts between the Service Program and the school, park and residential uses in the surrounding neighborhood.”

It stands to reason that an outright denial of the permit is not the least restrictive means if, considering the church’s ministry, the city’s planning staff independently concluded on three separate occasions that the stated concerns could in fact be addressed through the imposition of conditions (which is less restrictive than banning the ministry). Furthermore, the staff’s recommendation was not even limited to compelling interests under RLUIPA, but any interest under the municipal code banner of “compatible use”—including the “general character” of the neighborhood.

The planning staff was not alone in its conclusion that granting the application subject to conditions could serve the city’s stated interests. Chairman Long and Commissioners Beck and Ferrin all agreed in the course of deliberations that, subject to the proposed conditions, finding four—neighborhood compatibility under the municipal code—could be met. Though somewhat more skeptical, Vice Chairman Boydstun asked staff at the September hearing to continue work on proposed conditions in the hope that satisfactory ones could be found. And even the Commission’s resolution denying the permit observes staff’s proposed conditions “would tend to mitigate” what the Commission sees as the “incompatibility” of Operation Embrace.

But instead of exploring and utilizing the less restrictive means of granting the permit subject to conditions, the Commission abruptly concluded that no conditions could be “feasible”
because Harbor would not comply with them. The resolution bases this finding about the church’s hypothetical future non-compliance on statements in “correspondence dated July 3, July 24, August 20, September 5, September 11 and October 3, 2013, and orally on July 29 and September 11, 2013.” And yet, an examination of each cited letter and statement reveals that Harbor nowhere indicated it would not comply with lawful conditions. Harbor has lodged objections, yes, but in accordance with the permit application process and well within its legal rights. The fact of its objections cannot determine whether the Commission will impose conditions. To quote the city attorney, applicant objections are “not unusual at all” and agreement is “not legally necessary” to impose conditions.

Courts have emphasized the importance of exploring and considering alternatives. In *Jesus Center*, the court held that zoning authorities “must at least initially attempt to address community concerns” by working with the church “to develop guidelines for its operation.”38 Outright denial of a permit, as here, is not the least restrictive means of addressing concerns. Indeed, Harbor continues to be willing to explore all possible conditions including, for example, altered times of operation, increased security measures, a three-strikes disciplinary program, building modifications, providing a hotline, facilitating increased dialogue with neighbors and the city, and submitting periodic reports. Harbor is even open to a temporary permit, provided its rights are protected. Granting a permit subject to these conditions, or alternative conditions not yet considered, would be less restrictive than terminating Harbor’s ministry altogether. If nothing else, the city should at least try. The irreparable harm to Harbor’s religious freedom and the city’s poor caused by a forced closure demand nothing less.

There are several avenues for addressing non-compliance, including revocation of the permit for failure to comply with conditions and criminal prosecution. In its July 29 report, staff

indicated that even if granted, “[t]he permit approval shall be subject to revocation if the applicant fails to comply with the conditions listed herein at any time.” Staff reiterated that this means of ensuring compliance was available when it wrote again in September that failure to comply “would result in initiation of a code enforcement case . . . and possibly implementation of the Revocation Process as identified in the Planning Commission Resolution.” Revocation of any permit is a less restrictive means of satisfying the city’s interest than outright denial.

Ordinary criminal prosecution for lawbreakers also represents a less restrictive means. In Chosen 300 Ministries v. City of Philadelphia, the court noted that a city concerned about litter and public urination, could, instead of banning the church’s meal program, “enforce existing laws against litter and public urination and defecation.” Indeed, in cases involving homeless outreach, courts have found it “constitutionally problematic” and “troubling” where cities adopt “a group approach to individual violations of the law, taking adverse action against all homeless persons . . . based upon individuals’ misconduct.”

In sum, even if Harbor’s ministry raises a compelling public interest, an outright denial of the requested conditional use permit is not the least restrictive means of addressing that interest.41

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39 Chosen 300 Ministries, Inc. v. City of Philadelphia, No. 12-3159, 2012 WL 3235317 at *23 (E.D. Pa. Aug. 9, 2012) (“There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.” (citing Schneider v. New Jersey, 308 U.S. 147, 162 (1939) (“There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.”)).


