

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

*Church of Our Savior, formally known as  
Resurrection Anglican Church, Inc., a  
Florida Nonprofit Corporation,*

**Plaintiff,**

HON.  
Case No.

v.

*The City of Jacksonville Beach, and the City of  
Jacksonville Beach Planning Commission, a  
Florida Municipal Corporation,*

**Defendants.**

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, CHURCH OF OUR SAVIOR, formerly known as Resurrection Anglican Church, Inc., (“Plaintiff” or “Church”), by and through its attorneys, *Dalton & Tomich, plc*, and *Stambaugh & Associates, P.A.*, and in its Verified Complaint for

Declaratory and Injunctive Relief against Defendants City of Jacksonville Beach (“Defendant” or “City”) and the Jacksonville Beach Planning Commission (“Planning Commission”) (jointly referred to hereinafter as “Defendants”) states as follows:

### **INTRODUCTION**

1. This is an action for declaratory judgment, preliminary and permanent injunction, and equitable relief arising from Defendants City of Jacksonville Beach and Jacksonville Beach Planning Commission’s violations of federal and state constitutional and statutory rights. Plaintiff Church of Our Savior alleges that Defendant City of Jacksonville Beach’s Land Development Code, both on its face and as applied to the Church by the Defendant Planning Commission, violates its First Amendment rights to the free exercise of religion, the freedom of speech and assembly, and the Fourteenth Amendment right to equal protection of the law under the United States Constitution; Plaintiff’s parallel rights under the First Amendment of the Florida Constitution; the Substantial Burden and Equal Terms provisions of the Religious Land Use and the Institutionalized Persons Act of 2000 (“RLUIPA” or “Act”), 42 USC § 2000cc *et seq*; and the Florida Religious Freedom Restoration Act. Florida Code § 761.01 *et. seq*.

### **PARTIES**

2. Plaintiff Church of Our Savior, formerly known as Resurrection Anglican Church, is a religious organization that is incorporated in the state of Florida as a nonprofit, and has received IRS recognition as a 501(c)(3) tax exempt nonprofit religious organization that has as its main purpose to assemble weekly at a number of locations around Jacksonville Beach to worship God and engage in additional religious activities customarily associated with churches.

3. Defendant City of Jacksonville Beach, located in Duval County, is chartered by Florida law with a legislative body that consists of an elected City Council (“Council”).

4. Defendant Jacksonville Beach Planning Commission (“Planning Commission”) is appointed by the Jacksonville Beach City Council and is the final decision maker on whether to grant a number of requests and permits, including conditional use permits.

#### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this case pursuant to 28 USC § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 USC § 1343(a)(3), in that it is brought to redress deprivations under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 USC § 1343(a)(4), in that it seeks to recover equitable relief under acts of Congress, specifically 42 USC § 1983 and 42 USC § 2000cc, which provide causes of actions for the protection of civil and constitutional rights and injunctive remedies; and under 28 § 2201(a), to secure declaratory injunctive relief under 28 USC § 2202; and under 42 USC § 1988, to secure reasonable attorney fees as part of the case. Plaintiff includes a request for a speedy decision and advancement on this Court’s calendar under Fed. R. Civ. Pro. 57 and 28 USC § 2201. This Court has supplemental jurisdiction pursuant to 28 USC § 1367(a) over the state law claims asserted herein as they form part of the same case or controversy as the federal questions.

6. The venue in this action is proper within the Middle District of Florida, Jacksonville Division, pursuant to 28 USC § 1391(b), in that (i) Defendants are situated within this judicial district, (ii) Plaintiff resides within this judicial district, and (iii) all of the claims asserted by Plaintiff arose in this judicial district.

## FACTUAL ALLEGATIONS

### *Plaintiff Church of Our Savior*

7. Plaintiff Church of Our Savior was founded in 2006 and has since grown to its current size of roughly 110 church members and weekly parishioners. (*Exhibit 1, Church of Our Savior Mission*).

8. The Church's religious mission is to revel in and share the grace that God has shown them. (*Ex. 1*) ("The greatest part about this grace is that it is a gift that God has given to all people!")

9. In order to do so, the Church encourages members of the community to attend the Church's religious services. (*Ex. 1*) ("We would love nothing more than to share this grace that we know with you. Check out our website, but more importantly come and share with us in the love and grace of our Savior.").

10. As a result, over the past seven years, the Church has seen substantial growth that has led the church's leadership, known as the Vestry, to add a number of services, including bible study groups for both men and women. (*Exhibit 2, Affidavit of Kent Steen*).

