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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By: *[Signature]* Clerk

KINGDOM FIRST MINISTRIES,)
)
Plaintiff,)
)
v.)
)
CITY OF ATLANTA, GEORGIA,)
)
Defendant.)

CASE NO. 1 08 - CV - 3100
JURY TRIAL DEMANDED

-MHS

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, AND DAMAGES**

Plaintiff Kingdom First Ministries ("Kingdom First") complains against the Defendant City of Atlanta as follows:

I. INTRODUCTION

1. As a result of the kidnapping and murder of a teen relative in the West End neighborhood of Atlanta, Pastor Brenda Gibbons felt the call of God to return to the West End to pursue Kingdom First religious outreach ministries geared toward at-risk youth.
2. But through its illegal zoning restrictions, the Defendant City discriminates against Kingdom First and threatens irreparable harm to its constitutional and statutory rights, forcing Kingdom First to use ill-suited, inaccessible

meeting space that has resulted in a slump in average parishioner attendance to nearly *single digits*.

3. Indeed, due to the Defendant's unlawful zoning restrictions and enforcement action during the previous nine months, Kingdom First's average weekly church attendance has quickly plummeted to 15 people—a 60%-75% drop from its average of 40-60 parishioners.
4. During this time, Kingdom First has also lost additional new weekly parishioners due to Defendant's prevention of the church from relocating to its desired new location, a place that affords much needed additional space and safer access for attendees.
5. Kingdom First has also cancelled its children's ministry, nursery, special prayer meetings, singing and musical performances, outreach functions, and social gatherings of the congregation due to insufficient space at its current location.
6. All of this threatens the continued existence of Kingdom First, interfering with the church's religious mission and growth and putting a major financial strain on the church, which is on the brink of closing its doors.
7. Kingdom First accordingly challenges, both facially and as-applied to its religious speech and activities, Defendant's illegal zoning provisions found

in the Code of Ordinances of the City of Atlanta, Georgia, Part 16, Chapter 18U, et seq. (collectively, "Ordinance"), attached as Exhibits 1 and 2.

II. JURISDICTION AND VENUE

8. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988; and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc et seq. ("RLUIPA").
9. This Court has original jurisdiction over Plaintiff's federal claims by operation of 28 U.S.C. §§ 1331 and 1343.
10. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.
11. This Court has authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. § 1343(3).
12. This Court has authority to issue the requested damages under 28 U.S.C. § 1343(3).
13. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
14. This Court is authorized to grant the "appropriate relief" that Kingdom First requests under RLUIPA, 42 U.S.C. § 2000cc-2.

15. Venue is proper under 28 U.S.C. § 1391 in the Northern District because this claim arose there, because Defendant is situated within the District, because the material events occurred there, and because the law alleged to be facially illegal is being enforced in Atlanta, Georgia.

III. IDENTIFICATION OF THE PARTIES

16. Plaintiff Kingdom First Ministries is a Georgia church and a nonprofit organization under the laws of Georgia.
17. The senior pastor for Kingdom First is Pastor Brenda Gibbons.
18. Pastor Gibbons possesses the authority to speak and act on behalf of Kingdom First.
19. Defendant City of Atlanta is a municipal corporation organized and existing under the statutes and constitution of the State of Georgia that may sue and be sued.
20. The City, through its Mayor and City Council, is responsible for the enactment and enforcement of the ordinance challenged herein, including its enforcement against Plaintiff.

IV. STATEMENT OF FACTS

21. On November 1, 2007, on behalf of Kingdom First, Pastor Gibbons signed a one year lease for property at 535 Joseph E. Lowery Boulevard, SW, in Atlanta, Georgia (the "Lowery Property"), intending to use it as a church. The lease commenced on November 21, 2007, with rent progressing from \$3,650 per month to \$4,400, including a \$6,000 deposit.
22. Kingdom First currently has a congregation of about fifteen people and because of the illegal actions of the Defendant, meets in ill-suited rented space in the lobby of an office building at 236 Auburn Avenue, Atlanta, Georgia (the "Auburn Property"), for religious assembly, training, and worship.
23. The Lowery property is a 2.139 acre parcel located in the West End area and was previously used as a Local 21 Textile Union Hall, which is an assembly use similar to that of a church.
24. The West End area is a high crime area in the City.
25. In fact, Kingdom First's rented space at the Lowery Property has been broken into on one occasion.

