ITEM 10.D.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **David A. Bobardt, Community Development Director** N. for D.B.
Prepared By: Joseph R. Vacca, Principal Planner

DATE: **November 23, 2011 (CC Meeting of 12/7/2011)**

SUBJECT: **Consider Resolution Directing the Planning Commission to Study, Hold a Public Hearing, and Provide a Recommendation on Amendments to Chapter 17.20 (Uses by Zone) of the Zoning Ordinance to Address the Religious Land Use and Institutionalized Persons Act in the Allowed Uses**

BACKGROUND / DISCUSSION

Moorpark Municipal Code Chapter 17.20 establishes the uses by zone in the City. On September 22, 2000, following unanimous approval by Congress, President Clinton signed into law the Religious Land Use and Institutionalized Personas Act (RLUIPA), (Attachment 1), which is a civil rights law that protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations. RLUIPA is not a blanket exemption from zoning laws; it provides regulations for local governments regarding local zoning laws, as follows:

- zoning must not substantially burden religious exercise;
- zoning must not treat religious uses less favorably than non-religious assemblies or institutions;
- zoning must not discriminate based on religion or religious denomination; and
- zoning must not totally or unreasonably restrict religious uses.

Essentially, RLUIPA requires the city to apply zoning uniformly and not impose an unjustified substantial burden on religious exercise. Traditional zoning concerns, such as regulations addressing traffic, hours of operation, parking, maximum capacity, intensity of use, setbacks and frontage requirements, may be implemented so long as these regulations are applied to other assembly uses in the same way as applied to religious land uses. A number of court cases over recent years have helped frame the application of RLUIPA. At this time it is prudent to examine the City's Zoning Ordinance in light of RLUIPA to determine if any amendments are necessary.

The Municipal Code calls for a resolution of City Council to initiate an amendment to the Zoning Ordinance. The attached draft resolution, if adopted by City Council, would direct staff and the Planning Commission to study and provide a recommendation to the City Council on a Zoning Ordinance Amendment to address Uses by Zone in relation to the Religious Land Use and Institutionalized Persons Act in the Zoning Ordinance.

STAFF RECOMMENDATION

Adopt Resolution 2011-____.

ATTACHMENTS:

1. Statement of Department of Justice on RLUIPA
2. Draft Resolution

Statement of the Department of Justice on the Land-Use Provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA)

The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., is a civil rights law that protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations.[1] After hearings in which Congress found that religious assemblies and institutions were disproportionately affected, and in fact often were actively discriminated against, in local land use decisions, Congress passed RLUIPA unanimously in 2000. President Clinton signed RLUIPA into law on September 22, 2000.

Congress found that zoning authorities were frequently placing excessive or unreasonable burdens on the ability of congregations and individuals to exercise their faith with little to no justification and in violation of the Constitution. Congress further found that religious institutions often faced both subtle and overt discrimination in zoning, particularly minority, newer, smaller, or unfamiliar religious groups and denominations.[2]

Congress also found that, as a whole, religious institutions were treated worse than comparable secular institutions by zoning codes and zoning authorities. As RLUIPA's Senate sponsors, Senator Hatch and the late Senator Kennedy, said in their joint statement issued upon the bill's passage: "Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters, and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes."[3]

Congress further found that zoning authorities frequently were placing excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution.

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[1] This Statement deals with RLUIPA's land use provisions. Another section of RLUIPA protects the religious freedom of persons confined to prisons and certain other institutions.
[2] 146 CONG. REC. S7774 (daily ed. July 27, 2000) (joint statement of Senators Hatch and Kennedy).
[3] *Id.* at S7774-75.

RLUIPA provides a number of important protections for the religious freedom of persons, places of worship, religious schools, and other religious assemblies and institutions, including:

- *Protection against substantial burdens on religious exercise*: Section 2(a) of RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden" on the religious exercise of a person or institution except where justified by a "compelling governmental interest" that the government pursues in the least restrictive way possible.

- *Protection against unequal treatment for religious assemblies and institutions*: Section 2(b)(1) of RLUIPA provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.

- *Protection against religious or denominational discrimination*: Section 2(b)(2) of RLUIPA prohibits discrimination "against any assembly or institution on the basis of religion or religious denomination."