11. The Church has also established local ministries of feeding the homeless at the City's Mission House, and supported the teachers and staff at a nearby public elementary school. (*Ex. 2*).

12. The Church's service to the City and the quality and range of its ministries has resulted in growth of its membership to the point that the Church is now in dire need of its own sanctuary. (*Ex. 2*).

13. Additionally, in May 2013, Church of Our Savior merged with Resurrection Anglican Church, which had held worship services at a number of locations around Jacksonville Beach since 2006. (*Ex. 2*).

14. Plaintiff currently hosts two worship services on Sunday mornings at Beaches Museum Chapel, 505 Beach Blvd., in Jacksonville Beach. (*Exhibit 3, Church of Our Savior Schedule; Ex. 2*).

15. The Church also holds special services, including services on holy days such as Easter and Christmas, at the Beaches Museum Chapel. (*Ex. 2*).

16. Beaches Museum Chapel is a historic wooden chapel that has been moved to multiple locations over the years. (*Exhibit 4, Beaches Museum Chapel*).

17. The Church of Our Savior rents the chapel from the City of Jacksonville Beach in order to hold its Sunday services. (*Ex. 2*).

18. Because the it rents the chapel, the Church is unable to schedule services as it wishes, nor can it make repairs or alter the chapel in order to tailor the facility to the Church's religious needs. (*Ex. 2*).

19. Plaintiff's administrative offices and limited meeting rooms are located next to the historic chapel in a temporary facility known as Malone Hall, which Plaintiff has been permitted to use for two years. (*Ex. 2*).

20. Due to space and time constraints and conflicts, Plaintiff hosts its men's bible study every Tuesday morning at Colonel Mustard's, a popular hamburger restaurant in Jacksonville Beach. (*Ex. 3*).

21. Additionally, Plaintiff hosts other religious and social church activities at other local restaurants and the homes of members of the congregation. (*Ex. 2*).

22. The Church hosts a Friday bible study for women weekly choir rehearsals and other educational activities at Malone Hall. (*Ex. 3; Ex. 2*).

23. The Church suffers an increasingly substantial burden on its religious exercise due to the limited space in the currently rented chapel and temporary support building, as well as the substantial time needed to deploy and redeploy materials from Malone Hall to the chapel to support weekly services. (*Ex. 2*).

24. Additionally, classes for adults and children are severely limited due to inadequate available facilities to support them. (*Ex. 2*).

25. The Church also has to locate weddings and most funerals at locations other than at the chapel due to limitations on seating. (*Ex. 2*).

26. Such size limitations and the resulting logistical issues have hindered the Church's ability to attract more members, an integral part of the Church's religious mission, due to the varying locations and the lack of its own permanent house of worship. (*Ex. 1; Ex. 2*).

27. The Church Vestry eventually determined that locating the vast majority of the Church's religious worship activities at one house of worship would ease the substantial time and financial burdens that weigh on the shoulders of the Church Vestry and parishioners due to the constant changing of meeting locations the Church and its members have had to endure for several years. (*Ex. 2*).

28. Thus, Church leaders looked for a suitable property that could serve as the one ideal location for all of the Church's religious activities. (*Ex. 2*).

***The Property and the City Land Development Code***

29. In early 2012, the Church located the property at 2092 Beach Boulevard ("Property") in Jacksonville Beach that was for sale. (*Ex. 2*).

30. The Property consists of two parcels of land, each owned by a different person or entity, that is separated by a small piece of city-owned property. (*Ex. 5, Map*).

31. The Property is located just east of Hopson Road and the Intracoastal Waterway and on the west side of Adventure Landing, an amusement park that offers water attractions, miniature golf and laser tag. (*Exs. 2, 5*).

32. The Church hoped to build a 7,400-square foot, one-story building that would include a sanctuary with space for more than 200 worshipers on the northern parcel of the Property. (*Exs. 2, 5*).

33. The southern part of the Property was expected to be used for other Church activities, including a children's play area or park. (*Exs. 2, 5*).

34. Church leaders expected that having one location where all Church activities could be hosted would likely increase church attendance, and lessen the substantial burden Church members are under in having to shuffle from one location to another to hold various services, as the Church does now. (*Ex. 2*).

35. Thus, the Church purchased an option to buy the Property from the owners, Mr. Goodloe and the Duval Land Trust. (*Exhibit 6, Options*).

