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12 **CITY OF LOS ANGELES**

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 CONGREGATION ETZ CHAIM, an
16 unincorporated association and the
17 individual members thereof;
18 CONGREGATION ETZ CHAIM OF
19 HANCOCK PARK, a California non-
20 profit corporation,

21 Plaintiffs

22 v.

23 CITY OF LOS ANGELES,

24 Defendant.

25 **Case No. CV 10-01587-CAS-E**

26 Honorable Christina A. Snyder

27 **DEFENDANT CITY OF LOS ANGELES' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

28 (F.R.C.P. Rule 56)

DATE: May 2, 2011
TIME: 10:00 A.M.
COURTROOM: 5 (Spring St.)

(FILED CONCURRENTLY: 1. CITY'S STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW; 2. DECLARATION OF JONATHAN A. HERSHEY IN SUPPORT OF CITY'S MOTION FOR SUMMARY JUDGMENT; EXHIBITS A-V)

1 PLEASE TAKE NOTICE THAT on May 2, 2011, in Courtroom 5 of the
2 U.S.D.C. for the Central District of California, located at 312 N. Spring Street,
3 Los Angeles, CA 90012, at 10:00 a.m., or soon thereafter, Defendant City of
4 Los Angeles (the "City") will move this court for summary judgment, or, in the
5 alternative, partial summary judgment on the ground that there is no genuine issue as
6 to any material fact and that the City is entitled to judgment as a matter of law for the
7 reason that the City's denial of the Congregation's CUP and Variance application to
8 convert the property located at 303. S. Highland Avenue does not violate any of the
9 cited provisions of RLUIPA.

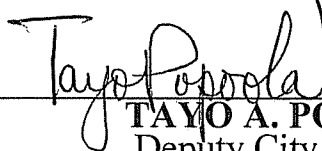
10 The motion is made pursuant to Federal Rules of Civil Procedure (FRCP), Rule
11 56, and it is based upon this Notice of Motion and Motion, the accompanying
12 Memorandum of Points and Authorities, the accompanying Proposed Statement of
13 Uncontroverted Facts and Conclusions of Law, the Declaration of Jonathan A.
14 Hershey, all the pleadings and papers on file in this action, and upon such other matters
15 as may be presented to the Court at the time of the hearing.

16 Dated: March 28, 2011

17 Respectfully submitted,

18 **CARMEN A TRUTANICH**, City Attorney
19 **TAYO A. POPOOLA**, Deputy City Attorney
20 **STEVEN N. BLAU**, Deputy City Attorney
21 **AMY BROTHERS**, Deputy City Attorney

22 By:



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24 Deputy City Attorney

25 Attorneys for Defendant
26 **CITY OF LOS ANGELES**

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MEMORANDUM OF POINTS AND AUTHORITIES¹

A. THE CITY’S DENIAL OF THE CONGREGATION’S CUP AND VARIANCE APPLICATION DOES NOT SUBSTANTIALLY BURDEN THE CONGREGATION’S RELIGIOUS EXERCISE

1. The Congregation Bears the Initial Burden of Persuasion on Whether the City’s Denial Substantial Burdens its Religious Exercise

In *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004) (“*San Jose*”), the court held that “[u]nder RLUIPA . . . [a plaintiff] bears the burden of persuasion on whether the zoning laws, or the City’s application of those laws to [Plaintiff], ‘substantially burdens’ its ‘exercise of religion.’ (Citations.)” Similarly in *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1225 (11th Cir. 2004) (“*Midrash*”), the court held: “To invoke the protection of § (a) of RLUIPA, plaintiffs bear the burden of first demonstrating that the regulation substantially burdens religious exercise.”

2. The City’s Requirement of a CUP Does Not Violate RLUIPA Because the Statute Does Not Exempt Religious Institutions From Complying with Local Zoning Laws

The Congregation alleges, among other things, that “demand for . . . a CUP . . . would impose . . . a substantial burden in violation of RLUIPA . . .” Complaint, ¶ 83. It similarly alleges that “[t]he City’s requirement of . . . a CUP results in a total ban on conditional synagogue and church uses in Hancock Park.” *Id.* at ¶ 100. The Congregation is wrong.

¹ The City dispenses with “Introduction” and other background information. The accompanying Statement of Uncontroverted Facts, which are hereby incorporated by reference, and the Declaration of Jonathan A. Hershey and Exhibits contain all the pertinent facts and other background information which are not repeated here. Moreover, the court is very familiar with this matter and its history as reflected in its rulings on various motions filed by the City, including Motion to Dismiss, filed March 26, 2010, and Motion for Judgment on the Pleadings, filed October 18, 2010.

1 The legislative history of RLUIPA makes it clear that the statute does not
2 exempt religious institutions from complying with local zoning laws. (See, *San Jose*
3 *Christian College v. City of Morgan Hill*, 2002 U.S. Dist. LEXIS 4517, *1, *7 (2002.)

4 Moreover, the *Midrash* court rejected a similar argument by the plaintiffs in that
5 case:

6 The congregations also contend that the burden of requiring
7 them to apply for a CUP constitutes a substantial burden on
8 religious exercise. Requiring churches and synagogues to
9 apply for CUPs allows the zoning commission to consider
10 factors such as size, congruity with existing uses, and
11 availability of parking. We have found that such reasonable
‘run of the mill’ zoning considerations do not constitute
substantial burdens on religious exercise. (Citation.)

12 *Midrash*, 366 F.3d at 1227.

13 In *Konikov v. Orange County*, 410 F.3d 1317, 1323-24 (11th Cir. 2005), the
14 court followed the *Midrash*, *supra*, precedent:

15 The zoning ordinance at issue requires Konikov to apply . . .
16 for a special exception in order to operate a ‘religious
17 organization.’ It does not prohibit Konikov from engaging in
18 religious activity. Because application for a special
19 exception does not coerce conformity of a religious
20 adherent’s behavior, we hold that such an application
requirement does not impose a substantial burden as defined
by RLUIPA.

21 **3. The Congregation Has Not Demonstrated (and Cannot Demonstrate)**
22 **that the City’s Denial of its CUP and Variance² Applications to Use a**
23 **Particular Property— 303 S. Highland Avenue—for Religious**
24 **Services Substantially Burdens its Religious Exercise**

25
26 ² In the Complaint, the Congregation only challenges the denial of the CUP application, and
27 not the denial of the Variance application. The City considers this as a waiver of the issue pertaining
28 to the denial of the Variance application.