26. In the summer of 2007, Kingdom First searched the entire West End area of Atlanta for over three months for a suitable place to locate their church. Only store fronts unsuitable for their church were available.
27. Pastor Gibbons grew up in the West End, and after a young cousin was abducted and murdered in the area, she felt called by God to return so that she and her congregation could to serve that community through Kingdom First.
28. Kingdom First has an 85% success rate in its ministry work with at-risk youth and persons struggling with addiction.
29. The church leased the Lowery property with the understanding and expectation that the landlord would renew the lease after the first year. In fact, the landlord has expressed his excitement about the church and ministry and has acknowledged that the West End community needs it.
30. Kingdom First plans to conduct the following ministries at the Lowery Property, which are essential religious beliefs and exercises of the church and of its members:
 - a. weekly assembly of the congregation to worship (Hebrews 10:25);
 - b. weekly preaching, including speech relating to personal morality, God, social, cultural, and political issues (2 Timothy 4:2);

- c. pastoral counseling for the sick, disturbed, lonely, and bereaved;
- d. prayer meetings (Acts 1:13-14);
- e. singing and musical performances (Psalms 81:1-2);
- f. baptisms, confirmations, weddings, funerals, and communion (Matthew 28:19; Luke 22:19);
- g. Bible studies;
- h. nurseries or crib rooms for infants and toddlers;
- i. youth activities, including religious instruction, games, and sports;
- j. social gatherings such as church dinners;
- k. service projects for members of the congregation, the poor, and the general community, such as gatherings for Boys and Girls Clubs of Atlanta and seniors groups (James 1:27);
- l. expression of their faith through the architecture of the house of worship, signs, crosses, paintings, windows, banners, or decorations;
- m. evangelism - sharing the Christian message and encouraging others to believe in Jesus the Messiah, particularly those who visit their church meetings; and
- n. financial giving and fundraising events to support salaries, building costs, the poor, and ministries for members of the congregation.

31. At the time the lease was signed, Kingdom First understood that the Lowery property was located in the C-1 (Community Business) zoning district, based upon a search of Fulton County's website and the survey that the landlord had given the church. Churches are a permitted use in the C-1 district.
32. In December 2007, Kingdom First spent over \$30,000 for rent, redecorating, furniture, and equipment for the Lowery property. None of the redecorating work required a building permit.
33. In December 2007, Pastor Gibbons was in the process of applying for a business license on behalf of Kingdom First at Atlanta City Hall, and was told by the city employee at the zoning department desk that the Lowery property had been re-zoned to the SPI-21 (Special Public Interest District), subarea 2 zoning district.
34. The city employee informed Pastor Gibbons that Kingdom First must apply for a special use permit (discretionary special permission from the Atlanta City Council) in order to use the Lowery property as a church.
35. Kingdom First applied for a special use permit on January 9, 2008, and paid the required \$400.
36. Attached to the application was the required impact analysis addressing ingress and egress, off-street parking and loading, buffer and screening,

hours of operations, duration of the special use permit, tree preservation and replacement, required yards and open spaces, authorization to inspect the premises, legal description, and the survey showing the Lowery property in the C-1 district.

37. Kingdom First also posted the required notice to the public and submitted the required sign posting affidavit.
38. Although Kingdom First was prepared to have their case heard on the earliest zoning board hearing date, Pastor Gibbons was told by a Planning Department employee that the church had to meet with the neighborhood to get their approval and could not have its case heard until April 10, 2008.
39. On January 29, 2008, Kingdom First had its first meeting with the neighborhood group West End Neighborhood Development, Inc. ("WEND"). Kingdom First presented their church plans and vision, as well as the resume for Pastor Gibbons.
40. WEND board members Joetta Thomas and Vonda Henry were adamant about not wanting a church at the Lowery property, and stated that they would recommend denial to the Neighborhood Planning Unit T (an extension of the City of Atlanta's government that makes recommendation to the Mayor and City Council on zoning, land-use and other planning

issues) (“neighborhood unit”). WEND is a member of the neighborhood unit. Pastor Gibbons of Kingdom First was then asked to leave the meeting.

