



# MEMORANDUM

Office of the City Attorney

060552

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commissioners

DATE: October 9, 2006

FROM: City Attorney

CONSENT

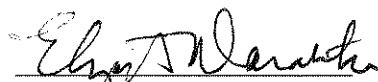
SUBJECT: Fire of God Ministries, Inc. v. City of Gainesville  
Case No.: 1:06-CV-188-SPM-AK – U.S. District Court

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Recommendation: The City Commission authorize the City Attorney and/or special counsel to represent the City in the case styled Fire of God Ministries, Inc. v. City of Gainesville, Case No: 1:06-CV-188-SPM-AK.

On September 26, 2006, the Mayor was served with a Summons and Complaint. Plaintiff alleges that the City applied its land development code in an unequal and discriminatory manner by requiring Plaintiff to apply for a Special Use Permit. The Plaintiff asks the Court to enjoin the City from requiring it to obtain a special use permit and to declare the City in violation of the Religious Land Use and Institutionalized Persons Act, the First Amendment and Equal Protection laws. Plaintiff also seeks attorney's fees and costs.

Prepared by:

  
Elizabeth A. Waratuke,  
Litigation Attorney

Submitted by:

  
Marion J. Radson,  
City Attorney

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

FIRE OF GOD MINISTRIES, INC.,

Plaintiff,

v.

Case No. 1:06 cv 188 - SPM-AK

CITY OF GAINESVILLE,

Defendant.

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**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Fire of God Ministries, Inc. ("Fire of God") files this Complaint and alleges:

**INTRODUCTION**

1. This suit seeks declaratory and injunctive relief from the clear and purposeful deprivation of:

(a) Plaintiff's federal statutory rights to equal treatment and freedom from discrimination under the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc *et seq.* ("RLUIPA"); and

(b) Plaintiff's rights to equal protection, due process, and freedom of religion, speech, assembly and association under the First and Fourteenth Amendments to the United States Constitution.

CLERK  
U.S. DISTRICT CT.  
NORTHERN DIST. FLA.  
GAINESVILLE, FLA.

06 SEP 26 PM 1:00

RECEIVED

2. Defendant City of Gainesville (“City”) has imposed and implemented its Land Development Code (“Code”) against Fire of God in a discriminatory, unprecedented and unwarranted fashion. It has acted to prevent Fire of God from using as of right a previously constructed, lawfully existing assembly hall for religious assembly and worship, even though the Code allows as of right the property’s use for equivalent nonreligious assembly purposes by a nonreligious assembly or institution. Fire of God has suffered and continues to suffer a legally cognizable injury from the City’s unequal and discriminatory application of the Code to require that Fire of God obtain a special use permit to use the assembly hall property it has leased for religious assembly and worship, when the Code would allow that same assembly hall property to be used by a nonreligious assembly or institution without the need for such a permit.

### **JURISDICTION**

3. RLUIPA explicitly authorizes a private right of action. 42 U.S.C. §2000cc-2(a). Plaintiff’s other claims for relief are predicated upon 42 U.S.C. §1983. This Court has jurisdiction over all claims pursuant to 28 U.S.C. §§1331, 1343(a)(3) & (a)(4).

4. Declaratory relief is authorized by 28 U.S.C. §§2201 and 2202.
5. Plaintiff seeks injunctive relief pursuant to Fed. R. Civ. P. 65.

### **VENUE**

6. Venue is proper in the Northern District of Florida, Gainesville Division, pursuant to 28 U.S.C. §1391(b). Defendant is located, and all acts and omissions

complained of herein occurred and continue to occur, in the Northern District of Florida, Gainesville Division.

### THE PARTIES

7. Plaintiff Fire of God is a Florida not-for-profit corporation. Fire of God is a non-denominational Christian church that has conducted public worship services in the Gainesville area since 2001.

(a) Fire of God is a religious institution within the meaning of RLUIPA. Fire of God has a special but not exclusive calling to minister to the poor, the hurting, the needy and the downtrodden, to heal and lift their spirits and to make them whole. Fire of God was formed in the belief that those who are often rejected need a church they can belong to that welcomes, values, respects and accepts them unconditionally.

(b) Fire of God's principal place of worship is located at 1414 NE 23<sup>rd</sup> Avenue, Gainesville, Florida (the "Property"). Fire of God leased the Property in December, 2005, from LD Enterprises of Florida, LLC, for use as a place of religious assembly and worship. (Exh. D.) Previously, Fire of God conducted its worship services at various temporary locations.

