ACLU
AMERICAN CIVIL LIBERTIES UNION of MINNESOTA
FOUNDATION

March 21, 2012

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Dear Mayor and Councilmembers,

The ACLU-MN was disheartened to learn that the city of St. Anthony Village adopted a moratorium on the consideration of Conditional Use Permits for Assembly, lodge or convention halls in commercial and light industrial zoning districts in direct reaction to an application for a CUP to establish an Islamic Center in the basement of the former Medtronic headquarters. This decision smacks of religious bigotry and likely violates both the Minnesota Constititon and the Federal Religious Land Use and Institutionalized Persons Act. George Washington was right: Religious freedom is not granted "by the indulgence of one class of people" – it is a fundamental American right. Unfortunately, resistance and outright hostility to mosques continues to flare up around the country. Throughout our history, Jews, Protestants, Catholics and Muslims have all been victims of fear and discrimination. In the end, tolerance and fairness generally prevail because religious discrimination is a losing proposition, and adhering to Federal law and the Constitution is not optional.

As you may already be aware, the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA) strictly limits the ability of local governments to burden religious exercise by "impos[ing] or implement[ing] a land use regulation." See 42 U.S.C. §§ 2000cc(a)(1); (b)(1). Under RLUIPA and Article 1 §16 of the Minnesota Constitution, land use regulations that impose substantial burdens on religious exercise must be justified as the least restrictive means of serving compelling government interest. Additionally, RLUIPA

prohibits government from "impos[ing] or implement[ing] 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." 42 U.S.C. § 2000cc(b)(1)

A city's land use rules fall within the jurisdiction of RLUIPA where, as here, the zoning code requires a religious organization to obtain a special exception or other exemption from existing land use regulations. *See* Guru Nanak Sikh Soc.'y v. County of Sutter, 456 F.3d at 986-87 ("[A]n entity intending to build a church must first apply for a CUP and be approved by the County. . . . RLUIPA therefore governs the actions of the County in this case."); Konikov v. Orange County, 410 F.3d at 1324 ("The [Orange County Code] does not permit religious organizations to operate in R-1A areas without special exception approval. . . . Because the OCC provides for individualized assessments, we may exercise jurisdiction."); Midrash Shephardi, Inc. v. Town of Surfside, 366 F.3d at 1225 ("The [Surfside Zoning Ordinance] requires each church and synagogue to apply for a CUP prior to operating in Surfside. . . . Thus, SZO is quintessentially an 'individual assessment' regime.").

While it appears, as discussed below, that the city's current zoning ordinance violates RLUIPA's "equal terms" provision, the moratorium also likely violates RLUIPA because it is being used to delay the issuance of the CUP necessary to use the property at issue for religious purposes. It is our understanding that the group wishing to establish the Abu-Huraira Islamic Center have a purchase agreement for the building and that substantial delay in obtaining the requisite CUP could substantially endanger the viability of the project. *See* Layman Lessons, Inc. v. City of Millersville, 636 F. Supp. 2d 620, 646, 649 (M.D. Ten. 2008) (holding that the "attempted imposition of a proposed ordinance . . . f[ell] within the definition of 'land use regulation' insofar as it constituted the 'application' of a proposed law to 'restrict[ ] [Plaintiff's] use or development of land.'"). 636 F. Supp. 2d 620. The impact that the delay and uncertainty caused by the moratorium may have on this project would likely be considered a substantial burden on the group's free exercise of religion. *See* Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin, 396 F.3d at 901 ("The burden here was substantial. The Church could have searched around for other parcels of land . . . or it could have continued filing applications with the City, but in either case there would have been delay, uncertainty, and expense."); Guru Nanak, 456 F.3d at 992 n.20, ("Admittedly, the availability of other suitable property weighs against a finding of a substantial burden. . . . However, RLUIPA does not contemplate that local governments can use broad and discretionary land use rationales as leverage to select the precise parcel of land where a religious group can worship."

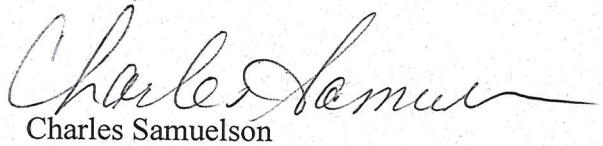
Because the moratorium will impose a substantial burden, the city must justify it as being the least restrictive means of serving a compelling interest. It is unclear what the city's interest is in imposing the moratorium other than to appease members of the public who have vocally opposed the Islamic Centery; however,

taking time to "study the impact on the community" as reported in the Star Tribune, is likely not a compelling interest.

The city's current zoning ordinance also violate RLUIPA's "equal terms" clause because treats religious uses on less than equal terms with other similar uses. For example, in a commercial zone, places of assembly such as coffee houses, daycare centers, Funeral homes, museums, music schools, dance schools and restaurants are permitted without the need for a CUP. In contrast, religious institutions appear to only be allowed in residential areas with a CUP. While it appears that the city was willing to consider granting a CUP for an assembly, lodge or convention hall, the legal deficiency of the zoning ordinance cannot be ignored. As the Court noted in Chabad of Nova, Inc. v. City of Cooper City, "[d]ay care centers; indoor recreational facilities, including movie theaters; centers offering personal improvement services such as aerobic studios, art, music dance and drama schools; and places where people may gather for meetings and/or business related to trade associations or unions" all qualify as assemblies. 533 F. Supp. 2d 1220, 1223 (S.D. Fla. 2008). Consequently, a city cannot permit them in business districts without also permitting religious assemblies or institutions. Id. *See also* Vietnamese Buddhism Study Temple in America v. City of Garden Grove, 460 F. Supp. 2d 1165, 1174 (C.D. Cal. 2006) ("The GGZO, on its face, treats churches and religious centers on less than equal terms than it treats private clubs and other secular assemblies. It allows private clubs to operate without a CUP in the office professional zone, while religious assemblies are banned from that zone entirely. The GGZO also allows private clubs to operate without a CUP in the open space zone, while churches are subject to the CUP requirements.").

Because both the city's zoning code and the current moratorium violate RLUIPA and the Minnesota Constitution, we respectfully request that you take immediate action to remedy this situation by lifting the moratorium and either amending your ordinance to allow religious uses on equal footing with other similar uses or by granting the Abu-Huraira Islamic Center's application for a CUP without further delay.

Sincerely,



Charles Samuelson
Executive Director