INFORMATION MEMO

Zoning for Religion

When considering an application for land use involving a religious institution, cities must comply with the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) law. Learn the requirements of this law and read examples of provided by the U. S. Department of Justice of zoning actions and ordinance language that can violate it.

RELEVANT LINKS:

I. Religious Land Use and Institutionalized Persons Act (RLUIPA)

While it probably isn't every day that your city receives a land use application for a religious use, this is still an area of planning and zoning cities need to pay attention to. The way your city handles applications for religious uses must comply with the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

42 U.S.C. § 2000cc et seq.

RLUIPA protects religious institutions from unduly burdensome or discriminatory land use regulations. This law was passed unanimously by Congress in 2000, after congressional hearings revealed that religious organizations were disproportionately affected by local land use decisions. Minority religions and start-up churches were impacted more than most. Congress also found that religious institutions were treated worse than comparable secular institutions and that zoning authorities were placing excessive burdens on the ability of congregations to exercise their faith.

As a result, Congress enacted RLUIPA in an effort to protect religious freedom, houses of worship, and religious schools. However, 10 years after it was passed, RLUIPA remains something of a mystery to those involved in local land use regulation

II. Origins of RLUIPA

Employment Div., Department of Human Resources of Ore. V. Smith, 42 U.S. 110 S. Ct. 108 L.Ed. 2nd 876 (1990).

A 1990 Supreme Court decision was the first step toward RLUIPA. Smith was fired as a drug counselor for ingesting peyote during a Native American ceremony. He was denied unemployment insurance by the state of Oregon because his termination was due to felony use of a controlled substance. The Supreme Court upheld the denial because the state ban on peyote was neutral and generally applicable. The Smith decision led to an outcry from religious groups that the courts were inadequately protecting the religious practice of individuals from the impact of government programs and policies.

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RELEVANT LINKS:

42 U.S.C. § 2000bb et seq.

Congress reacted in 1993 by passing the Religious Freedom Restoration Act (RFRA), which established "strict scrutiny" of any law that substantially burdened a religious individual or institution. A church in Texas challenged a city historic preservation law under RFRA and in 1997 the case went all the way to the Supreme Court. The Court struck down the application of RFRA to state and local government, ruling it was an unconstitutional violation of the limits of federalism. So Congress tried again, and after unsuccessful bills in 1998 and 1999, RLUIPA became law in 2000.

III. RLUIPA prohibitions

Department of Justice RLUIPA Policy Statement, Sept. 2010.

There is little guidance for compliance with RLUIPA, causing city officials, planners, and attorneys to puzzle over the language of this law. The following information from the U.S. Department of Justice provides examples of the kinds of zoning actions and ordinance language that might get a city into trouble with RLUIPA.

A. Infringement of religious exercise

42 U.S.C. § 2000cc(a).

RLUIPA bars zoning restrictions that impose a "substantial burden" on the religious exercise of a person or institution, unless the government can show that it has a "compelling interest" for imposing the restriction. In addition, the restriction imposed must be the least restrictive way for the city to further that interest.

Minor costs or inconveniences imposed on religious institutions are not enough to trigger RLUIPA's protections. The burden must be "substantial." Once the institution has shown a substantial burden on its religious exercise, the city must show that the reason for imposing a restriction is "compelling." Because the religious organizations in the following examples have demonstrated a substantial burden on their religious exercise, and the justifications offered by the cities in these cases are not compelling, the cities would likely be in violation of RLUIPA.

Example: A church has applied for a variance to build a modest addition to its building for Sunday school classes. The church demonstrated that the addition is critical to carrying out its religious mission, that there is adequate space on the lot, and that there would be a negligible impact on traffic and congestion in the area. The city denied the variance.

Example: A Jewish congregation has been meeting in various rented spaces that have proven inadequate for the religious needs of its growing membership. The congregation purchased land and seeks to build a synagogue. The city denied the permit, and the only reason given is "we have enough houses of worship in this city already, and we want more businesses."

RELEVANT LINKS:

B. Comparability to secular institutions

42 U.S. C. § 2000cc(b)(1).

Under RLUIPA, religious assemblies and institutions must be treated at least as well as non-religious assemblies and institutions. This is known as the "equal terms" provision of RLUIPA. On its face, the ordinance below favors nonreligious places of assembly over religious assemblies, so the following example would be a violation.

Example: A mosque leases space in a storefront, but zoning officials deny an occupancy permit since houses of worship are forbidden in that zone. However, fraternal organizations, meeting halls, and places of assembly are all permitted in the same zone.

