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November 29, 2023

***Via First Class Mail and
Email to lobsenz@carneylaw.com***

Mr. James E. Lobsenz, Esq.
Carney Badley Spellman, P.S.
701 5th Avenue, Suite 3600
Seattle, Washington 98104

Re: Reply to Oasis's November 21, 2023, Letter

Mr. Lobsenz,

Burien has received your letter titled "Your demand for a Temporary Use Permit Application," dated November 21, 2023, in which you argue that "Oasis Home Church is an establishment and that its principal purpose is religious worship." Burien neither questions Oasis's purpose, its religious conduct, nor the sanctity of hosting unhoused people, nor is Burien regulating religious conduct through permits. Burien has previously stated as much in multiple emails sent to Oasis and directly to you during our phone conversation on November 20, 2023. Moreover, Burien has never made the temporary use permit a pre-requisite to Oasis opening its encampment, the encampment is open already. Oasis has never submitted a temporary use permit application, and Burien has never demanded the closure of the encampment. Therefore, Burien declines to entertain constitutional hypotheticals.

Oasis is authorized to host an encampment by RCW 35A.21.360, 42 U.S.C. § 2000cc, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and Washington State Constitution Article I, Section 11. Oasis has the right to host the unhoused and must comply with the law. So far, Oasis has exercised its right to host but has refused to comply with BMC 19.75.010 and obtain a temporary use permit to host an unhoused encampment on its parking lot.

BMC 19.75.010 requires a temporary use permit whenever a use not permitted in a zone is requested or is being expanded beyond a previous approval. Thus, like any other property owner, Oasis must obtain a temporary use permit to host an encampment since encampments are not permitted in any Burien zone. Oasis's refusal to seek a temporary use permit violates the Burien Municipal Code.

RCW 35A.21.360 authorizes religious organizations to host unhoused persons on religious property and cities to regulate such use, require a permit, and impose fees for reviewing and approving the permit applications. As to Burien's ability to require a temporary use permit, RCW 35A.21.360(2)(a) explains that

“a code city may not enact an ordinance or regulation or take any other action that [i]mposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter...” (Emphasis added) RCW 35A.21.360 is the statute Oasis attempted to comply with when it notified Burien of its intended public hearing. RCW 35A.21.360(10).

RLUIPA begins not by saying that land use regulations cannot be imposed or implemented regarding religious organizations but by prohibiting the imposition or implementation of land use regulations “in a manner that imposed a substantial burden” on the exercise of religion. (Emphasis added) It is important to understand that Congress could have prohibited any or all burdens but only limited “substantial” burdens. Asking for a temporary use permit to know how, where, how long, and in what fashion the encampment will be run is reasonable, within Burien’s Washington State Constitution Article XI, Section 11 authority to protect health and safety, and not a substantial burden.

In *Living Water Church of God v. Charter Twp. Meridian*, 258 F. App’x 729, 736 (6th Cir. 2007), the Sixth Circuit held, “RLUIPA cannot stand for the proposition that a construction plan is immune from a town’s zoning ordinance simply because the institution undertaking the construction pursues a religious mission. Although RLUIPA assuredly protects religious institutions in their religious exercise, the statute’s language indicates that it is not an exemption from land-use regulations.” (Emphasis added) Washington’s constitution also carves a narrow limitation to the freedom of religious organizations as it relates to peace and safety, which are protected by land use regulations.

Washington State Constitution, Article I, Section 11 states, “Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state.” Even Washington’s Religious Freedom provision prohibits practices inconsistent with peace and safety. The temporary use permit is a tool that municipalities use to ensure peace and safety.

In sum, religious organizations are subject to local land use regulations. Oasis is subject to Burien’s land use regulations. Burien again asks you to advise your client, Oasis Home Church, to apply for a temporary use permit. As previously stated, Burien is willing to waive the permit fees. Finally, any concerns about the temporary use permit time limits are not applicable since Oasis has stated that the encampment will not operate beyond the temporary use permit time limitations. If Oasis intends to host the unhoused for longer than the temporary use permit typically permits, Burien is willing to modify that requirement. Again, Burien encourages, appreciates, and supports the safe and effective support of the unhoused on religious organizations’ property.

Sincerely,



Ndiabou Diagana
Assistant City Attorney