1 In light of the fact that RLUIPA does not define “substantial burden,” courts
2 have grappled with how to define and apply the term. In *San Jose, supra*, the court
3 opted for a “plain meaning,” dictionary definition:

4 Thus, for a land use regulation to impose a ‘substantial
5 burden,’ it must be ‘oppressive’ to a ‘significantly great’
6 extent. That is, a ‘substantial burden’ on ‘religious exercise’
7 must impose a significantly great restriction or onus upon
such exercise.

8 *San Jose*, 360 F.3d at 1034.

9 In *Midrash, supra*, the court agreed with the *San Jose* court’s “plain meaning”
10 definition: “Because RLUIPA does not define ‘substantial burden,’ we give the term
11 its ordinary or natural meaning.” 366 F.3d at 1226. After examining the various ways
12 the U.S. Supreme Court and other circuits have defined substantial burden in the
13 context of the free exercise clause over the years, the *Midrash* court settled for what
14 appears to be a workable definition:

15 The combined import of these articulations leads us to the
16 conclusion that a ‘**substantial burden**’ **must place more**
17 **than an inconvenience on religious exercise**; a ‘substantial
18 burden’ is akin to significant pressure which coerces the
19 religious adherent to conform his or her behavior
20 accordingly. Thus, a substantial burden can result from
pressure that tends to force adherents to forego religious
precepts or from pressure that mandates religious conduct.

21 *Midrash*, 366 F.3d at 1227 (emphasis added).

22 In *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978, 988
23 (9th Cir. 2006) (“*Guru Nanak*”), the Ninth Circuit similarly traced the history of how
24 the U.S. Supreme Court and other circuits have defined substantial burden and agreed
25 with the Eleventh Circuit’s approach: “These cases demonstrate ‘**that a substantial**
26 **burden must place more than an inconvenience on religious exercise.**’ See
27 *Midrash Sephardi* . . . (emphasis added).”

1 In *Midrash, supra*, two Orthodox Jewish congregations “joined temporarily” for
 2 religious services at a leased location within the Town of Surfside’s business district
 3 which prohibited churches and synagogues. *Midrash*, 366 F. 3d at 1219-20. Just like
 4 the Congregation in this matter, the *Midrash* plaintiffs “adhere to the strict observance
 5 of Orthodox Judaism.” *Id.* at 1221. The *Midrash* plaintiffs’ reasons for its continued
 6 use of the business district location are almost verbatim of the reasons the
 7 Congregation Etz Chaim has proffered for the use of 303 S. Highland Avenue in this
 8 matter:

9 Orthodox Judaism forbids adherents to use cars or other
 10 means of transportation during the weekly Sabbath and
 11 religious holidays; thus, adherents prefer to gather for
 12 worship and religious study in synagogues close enough to
 13 their homes to allow them to walk to services. To this end,
 14 the congregations claim that the RD-1 district is out of the
 15 required walking range for a significant number of their
 16 members, **particularly elderly ones**, who reside on the
 17 northern side of Surfside and in the neighboring Bal Harbour
 18 and Bay Harbor communities. (Emphasis added.)

19 *Id.* (Compare with Uncontroverted Facts, ¶¶ 4, 11, 12, 16-18.)

20 The *Midrash* court’s dissection and rejection of the plaintiffs’ contentions are
 21 particularly instructive in this matter in which the facts are uncannily similar:

22 The congregations argue that requiring them to locate their
 23 synagogues in the RD-1 district constitutes a substantial
 24 burden for two related reasons. **First, they contend that**
 25 **relocation would require their congregants to walk**
 26 **farther.** Specifically, they suggest that the additional blocks
 27 would greatly burden congregants who are ill, young or very
 28 old. The inconvenience occasioned on these congregants
 would cause them to stop attending services altogether,
 significantly impairing the synagogues’ operation. As a
 result, the congregations suggest that the significant decrease
 in attendance would require them to cease operations
 altogether, thereby creating an obvious substantial burden on
 their religious exercise. (Emphasis added.)

1 *Midrash*, 366 F.3d at 1227.

2 The court also considered and rejected the congregations' suggestion that being
3 unable to find a suitable alternate location creates a substantial burden:

4 That the congregations may be unable to find suitable
5 alternative space does not create a substantial burden within
6 the meaning of RLUIPA. As the Seventh Circuit noted,
7 'whatever specific difficulties [the plaintiff church] [sic]
8 claims to have encountered, they are the same ones that face
9 all [land users] [sic], not merely churches. The harsh reality
of the marketplace sometimes dictates that certain facilities
are not available to those who desire them.' (Citations.)

10 *Id.*

11 In *Midrash*, the Town of Surfside excluded churches and synagogues in the
12 business district in question. In this matter, however, L.A.M.C. § 12.24(W)(9) is not
13 as restrictive; it allows churches and synagogues in R1-1 district by the way of a CUP.
14 Notwithstanding the more restrictive zoning ordinance in *Midrash*, the court held that
15 neither the ordinance nor its application substantially burdened the congregations'
16 religious exercise. A similar holding should follow in this matter where the ordinance
17 is not as restrictive.

18 Referring to the plaintiffs, the *Midrash* court observed—and the same is true of
19 the Congregation in this matter—that they “do not claim that their current location has
20 some religious significance such that their faith requires a synagogue at this particular
21 site.” *Id.* at 1228. The court further observed that “[a]lthough [the plaintiffs] are not
22 permitted to locate in the business district, the congregations have the alternative of
23 applying for a permit to operate only a few blocks from their current location.” *Id.*
24 Furthermore, the court observed that “while walking may be burdensome and ‘walking
25 farther’ may be even more so, we cannot say that walking a few extra blocks is
26 ‘substantial burden’ as the term is used in RLUIPA . . .” *Id.*

27 The *Midrash* court's concluding remarks are instructive in this matter:
28

1 Were we to adopt the synagogue’s reasoning, it would be
2 virtually impossible for a municipality to ensure that no
3 individual will be burdened by the walk to a temple of
4 choice. Municipalities that allow religious exemptions to
5 alleviate even the small burden of walking a few extra blocks
6 would run the risk of impermissibly favoring religion over
7 other secular institutions, or of favoring some religious faiths
8 over others.