36. The Property was the only one of its kind available in the City of Jacksonville Beach that could accommodate the Church's needs of a space for both a religious worship facility and a nearby outdoor recreational area. (*Ex. 2*).

37. The Property is zoned "RS-1", or residential, under the Jacksonville Beach Land Development Code. (*Exhibit 7, Jacksonville Beach Zoning Map; Ex. 2*).

38. The Land Development Code does not permit church assembly use in the RS-1 residential zone, instead requiring parties such as Plaintiff to apply for special dispensation from

the City in the form of a Conditional Use Permit (“CUP”). (*Ex. 8, Land Development Code at 34-336*).

39. However, the Land Development Code does permit similar secular assemblies in the RS-1 residential district, including public and private parks, as a matter of right that does not require such secular uses to apply for and receive a CUP. (*Ex. 8 at 34-336*).

40. In fact, the Land Development Code does not permit churches or religious assemblies as a matter of right in eleven (11) of the thirteen (13) zoning districts the Land Development Code provides. (*Ex. 8 at 34-336 – 34-348*).

41. Instead, churches and religious assemblies such as Plaintiff must apply for special dispensation from the City in those eleven (11) zoning districts in the form of a CUP. (*Ex. 8 at 34-336 – 34-348*).

42. In both the Commercial Service District (“CSD”) and Central Business District (“CBD”), religious assemblies are not permitted as of right and must apply for and receive a CUP. (*Ex. 8 at 34-344, 34-345*).

43. However, identical assembly uses that have secular purposes, such as theatres and social and fraternal membership organizations, are permitted in the CSD and CBD zoning districts as a matter of right. (*Ex. 8 at 34-344, 34-345*).

***Church of Our Savior Applies for a CUP***

44. On or about March 1, 2013, the Church submitted an application to the City for a CUP to build the church at the Property. (*Exhibit 9, Undated First CUP Application*).

45. The application indicated that the Church sought a CUP to operate a 200-250 seat church in the RS-1 zoning district. (*Ex. 9*).



46. The City's Department of Planning and Development affirmed the receipt of the Church's application and verified that the application met all of the City's mandated standards for conditional use approval under Section § 34.336(e) of the Code. (*Exhibit 10, April 1, 2013, Letter from Department of Planning & Development; Exhibit 11, Standards Applicable to All Conditional Uses, Land Development Code § 34-231*).

47. In particular, the Church's plan conformed with the RS-1 setback requirements, included the required landscape and fence buffer adjacent to single-family uses, and the City's Public Works Department was aware of the Church's plans and found it would not interfere with works department maintenance. (*Ex. 10*).

48. Thus, the City Planning and Development Department recommended that the Planning Commission *approve* the CUP to the Church. (*Ex. 10*). ("The currently requested use of the subject properties is contemplated in RS-1 zoning, so it is not inconsistent with their Comprehensive Plan *Residential – Low Density* designation.").

49. Additionally, the Planning and Development Department found that the church use "represents a reasonable low intensity use of the undeveloped parcels...and would serve as transition between the soon to be developed commercial parking facilities to the east, and the Hopson Road neighborhood to the west and south." (*Ex. 10*).

50. On April 8, 2013, the City's Planning Commission heard the Church's conditional use permit request at a public hearing. (*Exhibit 12, April 8 Planning Commission Agenda; Exhibit 13, Minutes of April 8, 2013, Planning Commission Meeting*).

51. Even though it was pointed out that the proposed church would comply with height restrictions and setback and lot coverage requirements, a handful of neighbors objected to the CUP. (*Ex. 13*).

52. Despite the findings of the Planning and Development Department to the contrary, Commissioner DeLoach expressed his belief that the church was not consistent with the character of the neighborhood. (*Ex. 13*).

53. The Planning Commission voted unanimously (5-0) to deny the CUP. (*Ex. 13*).

54. The Church was surprised at the denial, as the City's Planning and Development Department officials – experts trained in evaluating CUP applications and zoning districts – had determined that the CUP should have been approved. (*Ex. 2; Ex. 10*).

55. Thus, the Church contemplated its options for moving forward with the Property. (*Ex. 2*).

#### ***Failed Negotiations and Second CUP Application***

56. The Church and the City attempted to find a mutually suitable way for the Church to be able to move forward with its project on the Property. (*Ex. 2*).

57. When those efforts failed to reach a mutually agreeable resolution, the City encouraged the Church to submit a second application for a CUP in September 2013. (*Ex. 2*).

58. Thus, the Church submitted a *second* application for a CUP to the City's Planning and Development Department. (*Exhibit 14, Second CUP Application*).