8. Defendant City is a Florida municipal entity organized under the laws of the State of Florida with the capacity to sue and be sued. The City is a government within the meaning of RLUIPA.

## FACTUAL ALLEGATIONS

### Fire of God's Use of the Property

9. Since December, 2005 Fire of God has used the Property solely for church services and church-related activities, including bible study and prayer meetings on Sundays, Tuesdays and Wednesdays, church services on Thursdays and Saturdays, and prayer breakfast services on Fridays. In addition, Fire of God uses the Property for youth group meetings, weddings and funeral services, and for pastoral counseling. To foster a sense of community and fellowship among the congregation, and help open the minds and hearts of the congregation to the spiritual teachings Fire of God seeks to instill, Fire of God provides a meal or snacks for the congregation in conjunction with some of its worship services and bible study meetings.

10. To assist members of the congregation who lack other means of transportation, Fire of God provides transportation to and from the Property in conjunction with some of its worship services and bible study and prayer meetings.

11. Fire of God's main worship service takes place on Saturday evenings. That service begins with group prayer in the sanctuary, followed by a fellowship meal in the dining area. Following the meal, the main worship service takes place in the sanctuary, and includes prayer, an offering, testimony, praise and worship (including the singing of hymns), preaching, a prayer of deliverance, healing, and individual acts of salvation. Additionally, the service includes a rite of communion once a month, and sometimes baptisms are performed at the beginning of the main worship service.

12. The number of people at Fire of God's worship services and bible study and prayer meetings varies from week to week, but only the Saturday evening services typically draw more than 100 people. Most of the bible study and prayer meetings draw only one or two dozen people, while the Thursday and Friday services typically draw somewhere between thirty and 100 people. The main sanctuary can accommodate about 300 people, and is never filled even close to capacity.

13. Fire of God has no other facility where it can conduct its worship services and bible study and prayer meetings. If Fire of God is prevented from using the Property for this purpose, Fire of God and its congregation will be prevented from assembling together to worship God.

#### The Original Use of the Property: the Moose Lodge

14. The Property that is the subject of the current dispute was originally constructed as an assembly hall in 1951. It was originally used as a fraternal lodge by Gainesville Lodge No. 1140, Loyal Order of Moose, a non-profit membership organization (the "Moose Lodge").

15. The Moose Lodge used the Property continuously for more than 50 years for nonreligious assembly purposes, from 1951 through October 2005, when the Moose Lodge sold the Property to LD Enterprises of Florida, LLC, Fire of God's lessor.

16. The Moose Lodge used the Property for a variety of assembly activities, including dining, dancing, participating in group games, listening to invited speakers, and conducting lodge meetings. For many years the Moose Lodge had over 500 members,

conducted meetings and other events in the main assembly hall portion of the building several times per week, and used the kitchen and dining areas on a daily basis. On numerous occasions the meetings and other events drew more than 300 people, and the facility was filled to capacity. In 1954 the Moose Lodge had over 1000 members, and was described in the Gainesville Daily Sun as one of the most active fraternal organizations in the City of Gainesville.

17. In recent years the membership of the Moose Lodge and the amount of activity at the Property decreased, but the Moose Lodge never discontinued or abandoned its use of the Property prior to the sale in October 2005.

#### The Zoning of the Property

18. The Property was annexed into the City of Gainesville at the end of 1961. Under the City's zoning code that became applicable to the Property in 1962, the use of the Property for assembly purposes by the Moose Lodge was defined as a "semi-public use," and was deemed to be "legally established as conforming" in the R1-b residential zoning district that applied to the Property.

19. In 1981, the City's zoning code was re-enacted and the Property was zoned as RSF-2, a single-family residential district. That zoning designation remained applicable to the Property when Gainesville's Land Development Code was enacted in 1992, and it remains applicable today.

20. The Code does not allow a fraternal lodge to operate within an RSF-2 residential zoning district. However, the use of the Property by the Moose Lodge was

“grandfathered” and remained lawful, because Code Section 30-346(d) authorizes continued operation of a lawfully existing nonconforming use. The City has explicitly acknowledged that the Moose Lodge’s use of the Property qualified as a lawfully existing nonconforming use under the Code.

The Code’s Provisions Regarding Nonconforming Uses

21. Code Section 30-23 defines “nonconforming use” as follows:

*Nonconforming use* means the use of any building or land other than a use specifically permitted in the zoning district in which such building or land is located, provided such use was at one time a lawful use and has not been discontinued for more than nine consecutive months since becoming nonconforming. A use is discontinued when there is a change from a nonconforming use to a conforming use or when the property has been altered to the extent that reestablishment of the nonconforming use will involve construction activity other than normal maintenance.