41. On February 13, 2008, Kingdom First met with the neighborhood unit and requested that the hearing on its application be deferred for 30 days in order to have further discussion with WEND to present the church plans and vision and to try and satisfy WEND’s demands.
42. On February 26, 2008, the WEND board informed Kingdom First at a second meeting that the church would have to change the use of the Lowery property from a church to a Starbucks, or some other income-generating use, if the church wanted WEND to recommend approval to the neighborhood unit.
43. On March 5, 2008, Pastor Gibbons contacted Kwabena Nkromo, Chairman of the neighborhood unit, requesting a second meeting with the neighborhood unit. Ms. Nkromo informed Pastor Gibbons that WEND had recommended denial of the church’s special use permit application, and that the church had to change their use.
44. On March 12, 2008, Vonda Henry, secretary for WEND, sent an email blast throughout the neighborhood asking them to oppose Kingdom First’s special use permit.

45. On March 14, 2008, the city deferred the public hearing date from April 10, 2008, to May 1, 2008.
46. On March 27, 2008, the church submitted additional material to Charletta Wilson Jacks, Zoning Administrator/Assistant Director, Bureau of Planning, including a notice of RLUIPA violation, a letter of support from the Lowery property owner, a letter of support from Willie Watkins Funeral Home, a letter for additional parking if needed, and a petition signed by over 100 residents of the West End supporting the church's use.
47. Kingdom First's special use application was supported by Atlanta's Department of Health and Wellness and not opposed by the Traffic Department.
48. On April 1, 2008, Pastor Gibbons met with Councilman at Large Ceazor Mitchell regarding the situation with the church. He advised Pastor Gibbons to come up with another plan with a different (i.e., commercial) use for the Lowery property.
49. On April 3, 2008, Kingdom First requested that the hearing on its application be deferred for 30 days in order to have further discussions with the neighborhood unit to change their recommendation of denial.

50. On April 6, 2008, Pastor Gibbons was informed by Carl Ness, president of WEND, that his group was opposing Kingdom First's application.
51. On April 8, 2008, Vonda Henry, secretary for WEND, sent a second email blast throughout the neighborhood asking them to oppose Kingdom First's special use permit because it would not bring revenue into the neighborhood, and may take away revenue.
52. At the April 10, 2008, Zoning Review Board hearing, Pastor Gibbons requested and was given an additional 30 days in order to meet for the third time with WEND and the second time with the neighborhood unit.
53. On April 21, 2008, on behalf of Kingdom First, Pastor Gibbons requested a meeting with the neighborhood unit and WEND to clarify the proposed use of the Lowery property.
54. In response, Kwabena Kikromo, chairman of the neighborhood unit, informed Pastor Gibbons that without reconsideration from WEND there was nothing else the neighborhood unit could do, even though Kingdom First had the support of over 100 West End residents.
55. Carl Ness informed Pastor Gibbons that the WEND board could not meet before the May 1 zoning hearing and wondered why they should meet with

the church again since the WEND board had already made up their minds to recommend denial of the permit to NPT-U and the zoning review board.

56. On April 30, 2008, Kingdom First informed WEND that Kingdom First had changed their outreach programs, and that the church would offer only two specific programs at the Lowery property: a Saturday youth program and a senior's program, as well as regular church services and Bible study.
57. Later the same day, Carl Ness informed Kingdom First of WEND's final recommendation: "WEND opposes the proposed use of Social Services Ministry at 535 Lowery by Kingdom First Ministries because the Use conflicts with our Master Plan and our LCI land use polices, goals and objectives that seek to strengthen our commercial corridors with essential goods and services. This is especially true for the proposed site since it is a Gateway point of entry into West End. Furthermore, the proposed use could have a negative impact on the SkyLofts Condominium project across the street."
58. On May 1, 2008, the City of Atlanta Zoning Review Board voted to recommend to the City Council that Kingdom First's application for a special use permit be denied.

59. On June 2, 2008, the Atlanta City Council unanimously voted to not grant Kingdom First a special use permit for a church at the Lowery property, without giving any reason for the denial.
60. The denial by the Defendant City as to Kingdom First's application for a special use permit was a final decision. (Relevant documentation of the City's denial is attached at Exhibit 3.)

Atlanta's Zoning Ordinance

61. Kingdom First's Lowery property is located in the SPI-21, subarea 2 zoning district. This district is known as the Historic West End/Adair Park Special Public Interest District. Subarea 2 is the Commercial Core. (See Ex. 1, Ordinance Sec. 16-18U.003.)
62. In subarea 2, churches and synagogues on a lot greater than one acre are excluded unless they obtain a special use permit – a discretionary special permission from the Atlanta City Council to use the property for religious assembly which is subject to limitations and requirements set forth in Sec. 16-25.002 and Sec. 16-25.003. (See Ex. 1, Ordinance Sec. 16-18U.008, Table Inset; Ex. 2, Ordinance Sec. 16-25.002; 16-25.003.)
63. The Atlanta Zoning Ordinance freely permits clubs and lodges, museums, art galleries and libraries, theatres, offices, studios, business or commercial

schools, childcare centers and kindergartens, and private and public schools in the subarea 2 district. (See Ex. 1, Ordinance Sec. 16-18U.008, Table Inset.)