59. The second CUP made clear that the first CUP application had mistakenly labeled the recreational area on the southern parcel of the Property to be a children's area when in fact the Church planned to make it a park open to neighborhood children and permitted in the RS-1 zoning classification. (*Ex. 14; Ex. 8 at 34-336*).

60. The Planning Commission discussed the second CUP application at a meeting on September 9, 2013. (*Exhibit 15, September 9, 2013, Planning Commission Agenda*).

61. Once again, as the Church met all the standards for conditional use approval, the City Planning and Development Department recommended the Planning Commission *approve* the CUP. (*Exhibit 16, September 9, 2013, Planning Commission Minutes*).

62. On September 23, 2013, the Planning Commission voted unanimously to deny the CUP for the Church. (*Ex. 2; Exhibit 17, Sept. 24, 2013, Letter to Plaintiff's Counsel*).

63. In its Findings of Fact, the Planning Commission indicated it denied the CUP “based on public testimony from the Hopson Road neighborhood residents” that the use of the Property for a religious use was inconsistent with the character of the surrounding properties. (*Exhibit 18, Findings of Fact*).

64. The Planning Commission also held that the Church’s planned use of the Property “is not consistent with RS-1 zoning district maximum lot coverage standards.” (*Ex. 18*).

65. However, the City’s own Planning and Development Department found that the church use “represents a reasonable low intensity use of the undeveloped parcels...and would serve as transition between the soon to be developed commercial parking facilities to the east, and the Hopson Road neighborhood to the west and south.” (*Ex. 10*).

66. The Planning and Development Department had also found that the Church’s “requested use of the subject properties is contemplated in RS-1 zoning, so it is not inconsistent with their Comprehensive Plan *Residential – Low Density* designation.” (*Ex. 10*).

67. Thus, the Planning Commission’s denial of the CUP, and its Findings of Fact, are completely contradicted by the determination of the City’s Planning and Development Department, which *twice* determined that Plaintiff should be granted the CUP. (*Exs. 10, 16*).

68. The Church was once again stunned by the denial of the CUP, as the Jacksonville Beach Planning Commission had previously granted a CUP to a church in the RS-1 District in 2010. (*Exhibit 19, August 13, 2010 Bethlehem Lutheran Church CUP Approval*).

69. The City also granted a CUP to a functionally similar secular assembly, a private school, in the RS-1 District in 1994. (*Exhibit 20, July 26, 1994, CUP Approval of Leah Hudson*).

70. A CUP was also granted to a public secondary school that sought to locate in the RS-1 zoning district. (*Exhibit 21, August 31, 1995, Letter to Eisman & Russo*).

71. Additionally, the City Planning Commission had also granted a CUP to Epic Surf Ministries in 2008 to operate a religious use in a residential district of the City. (*Exhibit 22, Minutes of Dec. 22, 2008, Planning Commission meeting*).

72. Upon information and belief, and a review of Planning Commission actions over the past nine (9) years, it is almost unheard of for the Planning Commission to ignore or otherwise go against the City Planning and Development Department's recommendations on CUPs. (*Ex. 2*).

73. The denial of the Church's CUP applications effectively denies the Church the right to meet and assemble for religious purposes on the Property. (*Ex. 2*).

74. Additionally, there are no ready alternatives for the Church, as there are no other parcels of property available in the City's C-1 and C-2 zoning districts, which are the two zoning districts where religious organizations are permitted as a matter of right. (*Ex. 2; Ex. 8 at 34-342 and 34-343*).

75. The Church has availed itself of and exhausted all of the administrative remedies set forth in the City's Land Use Code without success, as the decision of the City's Planning Commission is final and not appealable. (*Ex. 2*).

76. Thus, the Church will continue to have to rotate its locations between a rented public chapel and the back of a hamburger restaurant now that it will not be allowed to build its own structure within which to hold religious assemblies and exercise. (*Ex. 2*).

***Count I***  
***Violation of the Religious Land Use and Institutionalized Persons Act***  
***Substantial Burden Claim - 42 U.S.C. § 2000cc(a)***

77. Plaintiff restates the allegations in paragraphs 1 through 77 as if fully rewritten herein.

78. All acts alleged herein of the City, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of state law. Said acts include the enactment, implementation and enforcement of the Jacksonville Beach Land Development Code, as well as any additional ordinances, regulations, customs, policies and usages of the City, and the repeated denial by the City Planning Commission of Plaintiff's request for a CUP to use the Property to erect a facility for religious worship, speech, and assembly.