The City has explicitly acknowledged that the Moose Lodge’s use of the Property was not discontinued within the meaning of the Code.

22. Code Section 30-346(d) sets forth the regulations regarding continuation or change of a nonconforming use:

If a lawful use of a structure, or of a structure and premises in combination, exists on the date this chapter was adopted or amended, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued or changed to another use of the same major group, as identified in the Standard Industrial Classification Manual, as long as it remains otherwise lawful, subject to the following provisions:

- ...
- (2) If the use of a structure devoted to a use not permitted by this chapter in the district in which it is located is changed,



the use must be changed to one permitted in such district or to another use of the same major group, as identified by the Standard Industrial Classification Manual.

...

(4) There may be a change of tenant, ownership or management of a nonconforming use provided there is no change in the nature or character of such nonconforming use.

(Exh. F.)

23. Code Section 30-346(d) does not require that a permit be obtained in order to change a lawfully existing nonconforming use to another use of the same major group as identified in the Standard Industrial Classification (“SIC”) Manual. Rather, the Code provides that “the lawful use may be . . . changed” in this fashion. (Exh. F.)

24. Although prior versions of the City’s zoning code required Board of Adjustment approval for a nonconforming use to be changed to a different nonconforming use, the City has explicitly acknowledged that approval from the Board of Adjustment is no longer required for such a change in use under the current Code.

25. Code Section 30-346(d) authorizes the nonconforming use of the Property by the Moose Lodge to be changed to use for religious assembly purposes by Fire of God because both the Moose Lodge and Fire of God are classified within the same major group (as identified in the SIC Manual). The SIC Manual includes both “Civic, Social and Fraternal Associations” (Industry No. 8641) such as the Moose Lodge and “Religious Organizations” (Industry No. 8661) such as the Fire of God church within “Major Group 86 - Membership Organizations.” (Exh. G.)

The City's Discriminatory and Unprecedented Application of the Code to Fire of God

26. A plain reading of the Code establishes that places of religious assembly such as Fire of God do not need a special use permit in order to continue a fraternal lodge's nonconforming use. However, on April 24, 2006, the City issued a Notice of Violation and instituted code enforcement proceedings against Fire of God to compel Fire of God to cease operations or obtain a special use permit. (Exh. H.)

27. On May 1, 2006, Fire of God responded to the City's Notice of Violation and explained that Fire of God's use of the Property as a place of religious assembly was authorized as of right pursuant to Code Section 30-346(d) in light of the Moose Lodge's prior nonconforming use of the Property as a fraternal lodge. (Exh. I.)

28. The City did not reply for several weeks. Eventually, on May 30, 2006, the Director of the City's Community Development Department, Mr. Tom Saunders, replied on behalf of the City and claimed that Code Section 30-346(d) is inapplicable to Fire of God's use of the Property because "the SIC [Manual] is not used to define places of religious assembly and the property is located in a residential district." (Exh. L.)

29. The City's assertion that the "change of use" provision of Code Section 30-346(d) is inapplicable to Fire of God's use of the Property because the SIC Manual is not used in residential zoning districts is directly contrary to the City's established practice in prior cases.

- a. In Petition No. 19NCF-98 BA, the City granted a petition to re-establish a nonconforming use. The property in question was located in a residential zoning district. In granting the petition, the City explicitly authorized the

re-established nonconforming use to be changed to another use in the same major group of the SIC Manual, stating: “If the use of structure devoted to a use not permitted in the RMF-5 district is changed, the new use must be a use permitted in the RMF-5 district or in the same Major Group of Standard Industrial Code as the legal non-conforming use. The Major Group of this petition is Major Group 72 (Personal Services).”

- b. In Petition No. 33NCF-98 BA, the City granted a petition to re-establish a nonconforming use. The property in question was located in a residential zoning district. In granting the petition, the City explicitly authorized the re-established nonconforming use to be changed to another use in the same major group of the SIC Manual, stating: “If the use of structure devoted to a use not permitted in the RMF-5 district is changed, the new use must be a use permitted in the RMF-5 district or in the same Major Group of Standard Industrial Code as the legal non-conforming use. The Major Group of this petition is Major Group 54 (Food Stores).”
- c. In Petition No. 6NCF-02 BA, the City granted a petition to re-establish a nonconforming use. The property in question was located in a residential zoning district. In granting the petition, the City explicitly authorized the re-established nonconforming use to be changed to another use in the same major group of the SIC Manual, stating: “If the use of the structure devoted to a use not permitted in the RMF-5 district is changed, the new use must be a use permitted in the RMF-5 district or in the same Major Group of the Standard Industrial Code as the legal nonconforming use. The Major Group of this petition is Major Group 54 (Food Stores).”