64. In other words, in order to locate in Atlanta's SPI-21, subarea 2 district, these groups do not have to go through the highly discretionary and extensive special use permit process as churches and synagogues are required to do. (See Ex. 2, Ordinance Sec. 16-25.002; 16-25.003.)

Irreparable Harm to Kingdom First

65. Without immediate judicial relief, Kingdom First will continue to suffer significant harm to its federal constitutional and statutory civil rights.
66. By way of example, Kingdom First's average weekly church attendance has fallen to 15 people—a drop of 25-45 parishioners—and Kingdom First has lost additional new weekly parishioners due to Defendant's prevention of the church from relocating to its desired Lowery property location.
67. Without immediate judicial relief, Kingdom First is subjected to meeting in the lobby of an office building at the Auburn property which significantly impairs its church operation.
68. By having to meet in the office lobby, the church specifically experiences the following limitations on its religious ministries:

- (a) Kingdom First's Sunday service time has been moved to 11:30 a.m., and the church must be out of the building by 2:00 p.m. If the church could use the Lowery property, its normal Sunday morning worship would be from 9:00 a.m. to 3:00 p.m., which would include Sunday School, Morning Worship, and fellowship after the service. This would allow for a multitude of adult and children's programs and events to be coupled with worship services.
- (b) The church cannot hold any evening worship services or activities.
- (c) The office lobby at the Auburn property seats a maximum of 50 people comfortably, which is insufficient to hold all members plus family and visitors. In contrast, the Lowery property can seat up to 250 comfortably, and would allow the church to grow. The current arrangement prevents growth and deprives the church of the added parishioners that would come with growth.
- (d) The Auburn office lobby is surrounded by glass offices and elevators. Every Sunday there are at least some employees who work in the building who come to their offices on Sundays. They have to walk through the service in order to get to the elevators, and can see the

church services through their glass office walls, causing distractions and interruptions to the religious worship.

- (e) Certain people, particularly some of the elderly, do not come to the service at the Auburn property because it is in an unsafe area of the city.
- (f) Certain people do not come to the service at the Auburn property because of its location. The Lowery property is very close to the MARTA train station, and is more accessible to Kingdom First's current members, as well new potential members who have expressed interest in joining the church once Kingdom First moved into the Lowery location. Kingdom First's members, the majority of whom use public transportation, would have to take only the MARTA and walk to the church if it was at the Lowery property. Now they have to take the MARTA, walk to the bus station, wait for the bus, take the bus, and then walk to the Auburn office building. Kingdom First has elderly members, such as Alfred Walsh, who are disabled and cannot attend church services because of this travel requirement.
- (g) The location and time of the Auburn property have made church attendance difficult for some families, like Melinda Davis, Senior's

Ministry Coordinator, and her family; and impossible for others, like T. Lynn Smith, Minister of Music, and her family; Ida Burns, Praise and Worship Leader, and her family; Michael Benjamin, Youth Coordinator, and his family; and Wendy Truitt, Outreach Ministry, and her family.

- (h) Kingdom First cannot conduct its Sunday service in the same manner as it would at the Lowery property. Kingdom First cannot have praise and worship because of the disruption and distraction of the office personnel.
- (i) Kingdom First cannot have after-hours or before-hours prayer or Sunday school because of the limited time and space at the Auburn property.
- (j) The availability of face-to-face pastoral counseling is limited because of privacy and time constraints. Pastor Gibbons now has to do counseling over the telephone or travel long distances.
- (k) Special prayer meetings, singing and musical performances, outreach functions, and social gatherings of the congregation have been cancelled because Kingdom First does not have sufficient space at the Auburn property. In order to conduct these functions Kingdom First

would have to rent other space, which is cost prohibitive for the church.