79. The Jacksonville Beach Land Development Code is a land use regulation or system of land use regulations under which the City makes, or has in place, formal or informal procedures or practices that permit it to make individualized assessments of the proposed uses for property in its jurisdiction.

80. The text of the Jacksonville Beach Land Development Code can feasibly operate to keep Plaintiff from constructing a religious facility within any district in the City, including on the Property Plaintiff has an option to purchase. (*Ex. 8*).

81. The intended future use of the premises for the purpose of Plaintiff's religious exercise is itself religious exercise by Plaintiff and its members.

82. Defendants' implementation of the land use regulations contained in the Jacksonville Beach Land Development Code as alleged above imposes a substantial burden on the religious exercise of Plaintiff.

83. Additionally, the decision of the Defendant Planning Commission to twice deny Plaintiff's CUP Application as alleged above imposes a substantial burden on the religious exercise of Plaintiff.

84. The substantial burden Defendants imposed on Plaintiff's religious exercise is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any compelling governmental interest.

85. Accordingly, Defendants have violated Plaintiff's rights recognized under the Religious Land Use and Institutionalized Persons Act, 42 USC § 2000cc(a).

86. As a direct result of the Defendants' violations of Plaintiff's rights protected under 42 USC § 2000cc(a) of the Act, as alleged above, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

87. Furthermore, as a direct result of the Defendants' violations of Plaintiff's rights under 42 USC § 2000cc(a) of the Act as alleged above, Plaintiff has suffered and is entitled to recover equitable relief, costs and attorney fees.

**Count II**  
**Violation of the Religious Land Use and Institutionalized Persons Act**  
**Equal Terms, Nondiscrimination, and Unreasonable Limitations 42 U.S.C. § 2000cc(b)(3)**

88. Plaintiff restates the allegations in paragraphs 1 through 88 as if fully rewritten herein.

89. Plaintiff desires and intends to engage in religious assembly on the Property, and has purchased options on the Property for that purpose. (*Ex. 6*).

90. Defendants, by means of maintaining the existence and enforcement of the Jacksonville Beach Land Development Code and denying both of Plaintiff's applications for a Conditional Use Permit to operate its church, have imposed and continue to implement land use regulations in a manner that treats religious assemblies or institutions, including Plaintiff, on less than equal terms with non-religious assemblies or institutions.

91. Defendants, by means of maintaining the existence and enforcement of the Jacksonville Beach Land Development Code and denying both of Plaintiff's applications for a Conditional Use Permit to operate its church, have imposed and continue to implement a land use regulation that discriminates against assemblies or institutions, including Plaintiff, on the basis of religion.

92. Defendants, by means of maintaining the existence and enforcement of the Jacksonville Beach Land Development Code requiring religious assemblies desiring to locate in the City to obtain special dispensation from the City (in the form of a conditional use permit), and denying both of Plaintiff's applications for a Conditional Use Permit to operate its church, have totally excluded religious assemblies from or, alternatively, have unreasonably limited religious assemblies within Defendants' jurisdiction.

93. Accordingly, Defendants have violated the Plaintiff's rights recognized under federal law as contained in 42 USC § 2000cc(b)(1) (equal terms), (b)(2) (non discrimination) and (b)(3) (unreasonable limitation or exclusion) of the Act.

94. As a direct result of the Defendants' violations of Plaintiff's rights under 42 USC § 2000cc(b) of the Act, as alleged above, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

95. Furthermore, as a direct result of the Defendants' violations of Plaintiff's rights under 42 USC § 2000cc(b) of the Act, as alleged above, Plaintiff has suffered and is entitled to recover equitable relief, costs and attorney fees.

***Count III***  
***Violation of the Right to Free Exercise of Religion***  
***Guaranteed by the First Amendment to the U.S. Constitution (42 U.S.C. § 1983)***

96. Plaintiff restates the allegations in paragraphs 1 through 96 as if fully rewritten herein.

97. All acts alleged herein of the City, its officers, agents, servants, employees, or persons acting at its behest or direction, were done and are continuing to be done under the color and pretense of state law. Said acts include Defendants' enactment, implementation and enforcement of the Jacksonville Beach Land Development Code, as well as any additional ordinances, regulations, customs, policies and usages of the City, and the denial of Plaintiff's requests for a Conditional Use Permit.

98. The terms and operation of the Jacksonville Beach Land Development Code, as well as Defendants' application of the code as alleged herein, burdens Plaintiff's exercise of religion and are not neutral or of general application.