(Exh. E.)

30. The City’s standard practice has been to deem the “change of use” provision of Code Section 30-346(d) to be applicable in residential zoning districts.

(Exh. E.) The City has never before claimed that the “change of use” provision of Code Section 30-346(d) is inapplicable in residential zoning districts. On information and belief, the City has taken this position only in connection with Fire of God’s use of the Property, precisely in order to deny a place of religious assembly the benefit of the

“change of use” provision of Code Section 30-346(d) that would be available to anyone else, and to require that Fire of God obtain a special use permit that would not be required of any nonreligious assembly or institution.

31. The City’s additional assertion that the “change of use” provision of Code Section 30-346(d) is inapplicable to Fire of God’s use of the Property, because the SIC Manual is not used to define places of religious assembly, targets a place of religious assembly for less favorable treatment than the nonreligious assemblies and institutions that are classified in major group 86 of the SIC Manual, and operates as a ‘religious gerrymander’ that imposes on religious assemblies and institutions requirements and restrictions that are not imposed on nonreligious assemblies and institutions.

Fire of God’s Unsuccessful Appeal to the City’s Board of Adjustment

32. Fire of God appealed the City’s determination that the “change of use” provision of Code Section 30-346(d) is inapplicable to Fire of God’s use of the Property as a place of religious assembly. This appeal was filed with the City’s Board of Adjustment on June 19, 2006.

33. At the August 3, 2006, hearing on Fire of God’s appeal, the City explicitly acknowledged that the use of the Property by the Moose Lodge was a lawfully existing nonconforming use that had not been discontinued within the meaning of the Code.

34. At that hearing, counsel for Fire of God argued that the City’s position in Fire of God’s case was inconsistent with its prior practice as evidenced in prior cases such as Petition No. 19NCF98-BA, Petition No. 33NCF98-BA, and Petition No. 6NCF02-BA.

Counsel for the City replied that the Board was free to ignore these prior decisions.

35. At that hearing, a number of residents testified in opposition to Fire of God's appeal. Many of them affirmatively stated that they did not oppose a church being located on the Property, but they did oppose Fire of God. Some explained their opposition on the basis that Fire of God was not a "conventional" church. Others cited fears and concerns about members of Fire of God's congregation, speculating "[w]e don't know if they're registered sex offenders," and stated they did not want members of Fire of God's congregation in their neighborhood.

36. The City's Board of Adjustment denied Fire of God's appeal and upheld the City's determination that Plaintiff's use of the Property as a place of religious assembly was not authorized as of right, notwithstanding the provisions of Code Section 30-346(d). (Exh. M.)

37. The Board of Adjustment's decision denying Fire of God's appeal constitutes a final decision by the City that a special use permit is allegedly required for Fire of God to use the Property as a place of religious assembly.

38. In reaching this final decision, the City has imposed or implemented a land use regulation in a manner that treats Fire of God, a religious assembly or institution, on less than equal terms with a nonreligious assembly or institution.

39. In reaching a final decision, the City has imposed or implemented a land use regulation that discriminates against Fire of God on the basis of religion or religious denomination.

The City's Enforcement Proceedings Requiring Immediate Action

40. On September 14, 2006, the City's Code Enforcement Board held a hearing on the previously issued Notice of Violation concerning Fire of God's use of the Property for religious assembly and worship without a special use permit.

41. At the hearing the Code Enforcement Board found Fire of God guilty of the alleged Code violation, assessed costs in the amount of \$227.97, ordered Fire of God to obtain the required special use permit or cease operations within 60 days, and further ordered that a fine of \$100 per day be imposed for each day after the time set for compliance that the Property remains in violation of the Code. The Code Enforcement Board's Order was reduced to writing and issued on September 25, 2006. (Exh. O.)

42. The earliest date on which Fire of God possibly could obtain a special use permit for the use of the Property as a place of religious assembly is November 16, 2006. In order for the permit to be issued on that date, Fire of God would have to submit its application for the permit no later than October 17, 2006, would have to conduct a neighborhood meeting no later than October 16, 2006, and would have to advertise the neighborhood meeting no later than October 2, 2006. Even if Fire of God timely complies with all of these requirements, there is no guarantee that the special use permit will be issued on November 16, 2006, or at all.

43. Because there is no guarantee that the special use permit will be issued on November 16, 2006, the Code Enforcement Board's order may require Fire of God to cease using the Property for religious assembly and worship.

