

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TREE OF LIFE CHRISTIAN SCHOOLS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
CITY OF UPPER ARLINGTON, OHIO,)	Judge _____
)	
Defendant.)	Magistrate _____
_____)	

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

COMES NOW the Plaintiff, TREE OF LIFE CHRISTIAN SCHOOLS, by counsel and pursuant to the Federal Rules of Civil Procedure, and for its causes of action against Defendant CITY OF UPPER ARLINGTON, OHIO, alleges and states the following:

INTRODUCTION

1. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of its civil rights. TREE OF LIFE CHRISTIAN SCHOOLS (“TOL” or “Tree of Life”) is a Christian school located in the Columbus, Ohio, metropolitan area serving approximately 660 students. It is currently scattered across four different campuses in different locations of the metropolitan area. Some of its buildings are very old and in need of replacement or substantial remodeling and the scattered campuses hamper its ministry effectiveness, impede the growth of the school and damage the unity of the academic staff and students. In an effort to consolidate its campuses to one location, to enhance its ministry and reach more students, TOL acquired a building in the CITY OF UPPER ARLINGTON, OHIO (“City”). When it attempted to apply for zoning

approval, the City would not even allow it to apply even though other uses similar or identical to schools are allowed in the zoning jurisdiction where TOL's building is located, either as permitted or conditional uses. Because of the unequal treatment of TOL by the City and the substantial burden placed upon TOL by the City's refusal to even allow it to apply for zoning approval, TOL files this lawsuit to protect its civil rights.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution; federal law, particularly 42 U.S.C. §§ 1983 and 1988, RLUIPA, 42 U.S.C. §2000cc-1, et seq., and the Constitution of the State of Ohio.

3. This Court is vested with original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims arising under Ohio law.

4. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201, et seq.

5. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

6. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988.

7. Venue is proper in United States District Court for the Southern District of Ohio under 28 U.S.C. § 1391(b), in that Plaintiff resides in this district, the events giving rise to the claim occurred within the district, and the subject property is located in this district.

PARTIES

8. Plaintiff Tree of Life Christian Schools is a private Christian school, established and existing as a non-profit religious corporation under the laws of the State of Ohio. TOL's

principal place of business is located at 935 Northridge Road, Columbus, Ohio, 43224.

9. Defendant City of Upper Arlington, Ohio, is a public body corporate and politic established, organized, and authorized under and pursuant to the laws of Ohio, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

STATEMENT OF FACTS

Background on Tree of Life Christian Schools

10. Tree of Life Christian Schools was started in 1978 when members from the Linden Church of Christ, Beechwold Church of Christ, and Minerva Park Church of Christ collectively established a school in North Columbus.

11. The school was initially known as Linden Christian School and was later renamed to Tree of Life Christian Schools.

12. The three churches that initially began the school provided the members of the school board that is the governing body of Tree of Life.

13. Other churches, including Northeast Church of Christ, Indianola Church of Christ, Westerville Christian Church, North Park Church of Christ, Discover Christian Church, Pickerington Christian Church, Hilliard Church of Christ, and Worthington Christian Church have also sponsored or contributed to Tree of Life, including providing facilities space, financial support, and school board members.

14. The current sponsoring churches of TOL are, Beechwold Christian Church, Discover Christian Church, Hilliard Church of Christ, Indianola Church of Christ, North Park Church of Christ, Westerville Christian Church, and Worthington Christian Church.

15. If TOL is ever dissolved, the property and assets of TOL are to be distributed among the seven sponsoring churches.

16. The primary purpose of TOL is to assist parents and the Church in educating and nurturing young lives in Christ.

17. TOL's Mission statement reads as follows: "In partnership with the family and the church, the mission of Tree of Life Christian Schools is to glorify God by educating students in His truth and discipling them in Christ. 'A cord of three strands is not easily torn apart.' (Ecclesiastes 4:12)."