9 *Id.*

10 In this matter, the Congregation’s only stated reason for applying in 1996 and
11 2008 for a CUP and a Variance to use the Property as a house of worship was its
12 convenience—its relative close proximity to the residences of its members.
13 Uncontroverted Facts, ¶¶ 4, 11, 12, 16-18. As outlined above, just about all the courts
14 agree that under RLUIPA, a substantial burden must place more than an inconvenience
15 on religious exercise. As in *Midrash*, the burden on the Congregation for its members
16 to work a few extra blocks to a location on La Brea Avenue or Wilshire Blvd where
17 the requested use is permitted by right is a mere inconvenience which does not
18 constitute a substantial burden on religious exercise.

19 The Congregation alleges it “sought out space in the commercial district south
20 and west of Hancock Park but could find no suitable locations . . . [because] [a]s a
21 practical matter, these locations were too far away from the congregants’ home to
22 accommodate the needs of the members who are elderly, disabled or have young
23 children.” Complaint, ¶ 37.

24 But courts within the Ninth Circuit have been reluctant to find that a denial of an
25 application to use a particular property as a house of worship imposes a substantial
26 burden on religious exercise when there are alternative sites within a short distance. In
27 *San Jose* the court noted: “while the PUD ordinance may have rendered College
28 unable to provide education and/or worship at the Property, there is no evidence in the
 record demonstrating that College was precluded from using other sites within the
 city.” 360 F.3d at 1035. Referencing *San Jose*, the *Guru Nanak* court similarly

1 observed: “Admittedly, the availability of other suitable property weighs against a
2 finding of a substantial burden.” 456 F.3d at 992; also see *Centro Familiar Cristiano*
3 *Buenas Nuevas v. City of Yuma*, 615 F.Supp. 2d 980, 989 (D. Ariz. 2009) (“*Centro*
4 *Familiar*”).

5 In 1996 when the Congregation first applied for a CUP, the ZA found that even
6 though the proposed use would be convenient for the Congregation and its members, it
7 was not desirable to the public convenience or welfare, especially when there were
8 other locations within a reasonable walking distance. Uncontroverted Facts, ¶ 5. Fast
9 forwarding to this current application, in 2009, the ZA found that there is little or no
10 change in the surrounding land use and community circumstances since the denial of a
11 similar application in October, 1996. Uncontroverted Facts, ¶ 22. Additionally, the
12 ZA found that there is commercially zoned land on La Brea Avenue, approximately
13 1,500 feet, or 4-1/2 blocks west of the subject site, wherein the Congregation’s
14 proposed use could be located by right. *Id.* In any case, in the words of the *Midrash*
15 court, the fact that the Congregation “may be unable to find suitable alternative space
16 does not create a substantial burden within the meaning of RLUIPA.” 366 F.3d at
17 1227.

18
19 **4. The City’s Action is in Furtherance of its Compelling Interest in a**
20 **Comprehensive Zoning Plan, including the Preservation of the Quiet**
21 **Use and Enjoyment of the Residents of Hancock Park**

22 In *Guru Nanak, supra*, the court noted the shifting of the burden of proof: “. . .
23 the County ‘shall bear the burden of persuasion,’ (citation) to prove narrowly tailored,
24 compelling interests . . .” *Guru Nanak*, 456 F.3d at 992. In *Academy of Our Lady of*
25 *Peace v. City of San Diego*, 2010 U.S. Dist. LEXIS 31873, *1, *27-28 (S.D., Cal.
26 2010) (“*Academy*”), the court probably stated the rule best:

27 If plaintiff successfully carries its burden, the government
28 bears the burden of persuasion on whether the imposition of
the ‘substantial burden’ is in furtherance of a compelling

1 governmental interest, and is the least restrictive means of
2 furthering that . . . interest.

3
4 Assuming the Congregation has met its initial burden (and it has not), as detailed
5 below, the City’s action is in furtherance of a compelling governmental interest in
6 preserving its comprehensive zoning plan and the quiet use and enjoyment of its
7 residents.

8 Courts have generally held that enforcement of local zoning regulations are
9 compelling government interest:

10 There appears to be no dispute that local governments have a
11 compelling interest in protecting the health and safety of
12 their communities through the enforcement of the local
zoning regulations.

13 *Murphy v. Zoning Commission of the Town of New Milford*, 148 F. Supp. 2d 173, 190
14 (D. Conn., 2001).

15 But courts have also required that the government “must show a compelling
16 interest in imposing the burden on religious exercise in the particular case at hand, not
17 a compelling interest in general.” *Westchester Day School v. Village of Mamaroneck*,
18 540 F.3d 338, 353 (2d Cir. 2007). Similarly in *Rocky Mountain Christian Church v.*
19 *Bounty County*, 612 F. Supp. 2d 1163, 1174 (D. Colo., 2009), the court held that to
20 “establish a compelling governmental interest in the context of [RLUIPA], the
21 [County] must demonstrate that a compelling governmental interest is at stake in this
22 particular case, rather than relying on a compelling interest in general.”

23 As outlined below, the City has done just that:

24 As required by the City’s Comprehensive Zoning Plan, as codified in L.A.M.C.
25 §§ 12.00, et. seq.³, the Congregation applied for, and the City denied, an application

26
27 ³ In connection with its Reply to Opposition to Motion to Dismiss, filed in April 12, 2010, the
28 City filed a Request for Judicial Notice of, among other things, the City’s Comprehensive Zoning
Plan (See Electronically filed Document No. 10-1, filed April 12, 2010.) The City incorporates, by
(Footnote continues on next page.)

1 for a CUP and a Variance to use the Property as a house of worship. The purpose of
2 the Comprehensive Zoning Plan is, among other things, to “. . . promote health, safety,
3 and the general welfare all in accordance with the comprehensive plan.” L.A.M.C. §
4 12.02.

5 In his report dated October 8, 2009, denying the Congregation’s CUP and Zone
6 Variance⁴ application, the ZA wasted no time in pointing out some of the problems
7 presented by the application with regard to parking:

8 This application requests a conditional use permit and zone
9 variance to permit a religious use within a single-family
10 dwelling and provide for two on-site parking spaces in lieu of
the required 12 spaces.

11 AR 769.⁵

12 By its own statement in the CUP application, it is evident that the
13 Congregation’s proposed use of the Property transcends residential use and sounds
14 more like an institutional use:

15 Events to be held at the residence simply involve small
16 gatherings for daily prayer, with **occasional larger**
17 **gathering for religious services, weddings, receptions,**
18 **bar-mitzvahs, banquets . . . meetings, educational**
19 **activities, and/or memorial services, as well as other**
activities. . .”