41 Although the record is not yet fully developed on the point, the denial of Harbor’s application would also raise the specter of an independent violation of the First Amendment of the United States Constitution and Article I, section 4 of the California Constitution. Constitutional strict scrutiny would apply (and the city’s action fail) were a denial to arise from an “individualized process” for determining exemptions from zoning rules or the unfavorable application of those rules to Harbor’s religious use. See Sherbert v. Verner, 374 U.S. 398 (1963) (applying strict scrutiny to individualized assessments for exemptions in law); Church of the Lukumi Babalu, Inc. v. City of Hialeah, 508 U.S. 520 (1993) (applying strict scrutiny to discriminatory applications of law). Either situation would also cause additional grounds for finding a RLUIPA violation, under its own “individualized assessment” or “equal terms” provision. See 42 U.S.C. §§ 2000cc(a)(2)(C) & (b)(1).
II. REGARDLESS OF CONTROLLING FEDERAL LAW, HARBOR'S HOMELESS MINISTRY COMPLIES WITH VENTURA'S MUNICIPAL CODE AS A VALID "COMMUNITY MEETING" USE.

The Planning Commission erroneously concluded that Harbor's ministry is inconsistent with "the community meeting land use type because that use type . . . does not include the regular provision of laundry service, food service, clothing and showers." Even if federal law did not compel the city to grant the permit (it does), there is insufficient evidence under the plain language of the Municipal Code to support the Commission's contrary conclusion. Moreover, the Commission's application of the code is flawed for an identical reason as to why an outright denial of the permit is not the least restrictive means under RLUIPA—i.e., it ignores any proposed conditions that would ensure compatibility based on a misinterpretation of Harbor's objections as an unwillingness to obey them.

All of Harbor's uses, including formal worship, meals, the clothing closet, the food pantry, showers, and any other activity necessary to operate the church, are permitted in the R-1 zone as direct or ancillary Community Meeting uses, with or without conditions. The Municipal Code states that the "community meeting" use type "consists of group gatherings conducted indoors," including "synagogues, mosques, temples, churches, community centers, bingo halls, private clubs, fraternal, philanthropic and charitable organization, and lodges." Some of these typical uses surely involve the provision of laundry service, food service, clothing and showers. A club with a gym often has showers for its members and washing machines for dirty towels. Houses of worship regularly and frequently serve food to members; a bingo hall might even sell snacks to patrons. And fraternal groups or lodges sell branded clothes to members. This common-sense reading of the code was in fact corroborated by Planning Manager Ward, who
wrote to Harbor at the beginning suggesting that Operation Embrace “fall[s] under Community Meeting, as defined by our Municipal Code.”

Moreover, Harbor’s uses do not detract from the character of the neighborhood and are in fact compatible. Churches have long been understood as compatible with single-family residences, parks, and schools.  

42 As one zoning expert has observed, “religious uses contribute to the general welfare of the community, and can contribute most when located in residential districts.”  

43 And courts agree that this universal respect for religious uses “represents a secular judgment that religious institutions, by their nature, are compatible with every other type of land use and thus will not detract from the quality of life in any neighborhood.”  

44 This is particularly true where, as here, the church is a longtime anchor of the community, with a history stretching back to the creation of the neighborhood.

Once again, the Commission’s denial was also based on a misinterpretation of Harbor’s objections. Harbor was not unwilling to comply with lawful conditions on its ministry, but was merely stating potential religious liberty or privacy issues the conditions raised. Moreover, the city attorney clarified at the October 9 meeting, “it is not unusual at all for an applicant not to agree to conditions” and that applicant agreement is “not legally necessary.”

Harbor’s ministry is consistent with the community meeting land use type.

CONCLUSION

Because the Planning Commission’s denial of Harbor’s application for a permit violates the law and is unsupported by the facts, Harbor asks this Council to reverse the denial and to

42 E.C. Yokley, Zoning Law and Practice § 35–14, at 35 (4th ed. 1980, Supp. 1999) (“Since the advent of zoning, churches have been held proper in residence districts.”); see also Terry Rice, Re-Evaluating the Balance Between Zoning Regulations and Religious and Educational Uses, 8 Pace L. Rev. 1, 3 (1988) (The “dominant status” of churches and schools “is based on a recognition that religious and educational institutions are, by their very nature, beneficial to the public welfare.”).


44 Boyajian v. Gatzonis, 212 F.3d 1, 9 (1st Cir. 2000).
allow the church to minister to its low-income congregants at 3100 Preble Avenue. For the reasons stated here, in its application, and elsewhere in the record, Harbor requests the Council grant a permit. Harbor again emphasizes its willingness to comply with legally appropriate permitting conditions.

November 22, 2013

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