- *Protection against total exclusion of religious assemblies*: Section 2(b)(3)(A) of RLUIPA provides that governments must not totally exclude religious assemblies from a jurisdiction.

- *Protection against unreasonable limitation of religious assemblies*: Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit "religious assemblies, institutions, or structures within a jurisdiction."

RLUIPA's protections can be enforced by the Department of Justice or by private lawsuits. In the ten years since its passage, RLUIPA has been applied in a wide variety of contexts and has been the subject of substantial litigation in the courts. It is a complex statute, with five separate provisions that protect religious exercise in different but sometimes overlapping ways. In order to assist persons and institutions in understanding their rights under RLUIPA, and to assist municipalities and other government entities in meeting the requirements imposed on them by RLUIPA, the Department of Justice has created this summary and accompanying questions and answers.

Date: September 22, 2010

Questions and Answers on the Land-Use Provisions of RLUIPA

1. Who is protected and what types of activities are covered by RLUIPA?

RLUIPA protects the religious exercise of "persons," defined to include religious assemblies and institutions in addition to individuals. RLUIPA has been used, for

example, to protect houses of worship, individuals holding prayer meetings in their homes, religious schools, religious retreat centers, faith-based homeless shelters, soup kitchens, group homes, and other social services.

2. What does "religious exercise" include?

RLUIPA provides in Section 8 that "religious exercise" includes any exercise of religion, "whether or not compelled by, or central to, a system of religious belief." Thus a county or municipality cannot avoid the force of RLUIPA by asserting that a particular religious activity is something that a religious group merely wants to do rather than something that it must do. For example, a town could not claim that Wednesday prayer meetings are not religious exercise because they are less central to a church's beliefs or less compulsory than Sunday worship services.

RLUIPA also specifies in Section 8 that "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise . . . ." This provision makes clear that construction or expansion of places of worship and other properties used for religious exercise purposes is religious exercise under RLUIPA.

Religious exercise covers a wide range of activities, including operation of homeless shelters, soup kitchens, and other social services; accessory uses such as fellowship halls, parish halls and similar buildings or rooms used for meetings, religious education, and similar functions; operation of a religious retreat center in a house; religious gatherings in homes; and construction or expansion of schools, even where the facilities would be used for both secular and religious educational activities.

3. Who is bound by RLUIPA's requirements?

RLUIPA applies to states (including state departments and agencies) and their subdivisions such as counties, municipalities, villages, towns, cities, city councils, planning boards, zoning boards and zoning appeals boards. RLUIPA does not cover the actions of private citizens unless acting under color of state law, such as government employees. RLUIPA does not apply to the federal government, though another similar law, the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, does.

4. Does RLUIPA exempt religious assemblies and institutions from local zoning laws?

No. RLUIPA is not a blanket exemption from zoning laws. As a general matter, religious institutions must apply for the same permits, follow the same requirements, and go through the same land-use processes as other land users. RLUIPA does not pre-empt or replace the normal zoning code. Rather, it imposes a number of safeguards and

requirements on local governments regarding zoning that impact religious uses by requiring that:

- the zoning law or its application not substantially burden religious exercise without compelling justification pursued through the least restrictive means,
- the zoning law not treat religious uses less favorably than nonreligious assemblies and institutions,
- the law not discriminate based on religion or religious denomination, and
- the jurisdiction not totally or unreasonably restrict religious uses.

When there is a conflict between RLUIPA and the zoning code or how it is applied, RLUIPA, as a federal civil rights law, takes precedence and the zoning law must give way.

So long as a municipality applies its codes uniformly and does not impose an unjustified substantial burden on religious exercise, it may apply traditional zoning concerns – such as regulations addressing traffic, hours of use, parking, maximum capacity, intensity of use, setbacks, frontage – to religious uses just as they are applied to any other land uses.

5. Are there occasions when a religious assembly or institution does not have to apply for zoning approval, and appeal any denial, before it has recourse to RLUIPA?

As a practical matter, applying for a zoning permit, special use permit, conditional use permit, special exception, variance, rezoning, or other zoning procedure, and appealing within that system in case of denials, is often the fastest and most efficient way to obtain ultimate approval. Religious institutions and local governments are encouraged to attempt to resolve disputes through established zoning processes.