20 AR 88 (emphasis added).

21
22 (Footnote continued from previous page.)

23 reference, that document in this motion, and asks the court to once again take judicial notice of the
24 City’s Comprehensive Zoning Plan.

25 ⁴ As previously noted, the Congregation has not challenged the City’s denial of its
application for a Variance. The City considers this as a waiver of that issue.

26 ⁵ As stated in the accompanying City’s Proposed Statement of Uncontroverted Facts and
27 Conclusions of Law, the City had already asked that the court take judicial notice of the
Administrative Record (AR) in this matter. The City hereby incorporates the request by reference.
28

1 The ZA observed the incongruity of the Congregation's request for a lesser
2 number of parking spaces as compared to its 1996 application notwithstanding the fact
3 that the size of the building has increased significantly:

4
5 From the time the first application was denied to date, the
6 applicant has done work on the building. That work included
7 a 4,423 square-foot addition to the second floor plus a 657
8 square-foot addition to the loft area. There is now a reported
9 total floor area of 8,308 square feet. . .

10 Quite simply, between then (1996) and now (2009) the
11 building has gotten larger, but the amount of stated required
12 parking has gotten less. In 1996, the applicant sought to
13 provide 4 on-site spaces instead of the required 31 spaces
14 when the building had a reduced square footage but is now
15 offering to provide 2 spaces in lieu of 12 spaces under the
16 current case irrespective of the very large addition to the
17 building. The difference in these numbers has not been
18 explained.

19 Based on the above and due to the ambiguity surrounding the
20 size of the assembly . . . the [ZA] [was] unable to determine
21 the number of required parking spaces . . . the parking
22 requirement for auditoriums and churches is that for every
23 five fixed seats, one space should be provided while one
24 space is required for every 35 square feet of floor area for the
25 auditorium and or sanctuary area. The sanctuary area has not
26 been clearly defined herein.

27 AR 770.

28 Furthermore, the ZA was concerned by what appeared to be an institutional use
the Congregation was proposing to make of the residential property and the problems it
poses for the surrounding community:

The Zoning Investigator also commented that the above
events and associated uses are not undertaken on the Sabbath
when congregants do not drive to attend service. Being
mindful of the fact that both 3rd Street and Highland Avenue

1 where the property under review is located are very busy
2 thoroughfares, the lack of adequate parking raises concerns
3 regarding traffic and parking congestion. The applicant has
4 not provided any alternative solutions about parking for the
attendees to those events.

5 AR 771.

6 An important distinguishing factor of this matter involving land use is that it
7 involves more than just the civil rights and interests of the applicant; it also involves
8 the rights of other residents and the community at large. To overlook this fact is to
9 totally disregard Congress' admonition that RLUIPA does not exempt religious
10 institutions from complying with local zoning laws.

11 The City's Comprehensive Zoning Plan lays out the criteria for a CUP approval:

12 In approving any conditional use, the decision-maker must
13 find that the proposed location will be desirable to the public
14 convenience or welfare, is proper in relation to adjacent uses
15 or the development of the community, will not be materially
16 detrimental to the character of development in the immediate
neighborhood, and will be in harmony with the various
elements and objectives of the General Plan.

17 L.A.M.C. § 12.24(E).

18 The ZA could not make any of the above requisite findings. The ZA found that
19 the proposed location would not be desirable to the public convenience or welfare. AR
20 775-76. More specifically, the ZA found that while the location of the Property may
21 be convenient to the congregants, it would not be convenient to the public at large. *Id.*
22 The ZA pointed out that a greater public has voiced strong written and verbal
23 opposition . . . arguing that the use as proposed will substantially increase traffic and
24 parking problems resulting from banquet operations, valet parking, regularly scheduled
25 religious activities, other uses of the site, excessive floodlighting . . . and unclear use of
26 the basement." AR 776.
27
28

1 In finding that the location is not proper in relation to adjacent uses or the
2 development of the community, the ZA highlighted the problem posed by the request
3 for reduced parking, noting that it “would introduce additional traffic and parking
4 congestion to the neighborhood.” AR 777.

5 In finding that the use would be materially detrimental to the character of the
6 development in the immediate neighborhood, the ZA noted the recent Historical
7 Preservation Overlay Zone (HPOZ) designation of the Hancock Park community:

8 The surrounding neighborhood is a well established single-
9 family area recently awarded an HPOZ designation. Such
10 neighborhoods are oftentimes fragile in their stability but as
11 in the current case enjoy enormous community support to
12 protect and improve the status quo and insure its future
13 continuance. Issuance of CUPs in such an area must be
14 attuned to this set of preservation dynamics. Here, in this
15 instant case, the applicant’s desires must be held up to the
16 light of Historical Preservation and the impacts that such a
17 requested use would or would not have on continued
18 neighborhood stability.

16 *Id.*

17 These findings demonstrate, with particularity, the City’s compelling interest in
18 upholding its Comprehensive Zoning Plan and protecting the health, safety and welfare
19 of the residents of its residents.

20 **5. The City’s Action is the Least Restrictive Means of Furthering the**
21 **Compelling Governmental Interest**

22 The Congregation made its application more complicated and difficult by
23 joining its CUP application with a variance request. The ZA observed that, as
24 compared to the CUP process, a “variance procedure is a more severe test of zoning.”
25 AR 773. The ZA then outlined the five stringent requirements which the applicant
26 must demonstrate, none of which the Congregation was able to meet. *Id.*

1 In its Zone Variance Findings, the ZA observed that the Congregation was
2 seeking to convert an existing single family residential building into a religious facility
3 while maintaining the appearance of the building “as a private residence.” AR 778.
4 The ZA based this observation on one of the documents submitted to him by the
5 parties during the discretionary approval process. The document was an application
6 the Congregation filed with the Los Angeles County Assessor’s Office for a “Church
7 Exemption” for tax purposes, declaring that the property has been used not as a
8 residence but “solely for religious worship” since April, 1994. AR 1443-45.

9 The ZA juxtaposed the Congregation’s variance request for reduced parking
10 with the institutional use of the Property it was proposing and concluded there was no
11 alternative but to deny the application altogether:

12 Reduction in the amount of required parking is tied in this
13 instance hand in hand with the request for a conditional use
14 to allow for the establishment of a ‘church’. Without the
15 reduced parking the ‘church’ cannot be established. . . Once
16 granted, such a variance would run with the land. There can
17 be no assurance of a future sale of property to another
18 religious group who might not have such a nearby residential
19 congregation. . .

