



February 9, 2016

Mr. Joe Peplitsch
City Manager
P.O. Box 70
Lexington NE 68850

Dear Mr. Peplitsch:

I write with concerns regarding the City's pending review of the Islamic Center of Lexington's request to use their newly purchased building on North Grant for religious purposes.

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As you review this matter, you should know that this matter is governed by federal law. The right to gather and worship is a fundamental right granted to all Americans by the First Amendment. The Federal Religious Land Use and Institutionalized Persons Act ("RLUIPA") made explicit that promise of the Constitution. RLUIPA ensures that cities may not impose or implement an otherwise generally applicable land use regulation upon a religious organization. See 42 U.S.C. 2000cc(a)(1); (b)(1).

RLUIPA also does not permit a city to treat religious organizations differently than other entities such as businesses and industries while excluding churches, temples or mosques. 42 U.S.C. 2000cc(b)(1). To put it another way, a zoning ordinance that permits businesses to carry on in a certain district may not keep the religious organization out of the same district.

It appears that the city has set various hurdles, including changing the city code, denying the Islamic Center's application for a conditional use permit, and issuing threats that the Center must close. All of these actions by the city violate both the Constitution and federal law.

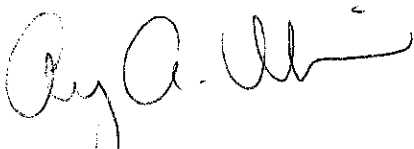
The city's asserted interests, according to news reports and statements by city officials, include "parking" and planning to "promote growth downtown." Neither of these purported government interests can counter-balance the fundamental right to exercise one's religion. RLUIPA requires a "compelling interest" by a city. This is the strictest, most demanding test available in court review, and the city is unlikely to prevail.

There are countless successful cases from across the country where a city attempted similar maneuvers to what Lexington is doing to the Islamic Center. Uniformly, the municipalities have lost in federal court. See, e.g., *Guru Nanak Sikh Society v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006), *Konikov v. Orange County*, 410 F.3d 1317 (11th Cir. 2005), *Midrash Shephardi, Inc., v. Town of Surfside*, 366 F.3d at 1214 (11th Cir. 2004), *Layman Lessons Inc., v. City of*

Millersville, 636 F.Supp.2d 620 (M.D. Tenn. 2008), *Sts. Constantine and Helen Greek Orthodox Church, Inc., v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005), *Chabad of Nova, Inc., v. City of Cooper City*, 533 F.Supp.2d 1220 (S.D. Fla. 2008), *Vietnamese Buddhism Study Temple in America v. City of Garden Grove*, 460 F.Supp.2d (C.D. Cal. 2006), *DiLaura v. Township of Ann Arbor*, 122 F.App'x 445 (6th Cir. 2004), *Westchester Day School v. Village of Mamaroneck*, 417 F.Supp.2d 477 (S.D.N.Y. 2006).

Based on the clear state of the caselaw, ACLU urges you to take appropriate steps to permit the Islamic Center of Lexington to continue to use their building on North Grant without threats. I note that successful lawsuits under RLUIPA require municipalities to pay the attorney fees and costs of the plaintiff religious organization. There is no reason for the city to expose itself to expense and years of litigation under the clear guidance of the courts and the US Department of Justice.

If we receive your written assurance that the Islamic Center of Lexington has received all necessary permits to continue its services on North Grant, we will close our file on this matter. Please advise.

A handwritten signature in black ink, appearing to read "Amy A. Miller". The signature is fluid and cursive, with a long horizontal stroke at the end.

Amy A. Miller
Attorney at Law