Legal Allegations

44. The City's conduct, as alleged herein, was and is taken under color of law.

45. The City's conduct, as alleged herein, has been ratified by City officials with final policymaking authority.

46. The City's conduct, as alleged herein, causes irreparable harm to Fire of God, for which Fire of God has no adequate remedy at law. Absent extraordinary relief from this Court, Plaintiff will continue to suffer irreparable harm by unwarranted violations of its constitutional and statutory rights.

**COUNT I:**

**VIOLATION OF THE  
ANTI-DISCRIMINATION REQUIREMENTS OF RLUIPA  
pursuant to 42 U.S.C. §§2000cc-2**

47. Plaintiff realleges paragraphs 1 through 46 as though fully set forth herein.

48. RLUIPA prohibits a government from imposing or implementing a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. RLUIPA also prohibits a government from imposing or implementing a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

49. The City has unlawfully imposed or implemented a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, and has discriminated against Fire of God on the basis of religion or religious denomination, in violation of RLUIPA, 42 U.S.C.

§§2000cc(b)(1)&(2), by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship.

50. Plaintiff has suffered and will continue to suffer harm, for which there is no adequate remedy at law, as a direct and proximate result of Defendant's violation of the anti-discrimination requirements of RLUIPA, 42 U.S.C. §§2000cc(b)(1)&(2).

**COUNT II:**

**VIOLATION OF THE  
FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT  
pursuant to 42 U.S.C. §1983**

51. Plaintiff realleges paragraphs 1 through 46 as though fully set forth herein.

52. This count is brought pursuant to 42 U.S.C. § 1983. At all times relevant to this action, Defendant has acted under color of state law.

53. The Free Exercise Clause of the First Amendment to the United States Constitution prohibits a government from depriving a person of the right to free exercise of religion by selectively targeting religiously motivated conduct.

54. The City has deprived Fire of God of its right to free exercise of religion by selectively targeting religiously motivated conduct, in violation of the Free Exercise Clause of the First Amendment to the United States Constitution, by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship.

55. Plaintiff has suffered and will continue to suffer harm, for which there is no adequate remedy at law, as a direct and proximate result of Defendant's violation of



the Free Exercise Clause of the First Amendment to the United States Constitution.

**COUNT III:**

**VIOLATION OF THE  
EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT  
pursuant to 42 U.S.C. §1983**

56. Plaintiff realleges paragraphs 1 through 46 as though fully set forth herein.

57. This count is brought pursuant to 42 U.S.C. § 1983. At all times relevant to this action, Defendant has acted under color of state law.

58. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a government from depriving a person of the equal protection of the laws by adopting a classification that treats similarly situated persons differently. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also prohibits a government from depriving a person of the equal protection of the laws by purposefully discriminating against the person in the application of a facially neutral law.

59. The City has deprived Fire of God of the equal protection of the laws by adopting a classification that treats similarly situated persons differently, and by purposefully discriminating against Fire of God in the application of a facially neutral law, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship.

60. Plaintiff has suffered and will continue to suffer harm, for which there is

no adequate remedy at law, as a direct and proximate result of Defendant's violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for:

1. Preliminary and permanent injunctive relief enjoining the City, its officers and employees from requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship;

2. A declaratory judgment that, by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship, the City has imposed or implemented a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution, and has discriminated against Fire of God on the basis of religion or religious denomination, in violation of RLUIPA, 42 U.S.C. §§2000cc(b)(1)&(2);

3. A declaratory judgment that, by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship, the City has deprived Fire of God of its right to free exercise of religion, as secured by the First Amendment to the United States Constitution;

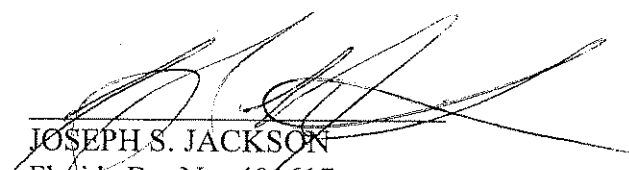
4. A declaratory judgment that, by requiring Fire of God to obtain a special use permit in order to use the Property for religious assembly and worship, the City has deprived Fire of God of its right to equal protection of the laws under the Fourteenth

Amendment to the United States Constitution;

5. An award of attorneys' fees, pursuant to 42 U.S.C. § 1988;
6. An award of costs of suit, pursuant to 42 U.S.C. §§ 1920 and 1988; and
7. Such other and further relief as the Court deems just and proper.

DATED: September 26 2006.

Respectfully submitted,



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