20 The Zoning Administrator in denying the requested variance
21 has tried to anticipate various uses and activities that could
22 become problematic in light of having reduced parking
23 should it have been granted, and in so doing has tried to
24 formulate appropriate conditions. This could not be done to
25 a point where the Zoning Administrator could have assurance
26 that reduced parking would not lead to increased parking and
27 traffic problems in the neighborhood. In light of this the
28 [ZA] must find that the granting of the variance will be
materially detrimental to the public welfare, or injurious to
the property or improvements in the same zone or vicinity in
which the property is located.

AR 779-80.

1 There was no other way to accommodate the Congregation given its difficult
2 requests. The City’s action was the least restrictive means of furthering its compelling
3 governmental interest in upholding its Comprehensive Zoning Plan and preserving the
4 health, safety and welfare of its residents.

5
6 **B. THE CITY’S DENIAL DOES NOT VIOLATE THE EQUAL TERMS
AND NONDISCRIMINATION PROVISIONS OF RLUIPA**

7
8 **1. The Congregation Has Not Established (and Cannot Establish) a
Prima Facie Case of an Equal Terms Violation**

9 In *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*,
10 450 F.3d 1295, 1307-08 (11th Cir. 2006) (“*Primera*”), the court identified four
11 elements of an Equal Terms violation:

- 12
13 (1) the plaintiff must be a religious assembly or institution,
14 (2) subject to a land use regulation, that (3) treats the
15 religious assembly on less than equal terms, with (4) a
 nonreligious assembly or institution.

16 (Also see, *The Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 510
17 F.3d 253, 270 (3rd Cir. 2007) (“*Lighthouse*”).)

18 The court, quoting from the statute, described the distribution of the burden of
19 proof in an Equal Terms violation claim:

20
21 Under the statute, the plaintiff bears the initial burden of
22 ‘produc[ing] [sic] prima facie evidence to support a claim
23 alleging a[n] Equal Terms] [sic] violation.’ (Citation.) If the
 plaintiff meets its initial burden, ‘the government . . . bear[s]
 [sic] the burden of persuasion on any element of the claim.

24 *Primera*, 450 F.3d at 1308.

25 Furthermore, the *Primera* court identified three distinct kinds of Equal Terms
26 statutory violations:

1 (1) a statute that facially differentiates between religious and
2 nonreligious assemblies or institutions; (2) a facially neutral
3 statute that is nevertheless ‘gerrymandered’ to place a burden
4 solely on religious, as opposed to nonreligious, assemblies or
5 institutions; or (3) a truly neutral statute that is selectively
enforced against religious, as opposed to nonreligious
assemblies or institutions.

6 *Id.*; also see, *Centro Familiar, supra*, 615 F.Supp. 2d at 992, quoting from *Primera*.

7 The *Primera* court next examined a series of cases it had decided in the past
8 involving allegations of equal terms violation, comparing them with the matter before
9 it:

10 In *Midrash*, we confronted the first kind of statutory Equal
11 Terms violation—facial discrimination. There, the zoning
12 ordinance . . . created a zoning district in which certain non-
13 religious assemblies and institutions were permitted, but
14 religious assemblies were prohibited. (Citation.) A panel of
15 this Court held that the ordinance facially violated RLUIPA’s
16 Equal Terms provision, and struck the ordinance down after
17 determining that it failed strict scrutiny review. (Citation.)
Here, *Primera* concedes, and we agree, that the zoning
provisions in question—the Separation Requirement . . .
(citation), are facially neutral and therefore do not constitute
a facial Equal Terms statutory violation.

18 *Primera*, 450 F.3d at 1308.

19 The *Primera* court described the third kind of statutory Equal Terms violation as
20 one that “would arise in the case of *discriminatory application* of a facially neutral
21 generally applicable statute. (Citation.)” *Id.* at 1310 (emphasis original).

22 The court next proposed the criteria for evaluating as-applied challenges to
23 facially neutral, generally applicable laws:

24 Thus *Konikov* stands for the proposition that a neutral
25 statute’s application may violate the Equal Terms provision
26 if it differentially treats *similarly situated* religious and
27 nonreligious assemblies. (Citations.) A plaintiff bringing an
28 as-applied Equal Terms challenge must present evidence that
a *similarly situated* nonreligious comparator received

1 differential treatment under the challenged regulation. If a
2 plaintiff offers no similarly situated comparator, then there
3 can be no cognizable evidence of less than equal treatment,
and the plaintiff has failed to meet its initial burden of proof.

4 *Id.* at 1311 (emphases original).

5 *Centro Familiar, supra*, is perhaps the most comprehensive, and probably the
6 only, published decision within the Ninth Circuit that discussed and analyzed the Equal
7 Terms provision of RLUIPA. There are procedural and factual similarities between
8 that case and this matter. In *Centro Familiar*, the church purchased a property in
9 downtown Yuma, Arizona, intending to use it as a church. *Centro Familiar*, 615 F.
10 Supp. 2d at 983. The code in question in the matter is typical of that of many
11 municipalities, including the City of Los Angeles:

12 The code permits a variety of uses as a matter of right within
13 the Old Town District, including ‘Membership organizations
14 (except religious organizations . . .).’ (Citation.) . . . The
15 code also permits certain uses upon the granting of a CUP,
16 including drive-through facilities, gasoline service stations,
17 educational services, religious organization . . . Religious
18 organizations are allowed as a matter of right in Transitional
Districts, Limited Commercial Districts, General
Commercial Districts. . .”

19 *Id.* at 984.

20 After the City of Yuma’s Planning and Zoning Commission denied its
21 application for a CUP, the church brought an action for declaratory and injunctive
22 relief, alleging that the denial violated the substantial burden and Equal Terms
23 provisions of RLUIPA. *Id.* at 988.

24 Quoting from cases from several circuits, the court rejected *Centro Familiar*’s
25 contention that the code facially violates the Equal Terms provisions:

26 The federal courts of appeals that have interpreted RLUIPA’s
27 equal terms provision agree on certain general principles.
28 The mere fact that the City’s zoning code identifies religious

1 organizations as a distinct type of use does not impair its
2 facial neutrality. (Citations.) . . .