18. TOL's vision statement is as follows: "As students are led to spiritual, intellectual, social and physical maturity, they become disciples of Jesus Christ, walking in wisdom, obeying His word and serving in His Kingdom."

19. TOL's philosophy of education is quintessentially and undeniably Christian. The philosophy of education puts the Bible at the center and asks the student to evaluate all he/she studies through the lens of God's Word. TOL believes that because God is Truth, He brings a unity of truth to all of His creation and that no subject can be taught in its totality if the Creator is ignored or denied.

20. TOL has a statement of faith that covers topics such as the Bible, the one true God, The Lord Jesus Christ, the Holy Spirit, Salvation, the Church, and the Christian life, among others.

21. Parents who enroll their children in TOL must certify that they agree with the mission, philosophy, and vision of TOL.

22. All faculty and staff must agree with and sign TOL's statement of faith, and must be active members of a local, Bible-believing congregation.

23. The leadership paradigm that TOL has adopted states, “The foundation of Tree of Life Christian Schools is Jesus Christ. On Him rests all that is done here.”

Tree of Life’s Current Facilities

24. TOL currently operates from four different campuses.

25. The “Northridge Campus” is located at 935 Northridge Rd. in Columbus, and serves grades 6-12.

26. The “Indianola Campus” is located at 2141 Indianola Avenue in Columbus, and serves grades Pre-School through 5th grade.

27. The “Dublin Campus” is located at 2900 Martin Road in Dublin, and serves grades Pre-School through 5th grade.

28. The “Westerville Campus” is located at 471 E. College Avenue in Westerville, and serves Pre-School only.

29. TOL has limited space in its current buildings for new students and has had to turn away students who desire to attend TOL.

30. The Indianola, Dublin, and Westerville Campuses are all located within existing churches that are sponsoring churches of TOL. TOL has no long term leases with these churches and occupies space in the church facilities as an at-will tenant.

31. The lack of permanence in the Indianola, Dublin, and Westerville Campuses has hampered TOL’s ability to plan long-term and to rely upon available facilities for its ministry.

32. The Dublin Campus is located in the Discover Christian Church facility. In 2007, Discover’s leadership requested that TOL vacate the facilities at the earliest possible time.

33. The lack of long-term space and the uncertainty of short-term at-will leases in church facilities have hampered TOL's ministry and its ability to minister effectively to its student population.

34. Some of TOL's facilities are located in buildings that are old and in need of substantial upkeep and/or remodeling and that are not suitable as long-term school facilities.

35. Since beginning in 1978, TOL's student body has expanded from an initial student body of 47 to approximately 660 students.

36. TOL employs approximately 150 people in its ministry.

37. TOL's current locations do not provide an opportunity for expansion to meet the needs of TOL's growing student body.

38. TOL's current locations hamper the unity of the ministry as the students and staff remain scattered among the different campuses and have no central meeting or gathering space.

Tree of Life's Property in Upper Arlington

39. Due to the constraints of TOL's current facilities, in 2006 TOL began a search for property that would allow it to expand its ministry.

40. TOL requires a facility within Franklin County to serve its current population of students and parents.

41. The search for an adequate facility lasted in excess of two years.

42. During the search for a new facility, TOL reviewed more than twenty sites and facilities within Franklin County without finding a property sufficient to meet its needs.

43. TOL finally found a building and property located at 5000 Arlington Centre Boulevard in Upper Arlington, Ohio (hereafter "property").

44. The property contains an office building that is approximately 254,000 square feet.

45. The property is uniquely situated to serve TOL's needs in that it is centrally located to serve TOL's current constituents.

46. The property's size would allow for consolidation of Pre-School through 12th grade at one location, something that TOL has not been able to accommodate for many years.

47. The property's size would allow TOL's ministry to expand to accommodate more students and to more effectively minister to its students by providing greater educational and extra-curricular opportunities.

48. The consolidated school would enhance TOL's ministry by allowing its staff to minister across all grade levels, reducing staff and student transportation costs, and providing updated facilities.