- (l) Kingdom First is unable to have its nursery and children's ministry because of the size of the Auburn property. In the Lowery location, the church has special rooms set up for the children. This would allow the parents to attend adult ministries and activities while their children have their Bible study in a child-friendly atmosphere. In the Auburn office lobby, the children must be in the church service along with the adults, resulting in numerous interruptions and distractions.
- (m) The separate nursery and children ministry is what motivated most of Kingdom First's families to join the church. Now Kingdom First has lost several families because of this lack of service.
- (n) Kingdom First is unable to have band or choir rehearsals at the Auburn property.
- (o) Kingdom First is unable to use expressions of faith through decoration because it cannot place items on the walls at the Auburn property, and does not have access to storage at the Auburn location.
- (p) Kingdom First had to purchase additional equipment to transport back and forth on Sunday to the Auburn property, and expends large

amounts of ministry time each week setting up, taking down and relocating the equipment.

- (q) Kingdom First had to cancel the funeral of Tiera Sullivan, the wedding of Ruth and Paris Weldon, and the baptism of Kai Banton.
- (r) Kingdom First had to cancel guest speakers like former NBA player Terry Cummings for events that would have served as significant outreaches for the church.
- (s) Kingdom First lost an opportunity to have its planned kick-off event at the Lowery property.
- (t) Kingdom First has lost significant ministry opportunities to those citizens of West End that signed the support petition.

69. Although Kingdom First's members cannot worship or occupy the Lowery property, the church is still required to pay approximately \$5,178 per month for lease payments, utility bills, and storage.

70. The landlord has also recently requested an additional \$6,000 deposit on the Lowery property.

71. The church is also paying \$800-1,000 per month for use of the rented office lobby space at the Auburn property.

72. All of this has put a significant financial drain on the church's finances, is interfering with the church's religious mission and growth, and threatens the continued existence of the church.
73. The church has also lost the following members from the loss of ministries resulting from Defendant's refusal to allow use of the Lowery property: T. Lynn Smith, Minister of Music, and her family; Ida Burns, Praise and Worship Leader, and her family; Michael Benjamin, Youth Coordinator, and his family; and Wendy Truitt, Outreach Ministry, and her family; and Melinda Davis, Seniors Program Coordinator.
74. When Pastor Gibbons hired these staff members, she explained to them the church's vision and future plans at the Lowery property. Accordingly, the church's and the pastor's integrity has been harmed as a result of these events.
75. The Defendant's Ordinance creates a substantial burden on Kingdom First.
76. The Burden and removal of it affects interstate commerce.
77. Kingdom First's worship activities involve interstate commerce through, among other things, the purchase of goods and services and ministry activities crossing state lines.
78. Kingdom First requests a jury trial.

V. ALLEGATIONS OF LAW

79. Each and all of the acts alleged herein were done by the Defendant under the color and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies.
80. The Defendant has enforced the challenged Ordinance against the Plaintiff.
81. Kingdom First's religious worship, religious expression, and religious assembly are fully protected by the United States Constitution.
82. Concomitantly, the use of an illegal zoning ordinance to deny Kingdom First access to its property to engage in protected religious worship, religious expression, and religious assembly is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution, and RLUIPA.
83. The decision to deny Kingdom First a special use permit to use its Lowery property as a church is a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by Defendant.
84. Unless and until the Defendant's interference of Kingdom First's ministries is enjoined, Kingdom First will suffer and continue to suffer irreparable harm to its federal constitutional and statutory rights and damages.

85. Kingdom First has no adequate or speedy remedy at law to correct or redress the deprivations to their constitutional and civil rights.
86. The Defendant will suffer no harm if the injunctive relief is granted to Kingdom First.
87. The harm to Kingdom First far outweighs any harm to the Defendant. The public interest is benefited when constitutional and civil rights are protected.

**VI. FIRST CAUSE OF ACTION — VIOLATION OF
RLUIPA EQUAL TERMS PROVISION**

88. The allegations contained in all preceding paragraphs are incorporated here by reference.
89. Section 2(b)(1) of RLUIPA prohibits Defendant from treating a religious assembly use less favorably than a non-religious assembly use:

(1) Equal Terms

No 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.

90. In *Midrash Sephardi, Inc., et al v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), the court concluded that “private clubs, churches and synagogues fall under the umbrella of ‘assembly or institution’ as those terms are used in RLUIPA.”