In some circumstances courts have held that religious institutions need not make an application or appeal before filing a RLUIPA lawsuit. These include settings where further application or appeal would be futile under the circumstances, or there would be excessive delay, uncertainty or expense, or if the application requirements are discriminatory on their face.

6. RLUIPA applies to any "land use regulation." What does that mean?

RLUIPA defines land use regulation as a "zoning or landmarking law . . . that limits or restricts a claimant's use or development of land." Zoning law encompasses laws, ordinances or codes that determine what type of building or land use can be located in what areas and under what conditions. Landmark preservation laws are restrictions that municipalities place on specific buildings or sites to preserve those that are deemed significant for historical, architectural, or cultural reasons. RLUIPA's definition of land use regulation, however, does not extend to every type of law involving land, such as fire

codes, ordinances requiring use of municipal sewer connections, laws regarding property taxes, most landlord-tenant laws, laws governing trespass, and others.

7. Does RLUIPA apply to local governments using eminent domain to take property owned by religious institutions?

"Eminent domain" refers to government taking of private property for public use with just compensation. As a general matter, it is not a zoning or landmarking law, and thus RLUIPA will not apply. However, where municipalities have tried to use eminent domain to short-circuit the zoning process for places of worship that have applied for zoning approval, courts have found that such actions may be covered by RLUIPA.

8. Can places of worship still be landmarked?

Yes, places of worship can be landmarked. However, like any other land-use regulation, landmarking designations that impose a substantial burden on religious exercise must be justified by compelling government interests and pursued in the least restrictive means. Also, landmarking regulations must not be applied discriminatorily.

9. What kinds of burdens on religious exercise are "substantial burdens" under RLUIPA?

The substantial burden inquiry is fact-intensive, and looks at the degree to which a zoning or landmarking restriction is likely to impair the ability of a person or group to engage in the religious exercise in question. Whether a particular restriction or set of restrictions will be a substantial burden on a complainant's religious exercise will vary based on context, such as the size and resources of the burdened party, the actual religious needs of an individual or religious congregation, the level of current or imminent space constraints, whether alternative properties are reasonably available, the history of a complainant's efforts to locate within a community, the absence of good faith by the zoning authorities, and many other factors.

Generally, when a municipality takes one of the following types of actions, it may constitute a substantial burden on religious exercise under RLUIPA:

- effectively barring the use of a particular property for religious activity;
- imposing a significantly great restriction on religious use of a property; or
- creating significant delay, uncertainty, or expense in constructing or expanding a place of worship, religious school, or other religious facility.

Courts have, for example, found substantial burdens on religious exercise in a denial of a church construction permit due to onerous off-street parking requirements imposed by a city, a permit condition requiring a religious retreat center to operate as a bed-and-breakfast, a denial of construction of a parish center, a denial of expansion plans for a religious school, and a denial of the ability to convert a building's storage space to religious use.

Conversely, courts have found no substantial burden violation when a church was denied the amount of off-street parking it would have preferred when there were reasonable parking alternatives available, when a religious high school was denied the ability to operate a commercial fitness center and dance studio out of a portion of its building, and when a church was barred from demolishing an adjacent landmarked building it had purchased in order to construct a family life center, as there was other space on the church's campus that would be suitable.

10. RLUIPA contains a complicated description about when the "substantial burden" section will apply. Just when does the "substantial burden" test apply in a particular case?

RLUIPA applies the substantial burden test to zoning or landmarking laws that have procedures in place under which the government makes "individualized assessments of the proposed uses for the property involved." By their nature, zoning or landmarking decisions typically involve such "individualized assessments." Individualized assessments are present when the government looks at and considers the particular details of a proposed land use in deciding whether to permit or deny the use. It thus will cover most applications for variances, special use permits, special exceptions, rezoning requests, conditional use permits, zoning appeals, and similar applications for relief, since these all ordinarily involve the government reviewing the facts and making discretionary determinations whether to grant or reject an application. A denial of a building or occupancy permit based *solely* on a mechanical, objective basis with no discretion on the part of the decision maker would not be an individualized assessment and thus would not require the application of the substantial burden test. Practically, however, such purely "ministerial" situations are extremely rare in zoning disputes.

Even if a zoning or landmarking case did not involve an individualized assessment, the substantial burden test still applies if the use at issue impacts interstate commerce, such as construction or expansion projects, or if there is federal funding involved.