49. The property would allow for TOL's staff and students to all worship together in one location.

50. After reviewing the property and determining that the property was uniquely situated to further enhance TOL's religious mission, TOL acquired the property on August 11, 2010.

The City of Upper Arlington's Zoning Code

51. All land and development in Upper Arlington is regulated by the Upper Arlington Unified Development Ordinance ("UDO").

52. Article 5 of the UDO sets forth the regulations applicable to the use and development of land in Upper Arlington and divides the City into zoning districts.

53. The City is divided into Residential Districts, Commercial Districts, Planned Districts, and Miscellaneous Districts.

54. TOL's property is located in the ORC zoning district.

55. Within the Commercial Districts, the UDO identifies the "ORC Office and Research Center District." The ORC District's purpose is described in Section 5.03(A)(6) as:

[T]o allow offices and research facilities that will contribute to the City's physical pattern of planned, healthy, safe, and attractive neighborhoods. The ORC district should also provide job opportunities and services to residents and contribute to the City's economic stability. Permitted uses generally include, but are not limited to, businesses and professional offices, research and development, book and periodical publishing, insurance carriers, corporate data centers, survey research firms, and outpatient surgery centers.

56. TOL's proposed use of its property as a Christian school is consistent with the purpose of the ORC District.

57. Table 5-C of the UDO lists the permitted and conditional uses for each of the commercial districts, including the ORC.

58. Section 5.01(B)(2) defines "Permitted Uses," and states, "Only a use designated as a permitted use shall be allowed as a matter of right in a zoning district and any use not so designated shall be prohibited except, when in character with the zoning district, such other additional uses may be added to the permitted uses of the zoning district by an amendment to this UDO (Section 4.04)."

59. Section 5.01(B)(3) defines "Conditional Uses," and states:

A use designated as a conditional use shall be allowed in a zoning district when such conditional use, its location, extent and method of development will not substantially alter the character of the vicinity or unduly interfere with the use of adjacent lots in the manner prescribed for the zoning district. To this end BZAP shall, in addition to the development standards for the zoning district, set forth such additional requirements as will, in its judgment, render the conditional use compatible with the existing and future use of adjacent lots and the vicinity. Additional standards for conditional uses are listed in Section 6.10.

60. Within the ORC zoning district, the UDO lists the following uses, among others, as permitted uses: Child Day Care Centers, Hotels/Motels, Hospitals, Outpatient Surgery Centers, and Business and Professional offices.

61. The UDO, in Article 2-8, defines Child Day-Care Centers as, “[A]ny place in which child daycare is provided, with or without compensation, for 13 or more children at one time”

62. The UDO, in Article 2-8 defines Child Day-Care as, “[A]dministering to the needs of infants, toddlers, preschool children and school children outside of school hours by persons other than their parents or guardians, custodians or relatives by blood, marriage, or adoption, for any part of the 24 hour day in a place or residence other than the child’s own home.”

63. TOL’s use of its property as a Christian school does not differ from a Child Day Care Center as that phrase is defined with respect to any zoning criteria identified by the City.

64. The UDO defines “Hotel” as, “[A]ny building or portion thereof used as a temporary abiding place for remuneration, with or without meals, containing 15 or more guest rooms or suites where no provision for cooking is made in any individual guest room or suite, and does not include hospitals and jails.”

65. TOL’s use of its property as a Christian school does not differ from a Hotel as that phrase is defined with respect to any zoning criteria identified by the City.

66. Within the ORC zoning district, the UDO lists the following uses, among others, as conditional uses: Places of Worship, Churches, and Residential.

67. The UDO does not define “Places of Worship.”

68. The UDO does not define “Churches.”

69. TOL is a Place of Worship or Church as that phrase is used in the UDO.

70. The UDO does not define “Residential.”

71. The UDO identifies seven zoning districts within Upper Arlington as “Residential.”

72. “Private Schools” are identified as permitted uses in every residential zoning district.

73. “Places of Worship, Churches” are identified as permitted uses in every residential zoning district.