91. The court in *Midrash* held that a zoning ordinance which permitted clubs and lodges but excluded churches and synagogues without a conditional use permit – practically identical to a special use permit – violated section (b)(1) of RLUIPA.
92. Defendant's Ordinance prohibits Kingdom First from using its Lowery property as a church unless it receives special permission from the City even though the Ordinance freely permits non-religious assembly uses, such as clubs and lodges, to use property in the same SPI-21, subarea 2 district.
93. Upon information and belief, Defendant receives federal financial assistance.
94. Defendant's policy and practice and the substantial burden of Kingdom First affects commerce with foreign nations, among the several states, and/or with Indian tribes.
95. Defendant's Ordinance permits its officials to make individualized assessments of the proposed uses of property within the City, including Kingdom First's Lowery property.
96. Defendant imposed and implemented a land use regulation treating Kingdom First on less than equal terms with non-religious assemblies, and in doing so Defendant violated RLUIPA § 2(b)(1).

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VII. SECOND CAUSE OF ACTION – VIOLATION OF
THE EQUAL PROTECTION CLAUSE OF
THE FOURTEENTH AMENDMENT**

97. The allegations contained in paragraphs 1 through 87 are incorporated here by reference.
98. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that the government treat similarly situated assembly uses equally.
99. Pursuant to the Ordinance, the Defendant explicitly and freely allows similarly situated non-religious assembly uses such as clubs and lodges, museums, art galleries and libraries, theatres, offices, studios, business or commercial schools, childcare centers and kindergartens, and private and public schools, in the SPI-21, subarea 2 district without a special use permit.
100. The Defendant's Ordinance excludes religious assembly uses such as churches and synagogues, including Kingdom First, from the SPI-21, subarea 2 district, unless they get special permission from the Atlanta City Council in the form of a special use permit, which treats them differently than similarly situated assembly uses.

101. For purposes of land use regulation, a wide variety of non-religious assembly uses are similarly situated and not distinguishable from religious assembly uses.
102. Members of non-religious organizations assemble for group activities that are similar or identical to the activities of a religious congregation (e.g., singing, socializing, recreation, education, dining).
103. The only reason Kingdom First's group activities are being treated differently is the religious content of its expression.
104. There is neither a compelling governmental interest nor rational basis for the Atlanta code to permit non-religious assembly uses in the SPI-21, subarea 2 district, but forbid religious assembly uses without special permission from the city council.
105. The Defendant's Ordinance and enforcement of it against Kingdom First violates various fundamental rights of Kingdom First, including free exercise of religion.
106. The Defendant's Ordinance therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

**VIII. THIRD CAUSE OF ACTION — VIOLATION OF
THE RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES CONSTITUTION**

107. The allegations contained in paragraphs 1 through 87 are incorporated here by reference.
108. Kingdom First and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.
109. The Bible instructs believers to share the Gospel with others.
110. Pastor Gibbons was led by God to open Kingdom First as a church in the West End community where she grew up.
111. The Defendant's Ordinance excludes religious assembly uses such as churches and synagogues, including Kingdom First, from the SPI-21, subarea 2 district, unless they get special permission from the Atlanta City Council in the form of a special use permit, while freely allowing other non-religious assembly uses such as clubs and lodges.
112. Defendant's Ordinance requiring religious assembly uses, like Kingdom First, to go through the extensive special use permit application process selectively imposes a substantial burden on Kingdom First that is not imposed on other non-religious assembly uses.

113. Defendant's enforcement of the Ordinance against Kingdom First imposes a substantial burden because it has forced Kingdom First to completely forego conducting religious exercises and practices at its desired church location.
114. Kingdom First could not make any changes to its permit application that would increase the chances of the permit being approved.
115. The Defendant's denial of Kingdom First's permit is not conditional. Kingdom First was not informed of any modifications it could make to have the permit approved.
116. Defendant lacks a rational or compelling reason that would justify their denial of Kingdom First's special use permit to use its Lowery property as a church.
117. Defendant will be unable to demonstrate that preventing the use of Kingdom First's Lowery property as a church will be the most narrow alternative to achieving any governmental interest, let alone a compelling interest.
118. Defendant's Ordinance therefore violates the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

**IX. FOURTH CAUSE OF ACTION — VIOLATION OF
THE RIGHT TO FREE SPEECH UNDER THE
UNITED STATES CONSTITUTION**

119. The allegations contained in paragraphs 1 through 87 are incorporated here by reference.
120. Kingdom First's religious activities and speech are fully protected under the Free Speech Clause of the First Amendment.
121. In limiting the location of religious organizations like Kingdom First, the Defendant's restrict speech.
122. Defendant's ban of religious uses is a content-based restriction on speech because it restricts only a single subject of speech.
123. Nonreligious organizations can discuss whatever issues they choose and still be permitted to locate as a matter of right throughout the City, while Kingdom First, because of its religious nature, cannot.
124. The suppression of Kingdom First's speech is not only content-based, but also viewpoint-based, as evidenced by the fact that similar subjects can be discussed from secular points of view without exclusion by the Defendant's through their Ordinance.
125. Defendant's Ordinance is also underinclusive because it fails to regulate similar speech that does not incorporate religious activities.