3 There is also wide agreement that the equal terms provision
4 codifies the Supreme Court's *Free Exercise Clause*
5 jurisprudence regarding neutral laws of general applicability.
(Citations.)

6 *Id.* at 992-93.

7 The court, while recognizing the conflicts among the federal courts of appeal on
8 how to prove a violation of the Equal Terms provision, favored an approach that is not
9 too restrictive of how the government enacts and implements zoning laws:

10 Beyond these general principles, there is some conflict
11 among the federal courts of appeals. The core of the conflict
12 is whether a religious organization can prove a violation of
13 RLUIPA's equal terms provisions merely by showing that
14 some nonreligious assemblies or institutions are afforded
15 better treatment within a given jurisdiction. According to the
16 reading of the provision advanced by the Church in this case,
17 'if a zoning regulation allows a secular assembly, all
18 religious assemblies must be permitted.' (Citations.) . . . An
19 alternative interpretation of the provision, advanced by the
20 City in this case, draws on *Free Exercise Clause*
21 jurisprudence to conclude that a religious assembly . . . must
22 show that it is treated less well than 'secular assemblies. . .
23 that are similarly situated as to the regulated purpose.'
24 (Citation.) Our circuit has not yet clarified the test to be
25 applied. . .

26 In the abstract, it could therefore mean that a law that treats
27 even a single nonreligious assembly . . . better than any
28 religious assembly . . . is subject to strict scrutiny. Yet the
language of the provision is not so plain as to compel that
interpretation. . .

'RLUIPA's Equal Terms provision requires equal treatment,
not special treatment.' (Citation.)

Id. at 993-94.

1 In this matter, just like the ordinance in *Konikov* and *Centro Familiar*, under §
2 12.24(W)(9), a “church” use is not allowed by right in an R1 zone, but only “if
3 approved by the Zoning Administrator as the initial decision-maker or the Area
4 Planning Commission as the appellate body.” But a church or synagogue is not the
5 only use not allowed by right in an R1 zone. The City’s Comprehensive Zoning Plan
6 similarly does not permit several non-religious uses in an R1-1 zone by right, but only
7 by a CUP process. These include auditoriums (L.A.M.C. § 12.24(U)(2)), educational
8 institutions (L.A.M.C. § 12.24(U)(6)), fraternity or sorority houses (L.A.M.C. §
9 12.24(W)(21), private clubs (L.A.M.C. § 12.24(W)(35). The Congregation admits as
10 much in its Complaint. Complaint, ¶ 45.

11 L.A.M.C. § 12.24(W)(9) is, therefore, of the third kind described by the *Primera*
12 and *Centro Familiar* courts—a neutral ordinance of general applicability. As the
13 *Centro Familiar* court pointed out, “the mere fact that [it] identifies religious
14 organizations as a distinct type of use does not impair its facial neutrality.” *Centro*
15 *Familiar, supra*, 615 F. Supp. 2d at 992.

16 The Congregation appears to recognize that the City’s ordinance in question is
17 of the third kind—a truly neutral statute, but only alleges it is selectively enforced:

18
19 [T]he City allows nonreligious assemblies and institutions to
20 locate and operate in Hancock Park without interference, and
21 without demanding a CUP. The City allows without
22 requiring a CUP many private nonreligious assemblies in
23 Hancock Park, including, *inter alia*, private book clubs,
24 private recreation clubs, large gatherings at consular homes,
25 and schools. The City also permits full-blown nonreligious
26 institutional uses, including private schools and academies
27 (e.g., Marlborough High School), with and without a CUP.
28 The City’s continuing unmitigated refusal to allow Etz
Chaim to assemble and pray and/or to obtain a CUP for an
[sic] synagogue use without interference to the same extent
as nonreligious assemblies and institutions, and non-Jewish

1 assemblies and institutions violates the equal terms and
2 nondiscrimination provisions of RLUIPA.

3 Complaint, ¶97.

4 But mere allegations are not enough. In the words of the *Primera* court, the
5 Congregation has to present “evidence that a *similarly situated* nonreligious
6 comparator received differential treatment under the challenged regulation.” *Primera*,
7 450 F.3d at 1311.

8 In its Complaint, the Congregation mentioned Marlborough High School as a
9 comparator, alleging that the City is treating the Congregation on less than equal terms
10 than the school. Complaint, ¶ 97. The Congregation also identified other institutions
11 in and around Hancock Park as comparators, including the L.A. Tennis Club, Yavneh
12 School, and a few schools and churches.⁶

13 As discussed below, the Congregation is wrong; it is not similarly situated as
14 any of these institutions, and therefore, they are not “comparators.”

15 Yavneh Hebrew Academy is located at 5353 W. 3rd Street, in the RD5-1-HPOZ
16 Zone (Restricted Density Multiple Dwelling Zone). Declaration of Jonathan A.
17 Hershey in Support of City of Los Angeles’ Motion for Summary Judgment (“Hershey
18 Declaration”), ¶¶ 1-5; Exhibits A, B and C to Hershey Declaration, pp. 8-16. In 1929,
19 the City’s Department of Building and Safety (“Building and Safety”) issued a permit
20 in connection with an “[a]pplication to Alter, Repair or Demolish” a building at the site
21 for the purpose of a “school.” Hershey Declaration, ¶ 5; Exhibit D, p. 17. The reverse
22 side of the permit shows that the zone at the time was checked “o.k.” for a school use.
23 *Id.*; Exhibit D, p. 18. In 1934, Building and Safety issued a Certificate of Completion
24 certifying that the “Boarding School building located at 5353 W. 3rd Street has been
25 inspected and found to comply with the provisions of Building Ordinance.” *Id.*;

26 ⁶ At the deposition of Albert Landini, the AZA, counsel for the Congregation asked several
27 pointed questions about several institutions in and around Hancock Park in attempts to infer that the
28 City treats the Congregation on less than equal terms.

1 Exhibit E, pp. 19-20. In 1998, the ZA approved Yavneh’s CUP application “to permit
2 the establishment and maintenance of a private school in the RD5 Zone.” *Id.*; Exhibit
3 F, pp. 21-42. Therefore, the site upon which Yavneh is located has a history of
4 institutional use—more specifically, a school use—dating back to the 1920’s.

5 Third Street Elementary School is located at 245 S. June Street, in the [Q]PF-
6 1XL-HPOZ Zone, a Public Facilities Zone that allows a school use by right per
7 L.A.M.C. § 12.04.09 B 8. Hershey Declaration, ¶ 6; Exhibit G, p. 43.