74. TOL is a residential use as that phrase is used in the UDO.

Tree of Life’s Requests for Zoning Approval and First Appeal

75. On or about December 21, 2009, TOL filed an application with the City of Upper Arlington for a Conditional Use Permit to “Use the property for a place of worship, church and residential, to the extent that residential includes a private school.” *See* Exhibit “A”.

76. On December 28, 2009, Senior Planning Officer Chad Gibson responded to TOL’s application by stating, among other things, that “[A] private school is neither a permitted use nor a conditional use in the ORC, Office and Research District (see UDO Table 5-C Article 5.01). Therefore, this application will not be scheduled for [Board of Zoning and Planning] review, even if a traffic study is submitted. The applicant should submit a rezoning application if they wish to pursue a private school at this location.” *See* Exhibit “B”.

77. Mr. Gibson’s letter of December 28, 2009, was the City’s official position on TOL’s application for Conditional Use.

78. On January 5, 2009, TOL appealed Mr. Gibson’s determination to the Board of Zoning and Planning (“BZAP”). *See* Exhibit “C”.

79. After a public hearing, On March 1, 2010, the BZAP upheld Mr. Gibson's determination "that the conditional use application proposing a private school in an ORC District was inappropriate and would not be scheduled for BZAP review." *See* Exhibit "D".

80. The BZAP's decision only addressed the issue of whether TOL could be classified as a residential use that would be allowed as a conditional use in the ORC District. *See* Exhibit "D" at 2.

81. The BZAP's decision did not address whether TOL could be classified as a Place of Worship or Church and be allowed as a conditional use in the ORC District.

82. On April 2, 2010, TOL appealed the BZAP's decision to the Upper Arlington City Council. *See* Exhibit "E".

83. On April 26, 2010, the Upper Arlington City Council held a public hearing on the appeal and voted to uphold the BZAP's decision. *See* Exhibit "F".

84. The Council's decision stated that "a private school is neither a permitted nor conditional use in the Office and Research District and that rezoning is required if Appellant plans to pursue a private school at this location." *See* Exhibit "F" at 4.

Tree of Life's Second Appeal

85. Mr. Gibson's letter of December 28, 2009, determined that TOL was not a residential use that could be considered as a conditional use in the ORC District. *See* Exhibit "B".

86. Because the City had made no determination whether TOL was a "Place of Worship" or a "Church" in its determination, counsel for TOL requested a determination from the City on that issue.

87. On February 26, 2010, Senior Planning Officer Chad Gibson issued a determination letter stating that, “At this time, no conditional use application has been submitted for a church at this site.” *See* Exhibit “G”.

88. Mr. Gibson’s determination was made in spite of the language contained in TOL’s application for a conditional use requesting to use the property “for a place of worship, church...” *See* Exhibit “A” at 1.

89. On March 3, 2010, TOL appealed Mr. Gibson’s determination to the BZAP. *See* Exhibit “H”.

90. The BZAP held a public hearing on June 7, 2010, and upheld Mr. Gibson’s determination. *See* Exhibit “I”.

91. The BZAP’s determination stated that, “for purposes of the UDO, the proposed primary use of the property as a private school does not constitute a ‘place of worship, church’ as that term is used in Table 5-C of Article 5 of the UDO, and is therefore not a conditional use in the ORC District.” *See* Exhibit “I” at 4.

92. On June 18, 2010, TOL appealed the BZAP’s determination to the Upper Arlington City Council. *See* Exhibit “J”.

93. On August 16, 2010, the City Council held a public hearing and issued a determination upholding the BZAP’s decision. *See* Exhibit “K”.

94. The City Council’s decision stated that “for purposes of the UDO, the proposed primary use of the property as a private school does not constitute a ‘place of worship, church’ as that term is used in Table 5-C of Article 5 of the UDO, and is therefore not a conditional use in the ORC District.” *See* Exhibit “K” at 4.