11. What are examples of compelling interests that will permit local governments to impose substantial burdens on religious exercise?

A government cannot impose a substantial burden on religious exercise *unless* it has a compelling governmental interest for doing so that is pursued through means that are the least restrictive of religious freedom possible. "Compelling interest" is a legal term meaning interests "of the highest order." Government interests that are merely reasonably or even significantly important are insufficient. Courts have ruled that municipal interests in revenue generation, economic development or eliminating congestion, are not compelling. The burden of proving that an interest is compelling lies squarely on the local government.

Examples of interests that may be compelling are those related to preserving public health and safety. For example, safety concerns relating to traffic can be compelling.

However, a county or municipality cannot simply point to an interest in traffic safety in the abstract as a compelling interest justifying a substantial burden on religious exercise. Rather, the government must show that it has a compelling interest in achieving that interest through the particular restriction at issue, such as safety interests in regulating traffic flow on the particular street at issue.

Even where an interest is compelling, it must be pursued through the least restrictive means. If there is another way that the government could achieve the same compelling interest that would impose a lesser burden on religious exercise, it must choose that way rather than the more burdensome way.

12. What does RLUIPA require of government with regard to the treatment of religious assemblies and institutions as well as nonreligious assemblies and institutions?

Section 2(b)(1) of RLUIPA contains a provision, known as the "equal terms provision." It provides that "[n]o government shall impose or implement 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." This section extends to ordinances that on their face treat religious assemblies or institutions on less than equal terms, as well as ordinances that, although facially neutral, are applied in a manner that treat religious assemblies or institutions on less than equal terms than nonreligious assemblies or institutions.

Congress enacted this provision to address the problem of zoning codes, either facially or in application, excluding places of worship where secular assemblies are permitted. The legislative history points to the problem of houses of worship being excluded where theaters, meeting halls, private clubs, and other secular assembly places are permitted.

Determining if a religious assembly is treated on "less than equal terms" than a secular assembly or institution requires a comparison of how the two types of entities are treated in a zoning code. Courts have differed regarding how such a comparison is made, and thus the precise legal test for determining when this section is violated will vary depending on the judicial circuit in which the case arises.

Courts have found the equal terms section violated in situations where places of worship were forbidden but private clubs were permitted, where religious assemblies were forbidden but auditoriums, assembly halls, community centers, senior citizen centers, civic clubs, day care centers, and other assemblies were permitted, and where places of worship were forbidden but community centers, fraternal associations, and political clubs were permitted.

Regardless of the legal test employed in a particular jurisdiction, however, local governments can avoid violating this section of RLUIPA by ensuring that their regulations focus on external factors such as size, impact on traffic and parking, intensity

of use, hours of operation, noise, and similar objective criteria in regulating land uses, rather than focusing on the content of the speech and assembly activities being regulated.

13. What constitutes discrimination based on religion or religious denomination under RLUIPA?

Section 2(b)(2) of RLUIPA bars implementation of a land use regulation that discriminates on the basis of religion or religious denomination. This bar applies to application of land use regulations that facially discriminate, as well as applications of land use regulation that are facially neutral but which in fact discriminate based on religion or religious denomination. Thus if a zoning permit is denied because town officials do not like members of a particular religious group, or if for any other reason an applicant is denied a zoning permit that would have been given to it had it been part of a different religion or religious denomination, Section 2(b)(2) has been violated. Because this section applies to discrimination based on either religion *or religious denomination*, it can apply to situations where a city may not be discriminating against all members of a religion, but merely a particular sub-group or sect.

14. What does it mean for a local government to totally exclude religious uses from a jurisdiction?

Section 2(b)(3)(A) prohibits local governments from "totally exclud[ing] religious assemblies from a jurisdiction." If a city, town or county had no location where religious uses are permitted, that would be a facial violation of Section 2(b)(3).

15. What does it mean for a local government to impose unreasonable limitations on a religious assembly, institution, or structure?

Section 2(b)(3)(B) prohibits land use regulations that "unreasonably limit[ ]" religious assemblies, institutions, or structures within a jurisdiction. This provision is violated if a municipality's land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct structures within that jurisdiction. A determination of reasonableness depends on a review of all of the facts in a particular jurisdiction, including the availability of land and the economics of religious organizations. Courts have found unreasonable limitations where regulations effectively left few sites for construction of houses of worship, such as through excessive frontage and spacing requirements, or have imposed steep and questionable expenses on applicants.