8 John Burroughs Middle School is located at 600 S. McCadden Place in the
9 [Q]PF-1XL-HPOZ Zone, a Public Facilities Zone that allows a school use by right per
10 L.A.M.C. § 12.04.09 B 8. Hershey Declaration, ¶ 7; Exhibit H, p. 48.

11 Daniel Murphy Catholic High School is located at 241 S. Detroit Street, in the
12 RD6-1 Zone, a Restricted Density Multiple Dwelling Zone. Hershey Declaration, ¶ 7;
13 Exhibit I, p. 54. In 1926, Building and Safety issued a permit in connection with an
14 application “for the Erection of Buildings” for the purpose of “School & Residence” at
15 the site. *Id.*; Exhibit J, p. 60. At the time, as indicated on the reverse side of the permit,
16 the zoning was checked “o.k.” for the purpose of a school and residence. *Id.*; Exhibit
17 J, p. 61. In 1957, Building and Safety issued a Certificate of Occupancy for a
18 “classroom building” at the site. *Id.*; Exhibit K, p. 62. Therefore, school use had
19 always been allowed at the site as far back as 1926.

20 The L.A. Tennis Club is located at 5851 W. Clinton Street, in the R3-1-HPOZ
21 Zone (Multiple Dwelling Zone with an HPOZ designation). Hershey Declaration, ¶¶ 9
22 and 10; Exhibit L, p. 63. In 1923, Building and Safety issued a permit in connection
23 with an application for “the Erection of Frame Buildings” at the site for the purpose of
24 a “clubhouse.” Hershey Declaration, ¶ 10; Exhibit M, p. 69. At the time, as indicated
25 on the reverse side of the permit, the zone was checked “o.k.” for the proposed use.
26 *Id.*; Exhibit M, p. 70. In 1937, the City passed an ordinance allowing the site “to be
27 used for the purpose of conducting and maintaining a tennis club thereon . . .” *Id.*;
28

1 Exhibit N, p. 71-74. Therefore, as far back as at least 1923, the site has been approved
2 for its current use as a tennis club.

3 Christ the King Church is located at 627 S. Arden Boulevard, in the R4-2 Zone
4 (Multiple Dwelling Zone). Hershey Declaration, ¶ 11; Exhibit O, p. 75. In 1927,
5 Building and Safety issued a permit in connection with an application “for the Erection
6 of Frame Buildings” for the purpose of a church at the site. *Id.*; Exhibit P, p. 81.
7 Therefore, a church use has been allowed at the site since at least 1927, at which time
8 the “zoning” was checked “o.k.” for the church use as indicated on the second page of
9 Exhibit P, which represents the reverse side of the original permit document. *Id.*;
10 Exhibit P, p. 82.

11 Wilshire United Methodist Church is located at 711 S. Plymouth Boulevard, in
12 the CR(PKM)-1-HPOZ, a limited commercial zone, with an HPOZ designation.
13 Hershey Declaration, ¶ 12; Exhibit Q, p. 83. In 1926, Building and Safety issued a
14 permit in connection with an application to “Alter, Repair or Demolish” an existing
15 “church” building for new buildings to be used for “Sunday School, Chapel &
16 Gymnasium” at the site. *Id.*; Exhibit R, p. 89. Therefore, as far back as 1926, the site
17 has been approved for a church use.

18 The Ebell Club of Los Angeles is located at 741-43 S. Lucerne Boulevard, in the
19 CR(PKM)-1-HPOZ Zone, a limited commercial zone, with an HPOZ designation.
20 Hershey Declaration, ¶ 13; Exhibit S, p. 90. In 1927, Building and Safety issued a
21 permit in connection with an application for “the Erection of Buildings” for the
22 purpose of a “Club & Theater.” *Id.*; Exhibit T, p. 96. The “Owner’s name” indicated
23 on the permit was the “Ebell Club,” at which time, as indicated on the reverse side of
24 the permit, the zone was checked “o.k.” for the proposed use. *Id.*; Exhibit T, pp. 96-
25 97. Therefore, the Ebell Club had been permitted as a club and theatre as far back as
26 1927.

27 The Marlborough School is located at 250 S. Rossmore Avenue, in the RE11-1-
28 HPOZ Zone (Residential Estate and an HPOZ designation). Hershey Declaration, ¶

1 14; Exhibit U, p. 98. In 1927, Building and Safety issued a permit allowing the
 2 “Marlborough School Corporation” to erect buildings at the site for the purpose of a
 3 “school,” at which time, as indicated on the reverse side of the permit, the zone was
 4 checked “o.k.” for the proposed school use. *Id.*; Exhibit V, pp. 105-06. Therefore,
 5 Marlborough School has been on the site as a permitted use as far back as 1927.

6 It is therefore evident that the above institutions are not similarly situated
 7 comparators to the Congregation. In the words of the *Primera* court, since the
 8 Congregation “offers no similarly situated comparator, then there can be no cognizable
 9 evidence of less than equal treatment, and [the Congregation] has failed to meet its
 10 initial burden of proof.” *Primera*, 450 F.3d at 1311.

11 **2. There are Neutral, Generally Applicable Land Use Principles Behind**
 12 **any Disparate Treatment of the Congregation and Nonreligious**
 13 **Assemblies or Institutions in Hancock Park**

14 The *Centro Familiar* court’s analysis of the distribution of the burden of proof
 15 between a plaintiff and the government in the context of an Equal Terms violation
 16 claim is instructive in this matter:

17 Once a religious assembly or institution has provided prima
 18 facie evidence of an equal terms violation, the statute places
 19 the burden on the government to show why a *Free Exercise*
 20 *Clause* violation has not occurred. A neutral and generally
 21 applicable law does not ordinarily violate the *Free Exercise*
 22 *Clause*. (Citation.) Accordingly, the government may
 23 satisfy its burden of persuasion by showing that any disparate
 24 treatment of a religious and a nonreligious assembly . . .
 25 stems from a neutral and generally applicable principle.

26 The two federal courts of appeals with the most divergent
 27 views on the proper interpretation of RLUIPA both agree
 28 with this principle . . .

If a city permits a few nonreligious assemblies or institutions
 in a given district, that does not necessarily mean that it must
 permit all religious assemblies . . . under RLUIPA . . .