95. TOL has been unable to apply for a conditional use permit for its school in the ORC zoning District due to the City's determinations of April 26, 2010, and August 26, 2010. See Exhibits "F" and "K".

96. The City has determined that TOL is not a permitted use in the ORC zoning district.

ALLEGATIONS OF LAW

97. All acts of the Defendant, its officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the ordinances, regulations, customs, policies and usages of the City of Upper Arlington.

98. Plaintiff has no adequate or speedy remedy at law to correct or redress the deprivations of its federal and state rights by Defendant.

99. Unless and until enforcement of the UDO and Defendant's Determinations are enjoined, the Plaintiff will suffer and continue to suffer irreparable injury to its federal and state rights.

100. The denial of zoning approval for TOL to locate its school in the ORC zoning district has caused TOL to suffer damages.

COUNT I – VIOLATION OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000 ("RLUIPA"), 42 U.S.C. 2000cc, *et seq.*

101. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs.

102. Defendant's UDO, Table 5-C, and Defendant's Determinations on Plaintiff's conditional use application violate Plaintiff's free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. §2000cc, et seq., both on their face and as applied.

103. Plaintiff's religious beliefs are sincerely and deeply held.

104. Plaintiff's intended use of the property constitutes "religious exercise" under 42 U.S.C. §2000cc-5(7)(A) and (B).

105. Defendant's UDO and its Determinations impose a substantial burden on Plaintiff's religious exercise.

106. Defendant's UDO and its Determinations are not in furtherance of a compelling governmental purpose.

107. Defendant's UDO and its Determinations are not the least restrictive means of furthering any governmental interest.

108. Upon information and belief, Defendant receives federal financial assistance.

109. Upon information and belief, Defendant's UDO and actions affect commerce with foreign nations, among the several states, or with Indian tribes.

110. Defendant's Code permits it to make individualized assessments of the proposed uses of property within the City, including Plaintiff's property.

111. Defendant's UDO and its Determinations treat Plaintiff on less than equal terms with nonreligious assemblies or institutions.

112. TOL is a religious assembly or religious institution.

113. The nonreligious assemblies or institutions treated more favorably than Plaintiff cause no lesser harm to the zoning criteria identified in the UDO.

114. Defendant's UDO and its Determinations discriminate against Plaintiff on the basis of religion.

115. Defendant's UDO and its Determinations totally exclude Plaintiff from a zoning jurisdiction.

116. Defendant's UDO and its Determinations unreasonably limit Plaintiff within the zoning jurisdiction of Plaintiff's property.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT II – VIOLATION OF THE RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE UNITED STATES CONSTITUTION**

117. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs.

118. Defendant's UDO and its Determinations violate Plaintiff's right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

119. Plaintiff's religious beliefs are sincerely and deeply held.

120. Defendant's UDO and its Determinations substantially burden Plaintiff's sincerely held religious beliefs.

121. Defendant's UDO and its Determinations are neither a neutral nor general law of applicability.

122. Defendant's UDO and its Determinations specifically and discriminatorily target religion and religious worship.

123. Defendant's UDO and its Determinations are the result of a system of individualized exemptions such that they are not neutral and generally applicable.

124. There is no compelling government interest sufficient to justify Defendant's UDO and its Determinations.

125. Defendant's UDO and its Determinations are not the least restrictive means to accomplish any permissible government purpose sought to be served by the UDO and the Defendant's Determinations.

126. Defendant's UDO and its Determinations are not a narrowly tailored restriction on Plaintiff's free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

127. Defendant has failed or refused to accommodate Plaintiff's sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT III - VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FOURTEENTH AMENDMENT**

128. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs.

129. The term "Place of Worship" is not defined in the UDO.

130. The term "Church" is not defined in the UDO.

131. The term "Residential" is not defined in the UDO.

132. The lack of definition of terms in the UDO allows for the exercise of unfettered, arbitrary, and subjective determinations by the City.