126. Defendant's Ordinance is overbroad because it sweeps within its ambit protected First Amendment religious speech.
127. Defendant's Ordinance operates as an impermissible prior restraint on speech, granting unbridled discretion to decision-making officials to decide whether to exclude religious uses.
128. Defendant's Ordinance and actions that prohibit Kingdom First from locating as of right in the City do not leave open ample alternative channels of communication.
129. Kingdom First has a right to conduct its First Amendment activities in the SPI-21, subarea 2 zoning district where similar secular organizations are permitted to locate by right.
130. Defendant's Ordinance and actions chill Kingdom First's constitutional and statutory rights.
131. The Defendant lacks a compelling interest to justify its Ordinance and actions.
132. Defendant's Ordinance and actions are not narrowly tailored to achieve a compelling interest.

133. The Defendant may not suppress protected speech absent a showing of a clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order.
134. Kingdom First's religious use in the SPI-21, subarea 2 zoning district (or in any other zoning district in the City) does not implicate any of these concerns, thereby illustrating the Ordinance's lack of narrow tailoring.
135. Defendant's Ordinance and actions are not the least restrictive means of achieving a compelling interest.
136. Whatever the specific "evils" the Defendant is attempting to address through its Ordinance, excluding religious uses as a matter of course from the SPI-21, subarea 2 zoning district and other districts does nothing to address those interests.
137. Defendant's Ordinance accordingly violates the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

**X. FIFTH CAUSE OF ACTION — VIOLATION OF RLUIPA
SUBSTANTIAL BURDEN PROVISION**

138. The allegations contained in paragraphs 1 through 87 are incorporated here by reference.
139. Section 2000cc (a)(1) of RLUIPA provides:
- (1) General rule.
No government shall impose or implement a land use regulation that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.
140. Kingdom First and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.
141. The Bible instructs believers to share the Gospel with others.
142. Pastor Gibbons was led by God to open Kingdom First as a church in the West End community where she grew up.
143. The Defendant's Ordinance excludes religious assembly uses such as churches and synagogues, including Kingdom First, from the SPI-21, subarea 2 district, unless they get special permission from the Atlanta City

Council in the form of a special use permit, while freely allowing other non-religious assembly uses such as clubs and lodges.

144. Defendant's Ordinance requiring religious assembly uses, like Kingdom First, to go through the extensive special use permit application process selectively imposes a burden on Kingdom First that is not imposed on other non-religious assembly uses.
145. By forcing Kingdom First to go through the extensive special use permit application process and have to wait an unspecified amount of time to learn whether the permit application would be approved or denied by a discretionary board of decision makers, the Defendant precludes Kingdom First and its members from preaching the Gospel of Jesus the Messiah, worshipping, ministering to others, and sharing their faith with others at the Lowery property, and thereby substantially burdens their sincerely held religious beliefs.
146. Defendant lacks a rational or compelling reason that would justify their denial of Kingdom First's special use permit to use its Lowery property as a church.

147. Defendant will be unable to demonstrate that preventing the use of Kingdom First's Lowery property as a church will be the most narrow alternative to achieving any governmental interest, let alone a compelling interest.
148. Upon information and belief, Defendant receives federal financial assistance.
149. Defendant's policy and practice and Kingdom First's substantial burden affects commerce with foreign nations, among the several states, and/or with Indian tribes.
150. Defendant's Ordinance permits its officials to make individualized assessments of the proposed uses of property within the City, including Kingdom First's Lowery property.
151. Defendant's Ordinance therefore violates the substantial burden provision of RLUIPA.