1
2 A zoning ordinance does not violate the equal terms
3 provision, even if it permits some secular assemblies or
4 institutions and exclude religious assemblies . . . so long as
5 there is a neutral and generally applicable principle for doing
6 so.

7 *Centro Familiar*, 615 F. Supp. 2d at 995-96.

8 Finally, the court concluded that the rational basis review is the appropriate
9 standard for evaluating the ordinance in question:

10 Since the equal terms provision codifies free exercise
11 principles, rational basis review must be applied where the
12 government shows that the unequal treatment identified by a
13 religious organization actually stems from a neutral and
14 generally applicable principle. (Citation.) . . Under rational
15 basis review, the regulations will be upheld if they are
16 rationally related to a legitimate governmental purpose.
17 (Citation.) ‘[T]he burden is on the one attacking the
18 legislative arrangement to negative every conceivable basis
19 which might support it.’ (Citation.) Although it is a court’s
20 duty to scrutinize the connection between the government’s
21 objective and the means that it has used to accomplish that
22 objective, **‘courts are compelled under rational-basis
23 review to accept a legislature’s generalizations even when
24 there is an imperfect fit between the means and the ends.’**
25 (Citations.)

26 *Id.* at 1000 (emphasis added).

27 Assuming the Congregation has met its initial burden of proof of showing a
28 similarly situated comparator (which it has not), there are legitimate, neutral and
generally applicable land use principles behind any disparate treatment of the
Congregation and other assemblies or institutions in Hancock Park. Each of the
institutions identified above is located at a site with a long history of institutional use.
Most of them have been located at their current site since the use was first permitted
several years ago. This reason alone qualifies as a legitimate, neutral and generally

1 applicable land use principle behind what appears to be disparate treatment of these
2 institutions as compared to the Congregation.

3 Moreover, this same principle qualifies as a rational basis justifying what
4 appears to be the City's disparate treatment of the Congregation.

5 **3. The City's Action Does Not Violate the Nondiscrimination Provision**
6 **of RLUIPA**

7 Similarly and for all of the above reasons, the City's L.A.M.C. § 12.24(W)(9),
8 as interpreted and applied, does not violate the nondiscrimination provision of
9 RLUIPA.

10
11 **C. THE CONGREGATION IS NOT ENTITLED TO A PRELIMINARY OR**
12 **PERMANENT INJUNCTION**

13 The courts have long established the criteria for obtaining a preliminary
14 injunction:

15 In order to obtain a preliminary injunction, plaintiff must
16 establish either: 1) the combination of a likelihood of success
17 on the merits and the possibility of irreparable harm if an
18 injunction is not issued, or 2) that plaintiff has raised serious
19 questions on the merits [and] that the balance of hardships
20 tips sharply in its favor. (Citations.)

21 *San Jose Christian College, supra*, 2001 U.S. Dist. LEXIS 23162 *1, *3. (Also see,
22 *Murphy, supra*, 148 F. Supp. 2d at 179; *Ventura County Christian High School v. City*
23 *of San Buenaventura*, 233 F. Supp. 2d 1241, 1246 (C.D., Cal. 2002).)

24 Moreover, courts in the Ninth Circuit have required a moving party to make a
25 stronger showing when public interest is involved:

26 However, when the public interest may be implicated by a
27 preliminary injunction, 'courts of equity may, and frequently
28 do, go much farther to give and withhold relief in furtherance
of the public interest than they are accustomed to go when
only private interests are involved.' (Citation.) According to
the Ninth Circuit, 'when a district court balances the

1 hardships of the public interest against a private interest, the
2 public interest should receive greater weight.’ (Citation.)

3 *Ventura County Christian High School*, 233 F. Supp. 2d at 1252.

4 Courts in other circuits agree:

5 However, in a case in which the moving party seeks to stay
6 governmental action taken in the public interest pursuant to a
7 statutory or regulatory scheme, the injunction should be
8 granted only if the moving party meets the more rigorous
9 likelihood-success standard. (Citations.)

10 *Murphy*, 14 F. Supp. 2d at 179-180.

11 **1. The Congregation Has No Likelihood of Success on the Merits**

12 For all of the foregoing reasons, the Congregation has no likelihood of success
13 on their claims that the City’s action violated any of the alleged provisions of
14 RLUIPA.

15 **2. There is No Imminent, Irreparable Harm to the Congregation**

16 The only action the City has taken in this matter is the Department of Planning’s
17 denial of the Congregation’s CUP and Variance application to use the Property as a
18 house of worship. In the Complaint’s “Prayer for Relief,” however, the Congregation
19 asks that the court “issue a Preliminary Injunction restraining [the City] from enforcing
20 or threatening to enforce against [the Congregation] [L.A.M.C.] section 12.24[(W)](9)
21 . . .” The Congregation makes a similar request as to “a Permanent Injunction.”

22 But the Planning Department’s action was a denial of an application, not an
23 enforcement action. Therefore there is no “enforcement” or a “threat of enforcement”
24 to enjoin. In over fifteen years, the City has neither threatened to enforce nor enforced
25 against the Congregation, and there is no indication the City is planning to do so
26 anytime soon. The Congregation’s request for preliminary or permanent injunction is
27 therefore premature.
28

1 Moreover, under L.A.M.C. § 98.0403.1(a)(3), the Department of Building and
2 Safety “is granted the power to enforce the zoning ordinances of the City.” The
3 Department of Building and Safety has not issued any enforcement orders in this
4 matter, and therefore, the Congregation is not currently faced with an imminent,
5 irreparable harm of an enforcement action.

6 Finally, with regard to the Congregation’s compensatory damages, as the *San*
7 *Jose* court observed, “[m]onetary expenses, however, do not constitute an irreparable
8 harm and are insufficient to support an injunction. (Citation.)” *Id.*, at *22.

9
10 **3. The Congregation Has Not Raised Serious Questions on the Merits,**
and the Balance of Hardships is Not in its Favor

11 Similarly, and for the foregoing reasons, the Congregation has not raised serious
12 questions on the merits and, therefore, the balance of hardships is not in its favor.
13

14 **CONCLUSION**

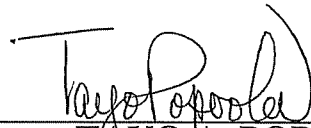
15 Based on the foregoing, the City requests that the court grant its motion for
16 summary judgment and dismiss this action with prejudice.
17

18
19 Dated: March 28, 2011

Respectfully submitted,

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24 By: _____



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28