16. When must someone file suit under RLUIPA?

RLUIPA lawsuits brought by private plaintiffs must be filed in state or federal court within four years of the alleged RLUIPA violation.

17. What can a local government do to avoid liability under RLUIPA?

RLUIPA contains a "safe harbor" provision that protects a local government from application of RLUIPA's enforcement provisions if it takes steps to ameliorate the violation. Section 4(e) provides that a local government can avoid the force of RLUIPA's provisions by:

- changing the policy or practice that results in a substantial burden on religious exercise;
- retaining the policy or practice and exempting the substantially burdened religious exercise;
- providing exemptions from the policy or practice for applications that substantially burden religious exercise; or
- any other means that eliminates the substantial burden.

18. What is the Department of Justice's role in enforcing RLUIPA?

The Department of Justice is authorized to file a lawsuit under RLUIPA for declaratory or injunctive relief, but not for damages. For example, the Department may bring suit seeking an order from a court requiring a municipality that has violated RLUIPA to amend its discriminatory zoning codes or grant specific zoning permits to a place of worship, religious school, or other religious use. However, the Department may not seek monetary awards on behalf of persons or institutions that have been injured. Those who have suffered monetary damages from RLUIPA violations must file individual suits.

The Housing and Civil Enforcement Section of the Civil Rights Division has the delegated authority within the Department to investigate and bring RLUIPA lawsuits, both on its own and in conjunction with United States Attorney's offices around the country. If you believe you have a potential RLUIPA violation case, you should bring it to the attention of the Department of Justice as soon as possible to allow adequate time for review.

The Department receives many complaints from individuals and groups whose rights under RLUIPA may have been violated. While it cannot bring suit in all cases, the Department may take a number of actions in addition to filing suit to resolve RLUIPA matters. The Department may involve the Community Relations Service (CRS) to address community unrest or discord. It may contact the municipality to educate it regarding its obligations under RLUIPA. It may file an amicus brief to weigh in on an important point of law. In deciding whether to file suit, the Department considers a number of factors including whether a case involves important or recurring issues, particularly serious violations of law, or if it is a case that will set precedent for future cases. Many of the Department's cases have been resolved by negotiating consent decrees that lay out a municipality's specific obligations to comply with the law. Aggrieved individuals and institutions are encouraged to seek private counsel to protect their rights, in addition to contacting the Department of Justice.

19. How can someone contact the Department of Justice about a RLUIPA matter?

The Civil Rights Division's Housing and Civil Enforcement Section may be reached by phone at:

(202) 514-4713
(800) 514-1116
(202) 305-1882 (TTY)
(202) 514-1116 (fax).

The mailing address is:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section, NWB
Washington, D.C. 20530

RESOLUTION NO. 2011-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, DIRECTING THE PLANNING COMMISSION TO STUDY, HOLD A PUBLIC HEARING, AND PROVIDE A RECOMMENDATION TO THE CITY COUNCIL ON A ZONING ORDINANCE AMENDMENT THAT WOULD AMEND CHAPTER 17.20 OF THE MOORPARK MUNICIPAL CODE RELATED TO RELIGIOUS LAND USES

WHEREAS, Section 17.44.050 of the Municipal Code provides that the City Council may initiate proceedings to consider amendments to the Zoning Ordinance by the adoption of a resolution of intent; and

WHEREAS, the City Council wishes to initiate proceedings to consider a Zoning Ordinance Amendment that would amend Chapter 17.20 of the Moorpark Municipal Code related to religious land uses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. INITIATION OF PROCEEDINGS: The City Council hereby authorizes the initiation of proceedings to consider a Zoning Ordinance Amendment that would amend Chapter 17.20 of the Moorpark Municipal Code related to religious land uses.

SECTION 2. DIRECTION TO PLANNING COMMISSION: The Planning Commission is hereby directed to study, hold a public hearing, and provide a recommendation to the City Council on this matter.

SECTION 3. CITY CLERK CERTIFICATION AND FILING: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 7th day of December, 2011.

_____
Janice Parvin, Mayor

ATTEST:

_____
Maureen Benson, City Clerk