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

**XI. SIXTH CAUSE OF ACTION — VIOLATION OF RLUIPA
UNREASONABLE LIMITATION PROVISION**

152. The allegations contained in paragraphs 1 through 87 are incorporated here by reference.

153. Section 2000cc (b)(3)(B) of RLUIPA provides:
- (3) Exclusions and limits.
No government shall impose or implement a land use regulation that
- (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.
154. Kingdom First and its members hold sincere religious beliefs which motivate them to preach the Gospel of Jesus the Messiah, worship, minister to others, and share their faith with others.
155. The Bible instructs believers to share the Gospel with others.
156. Pastor Gibbons was led by God to open Kingdom First as a church in the West End community where she grew up.
157. The Defendant's Ordinance excludes religious assembly uses such as churches and synagogues, including Kingdom First, from the SPI-21, subarea 2 district, unless they get special permission from the Atlanta City Council in the form of a special use permit, while freely allowing other non-religious assembly uses such as clubs and lodges.
158. Defendant's Ordinance requiring religious assembly uses, like Kingdom First, to go through the extensive special use permit application process selectively imposes an unreasonable limitation on Kingdom First that is not imposed on other non-religious assembly uses.

159. Religious assembly uses must seek special use permits in order to locate in nine out of ten areas of the city, while nonreligious assembly uses do not.
160. By forcing Kingdom First to go through the extensive special use permit application process and have to wait an unspecified amount of time to learn whether the permit application would be approved or denied by a discretionary board of decision makers, the Defendant precludes Kingdom First and its members from preaching the Gospel of Jesus the Messiah, worshipping, ministering to others, and sharing their faith with others at the Lowery property, and thereby places an unreasonable limitation on their sincerely held religious beliefs.
161. Defendant lacks a rational or compelling reason that would justify their denial of Kingdom First's special use permit to use its Lowery property as a church.
162. Defendant will be unable to demonstrate that preventing the use of Kingdom First's Lowery property as a church will be the most narrow alternative to achieving any governmental interest, let alone a compelling interest.
163. Permitting non-religious group activities as of right, but requiring a permit for similar group activities that are religious in nature is an unreasonable limitation on churches, including Kingdom First.

164. Defendant's Ordinance therefore violates the unreasonable limitation provision of RLUIPA.

WHEREFORE, Kingdom First respectfully prays that the Court grant the relief set forth in the prayer for relief.

XII. PRAYER FOR RELIEF

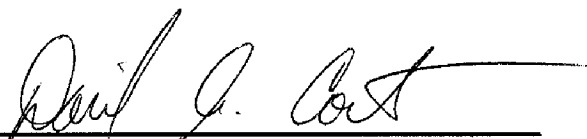
WHEREFORE, Kingdom First respectfully requests relief as follows:

- A. That this Court issue a preliminary and permanent injunction requiring the Defendant to immediately permit Kingdom First to use its property at 535 Joseph E. Lowery Blvd. SW, Atlanta, Georgia, as a church;
- B. That this Court issue a preliminary and permanent injunction, enjoining the Defendant, its officers, agents, employees, attorneys and all other persons acting in active concert with it, from enforcing its Ordinance, both facially and as applied to Kingdom First, and from preventing or attempting to prevent Kingdom First from using its property at 535 Joseph E. Lowery Blvd. SW, Atlanta, Georgia, as a church;
- C. That this Court enter a Declaratory Judgment declaring that Defendant's requirement that churches and synagogues obtain a

special use permit in the SPI-21, subarea 2 zoning district is void and unconstitutional both on its face and as applied to Kingdom First;

- D. That this Court award nominal damages for violation of Kingdom First's constitutional rights;
- E. That this Court award Kingdom First compensatory damages for Kingdom First's economic losses caused by the delay in being able to use its Lowery property for church purposes;
- F. That this Court award Kingdom First compensatory damages in an amount to be determined for Defendant's violation of Kingdom First's constitutional rights;
- G. That this Court award Kingdom First its costs and expenses of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. 1988, and other applicable law;
- H. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders; and
- I. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 1st day of October, 2008.



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*Motion for Admission *Pro Hac Vice* submitted concurrently
+Admission pending

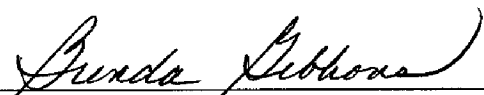
Attorneys for Plaintiff

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, the undersigned, declare under penalty of perjury that:

1. I am a citizen of the United States and a resident of Georgia;
2. I am the pastor of Kingdom First Ministries, the Plaintiff in this action, and am authorized to speak on behalf of that organization; and
3. I have read the foregoing Verified Complaint and the facts as alleged are true and correct.

Executed this 1st day of October, 2008, in Lawrenceville, Georgia.



Brenda Gibbons, on behalf of
Kingdom First Ministries