133. The Defendant's UDO and its Determinations constitute a violation of Plaintiff's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT IV – VIOLATION OF THE RIGHT TO EQUAL PROTECTION
UNDER THE UNITED STATES CONSTITUTION**

134. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs.

135. Plaintiff's right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

136. Defendant's UDO and its Determinations are unconstitutional abridgements of Plaintiff's affirmative right to equal protection of the laws, are not facially neutral, and specifically target Plaintiff's religious viewpoints and speech.

137. Defendant's UDO and its Determinations are unconstitutional because they treat religious organizations, assemblies and institutions differently than they treat secular organizations, assemblies and institutions.

138. Defendant's UDO and its Determinations are unconstitutional abridgements of Plaintiff's right to equal protection of the law because Defendant treats Plaintiff differently from other similarly situated organizations and businesses on the basis of Plaintiff's religious content, viewpoint and expression.

139. Defendant's UDO and its Determinations are not supported by a compelling governmental interest sufficient to justify its enactment or enforcement against Plaintiff.

140. Defendant's UDO and its Determinations are not the least restrictive means to accomplish any permissible government purpose sought to be served by the actions.

141. Defendant's UDO and its Determinations do not serve a significant government interest.

142. Defendant's UDO and its Determinations do not leave open ample alternative channels of communication.

143. Defendant's actions are irrational and unreasonable, and impose irrational and unjustifiable restrictions on constitutionally protected speech.

144. Defendant, in violation of the Equal Protection Clause, has caused, and will continue to cause, Plaintiffs to suffer undue and actual hardship and irreparable injury.

145. Plaintiff has no adequate remedy at law to correct the continuing deprivations of Plaintiff's most cherished constitutional liberties.

146. As a direct and proximate result of the Defendant's continuing violations of Plaintiff's rights, Plaintiff has in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of the ability to exercise its constitutional rights.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT V - VIOLATION OF THE FREE SPEECH CLAUSE
OF THE UNITED STATES CONSTITUTION**

147. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs.

148. The UDO and Defendant's Determination violate the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

149. To determine whether a proposed use is a "Church, Place of Worship" under the UDO, the City must analyze the content and viewpoint of speech and other expressive activity.

150. The UDO and Defendant's Determinations, facially and as applied, restrict Plaintiff's speech based on religious viewpoint and content.

151. The UDO and Defendant's Determinations are underinclusive as they do not place similar restrictions on nonreligious assemblies, institutions or organization which do not incorporate religious speech and viewpoints.

152. The UDO and Defendant's Determinations are overbroad because they sweep within its ambit protected First Amendment speech, thus violating the rights of Plaintiff and third parties not before the Court.

153. The Ordinance operates as a prior restraint on speech because Plaintiff and other organizations must obtain permission before engaging in religious speech, such as prayer, Bible reading and discussion, or singing religious songs with others in a place of worship in the City.

154. The UDO and Defendant's Determinations do not leave open ample alternative channels of communication.

155. The City does not have a compelling interest for the UDO and Defendant's Determinations.

156. The UDO and Defendant's Determinations are not narrowly tailored to achieve a compelling interest.

157. The UDO and Defendant's Determinations are not the least restrictive means of achieving a compelling interest.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT VI - VIOLATION OF THE RIGHT TO PEACEABLE ASSEMBLY
UNDER THE FIRST AMENDMENT**

158. Plaintiff hereby reiterates and adopts each and every allegation in the preceding

paragraphs.

159. Plaintiff believes that it must regularly associate to express its devotion to God through communal prayer and worship, education of its students, discussion regarding religion, and other religious speech.

160. The Defendant's UDO and its Determinations prohibit Plaintiff from assembling for religious speech and other religious purposes.

161. The City has no compelling interest in limiting the peaceable assembly of Plaintiff.

162. The Defendant's UDO and its Determinations thus constitute a violation of Plaintiff's right of peaceable assembly under First Amendment to the United States Constitution, as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT VII - VIOLATION OF THE ESTABLISHMENT CLAUSE
OF THE UNITED STATES CONSTITUTION**

163. Plaintiffs hereby incorporate and adopt each and every allegation in the proceeding paragraphs.

164. The First Amendment's Establishment Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the establishment of any religion and/or excessive government entanglement with religion.