C. Discrimination among religions

42 U.S.C. § 2000cc(b)(2).

RLUIPA bars discrimination "against any assembly or institution on the basis of religion or religious denomination." If it were proven that the permit was denied because the applicants are Hindu, the example below would constitute a violation.

Example: A Hindu congregation is denied a building permit despite meeting all of the zoning code requirements for height, setback, and parking. The zoning administrator is overheard making a disparaging remark about Hindus.

D. Exclusion of religious assemblies

42 U.S.C. § 2000cc(b)(3)(A).

RLUIPA provides: "No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction." Exclusions like the example below are explicitly forbidden.

Example: A city, seeking to preserve tax revenues, enacts a law that no new churches or other houses of worship will be permitted.

E. Unreasonable limits on houses of worship

42 U.S.C. § 2000cc(b)(3)(B).

Under RLUIPA: "No government shall impose or implement a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." The zoning scheme described below, if proven to be an unreasonable limitation on houses of worship, would constitute a violation.

Example: A city has no zones that permit houses of worship. The only way a church may be built is by having an individual parcel rezoned, a process which in that city takes several years and is extremely expensive.

RELEVANT LINKS:

IV. Impact on zoning

It is important to recognize that RLUIPA does not shield religious institutions from all land use regulation. A zoning ordinance can be enforced as long as it does not discriminate against or exclude religious uses, does not treat religious uses less favorably than comparable nonreligious uses, and does not impose a substantial burden.

Religious land uses include places of assembly for worship such as churches, synagogues, mosques, and temples. But, RLUIPA can also encompass any number of associated religious activities, such as shelters, schools, soup kitchens, and community centers.

Historically, most zoning ordinances have treated religious institutions like any other building. They usually are subject to setbacks, height limits, and lot size requirements. Often the impacts are limited to traffic and parking concerns that occur at the time of regular worship services. However, some ordinances specify zoning districts in which religious buildings are or are not allowed, and require that performance standards be met as to parking and site plan. Like any zoning regulation, the purpose is generally to mitigate the impact of the land use on its neighbors.

Another traditional way of handling zoning ordinances is to treat churches and other places of worship as uses associated primarily with residential districts. Neighborhood churches were viewed as a classic residential use, often located on corner lots near larger streets. But the model has changed over time with new forms emerging. Large mega-churches draw thousands of worshipers to shopping-center sized facilities. Conversely, smaller storefront churches provide youth drop-in centers and religious outreach efforts. Many zoning ordinances have not yet addressed the variety of forms religious institutions can take.

V. Review and plan

Cities that have not reviewed their zoning ordinances for consistency with RLUIPA might start by taking a look at how religious land uses are currently regulated:

- Does the zoning ordinance call them out as specific land uses?
- If so, does the ordinance impose unique requirements or limit their location to certain districts?
- How are religious land uses defined? If the ordinance uses the term “churches” the city should consider changing to a broader definition, as the term church can be viewed as discriminating among religions.

RELEVANT LINKS:

Some ordinances now employ a broad definition of "places of assembly" that include both religious and non-religious uses. This approach may go a long way toward protecting the city from an equal terms challenge under RLUIPA.

Cities should also consider whether the ordinance requires religious uses to undergo any particular approval process. If the ordinance leaves the city with significant discretion over the approval and conditions that may be attached, a city is more likely to face a substantial burden challenge under RLUIPA.

Some ordinances regulate places of religious assembly as a conditional use. While a conditional use may be appropriate and may survive a challenge if applied fairly and judiciously, cities should be wary of this practice. Concerns a city may wish to address through a zoning approval process do not always pertain to all places of assembly but rather are focused on assemblies of a particular size. Consider classifying assemblies based on scale and impact, and have sliding zoning standards that apply accordingly. A small place of assembly may be permitted outright, yet a larger one would be subject to specified performance standards.

While the meaning and impact of RLUIPA continues to be sorted out, cities should remain aware of the possibility that their zoning practices may be alleged to violate RLUIPA. Review of RLUIPA underscores the importance of careful planning, as well as ordinance drafting and administration, whenever a city receives a land use application for a religious use. Cities should work closely with their planners and attorneys to navigate this complex area of land use law.

VI. Further assistance

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League of Minnesota Cities.

For questions on the Religious Land Use and Institutionalized Persons Act and other land use situations, contact the League's Loss Control Land Use Attorney. You can learn more about land use issues in the land use section of the League's website.