165. To determine whether a gathering of persons is a "Church," or a "Place of Worship," the City must analyze the content of speech and other expressive activity.

166. Obtaining sufficient information for the City to analyze the content of speech and other expressive activity of the Plaintiff requires ongoing, comprehensive government

surveillance that impermissibly entangles the City with religion and thus violates the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

**COUNT VIII – VIOLATION OF ARTICLE I, SECTION 7
OF THE OHIO CONSTITUTION**

167. Plaintiff hereby incorporates and adopts each and every allegation in the proceeding paragraphs.

168. Defendant’s UDO and its Determinations violate Plaintiff’s right to free exercise of religion, as guaranteed by Article I, Section 7 of the Ohio Constitution.

169. Plaintiff’s religious beliefs are sincerely and deeply held.

170. Defendant’s UDO and its Determinations substantially burden Plaintiff’s sincerely held religious beliefs.

171. There is no compelling government interest sufficient to justify Defendant’s UDO and its Determinations.

172. Defendant’s UDO and its Determinations are not the least restrictive means to accomplish any permissible government purpose sought to be served by the UDO and the Defendant’s Determinations.

173. Defendant’s UDO and its Determinations are not a narrowly tailored restriction on Plaintiff’s free exercise of religion.

WHEREFORE, Plaintiff respectfully requests that the Court grant the equitable and legal relief set forth in the prayer for relief.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. That this Court immediately issue a Preliminary Injunction to enjoin the Defendant, Defendant's officers, agents, employees and all other persons acting in active concert with them, from enforcing its UDO, Article 5.01, Table 5-C, so that:

- (1) Defendant must not prohibit Plaintiff from operating its school in the ORC Zoning District;
- (2) Defendant must treat Plaintiff equally with other secular or nonreligious assemblies or institutions;
- (3) Defendant's UDO will not be used in any manner to infringe upon Plaintiff's rights;

B. That this Court immediately issue a Permanent Injunction to enjoin the Defendant, Defendant's officers, agents, employees and all other persons acting in active concert with them, from enforcing its UDO, Article 5.01, Table 5-C, so that:

- (1) Defendant must not prohibit Plaintiff from operating its school in the ORC Zoning District;
- (2) Defendant must treat Plaintiff equally with other secular or nonreligious assemblies or institutions;
- (3) Defendant's UDO will not be used in any manner to infringe upon Plaintiff's rights;
- (4) Defendant must allow Plaintiff to apply for a conditional use permit for its school in the ORC zoning district;

C. That this Court render a Declaratory Judgment declaring Defendant's UDO, Article 5.01, Table 5-C, and its Determinations regarding the Plaintiff unconstitutional, and declaring that Defendant, Defendant's officers, agents, employees and other persons acting in

active concert with them, unlawfully obstructed Plaintiff from exercising Plaintiff's constitutionally protected rights and further declaring that:

- (1) Defendant must not prohibit Plaintiff from operating its school in the ORC Zoning District;
- (2) Defendant must treat Plaintiff equally with other secular or nonreligious assemblies or institutions;
- (3) Defendant's UDO will not be used in any manner to infringe upon Plaintiff's rights;
- (4) Defendant must allow Plaintiff as a conditional use in the ORC zoning district; and

D. Grant to Plaintiff compensatory and nominal damages;

E. Grant to Plaintiff an award of its costs of litigation, including reasonable attorneys' fees and expenses.

F. Grant such other and further relief as this Court deems just and proper.

Dated this 5th day of January, 2011.



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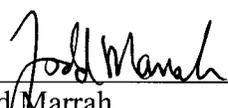
Local Counsel for Plaintiff

**Pro Hac Vice* Motions pending

VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 5th day of January, 2011.



Todd Marrah
Superintendent
Tree of Life Christian Schools