99. As the text and application of the Jacksonville Beach Land Development Code discriminates against Plaintiff and other religious institutions by permitting operationally similar non-religious assemblies as of right in the CS and CBD zoning districts but requiring religious assemblies to apply for special dispensation in the form of a CUP, Defendants have unjustifiably violated Plaintiff's right to the free exercise of religion.

100. Defendants' discrimination against religious exercise established by the Jacksonville Beach Land Development Code and the denial of Plaintiff's Conditional Use Permit applications is not justified by, or narrowly tailored to further, any compelling governmental interest.

101. As a direct result of the Defendants' violations of Plaintiff's right to the free exercise of religion, as alleged above, the Church is suffering irreparable harm for which there is no adequate remedy at law.

102. As a direct result of the Defendants' violations of Plaintiff's First Amendment right to the free exercise of religion, as alleged above, the Church has suffered and is entitled to equitable relief, costs, and attorney fees.

***Count IV***  
***Violation of the Rights to Freedom of Speech and Assembly***  
***Guaranteed by the First Amendment to the United States Constitution (42 U.S.C. § 1983)***

103. Plaintiff restates the allegations in paragraphs 1 through 103 as if fully rewritten herein.

104. In circumstances in which religious and non-religious assembly uses are operationally similar (from the perspective of the proper purposes and objectives of government zoning authority), the Jacksonville Beach Land Development Code and Defendant Planning Commission nonetheless treat differently religious and non-religious assemblies.

105. The Jacksonville Beach Land Development Code, as implemented and applied by Defendants, differentiates religious assemblies and uses from similar secular assemblies and uses by means of analysis of the content of the speech of those who would use the property for assembling and assigns discriminatory burdens to those users whose speech is religious.

106. Defendants' discriminatory treatment of religious land uses, including that of the Plaintiff, constitutes a content-based and viewpoint-based restriction on speech.

107. The content- and viewpoint-based restrictions of Defendants and the City's Land Development Code that are placed upon Plaintiff are not supported by a compelling governmental interest and are not narrowly tailored to accomplish the same compelling governmental interest.

108. The Jacksonville Beach Land Development Code regulation of religious uses is not a legitimate time, place, or manner regulation, as it does not serve a significant government interest, and does not leave open ample alternative channels for communication.

109. The Jacksonville Beach Land Development Code, to the extent it requires Plaintiff to obtain special dispensation from the City to use land for assembly and for religious purposes and affords Defendants unfettered discretion to decide whether to allow religious speech and does not contain in that process the procedural safeguards necessary for a speech-related permit scheme, constitutes a prior restraint on Plaintiff's speech in violation of the First Amendment to the United States Constitution.

110. By discriminating against churches and similar religious land uses, Defendants have violated and continue to violate Plaintiff's right to the Freedom of Speech under the First Amendment.

111. The Jacksonville Beach Land Development Code, to the extent it imposes discriminatory burdens on those who seek to assemble for religious exercise and speech, violates Plaintiff's right to assemble and associate for the purpose of engaging in activities protected by the First Amendment.

112. As a direct result of Defendants' violation of Plaintiff's First Amendment rights to the freedom of speech and assembly as alleged above, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

113. As a direct result of the City's violation of Plaintiff's First Amendment rights to the freedom of speech and assembly, as noted above, Plaintiff has suffered and is entitled to equitable relief, costs and attorney fees.

***Count V***  
***Violation of the Rights to Equal Protection of the Law as Guaranteed  
by the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)***

114. Plaintiff restates the allegations in paragraphs 1 through 114 as if fully rewritten herein.

115. Defendants have deprived and continue to deprive Plaintiff and its members of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating in Defendants' application of the laws and land use regulations, namely the Land Development Code, based on religion.

116. As a direct result of the Defendants' violations of Plaintiff's Fourteenth Amendment rights to the equal protection of the laws as alleged above, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law.

117. As a direct result of the Defendants' violations of Plaintiff's Fourteenth Amendment rights to the equal protection of the laws as alleged above, Plaintiff has suffered and is entitled to equitable relief, costs and attorney fees.

***Count VI***  
***Violation of Article 1, Section 3 of the Florida Constitution***  
***Free Exercise of Religion***

118. Plaintiff restates the allegations in paragraphs 1 through 118 as if fully rewritten herein.

119. Article 1, Section 3 of the Florida Constitution provides that "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety."

120. The terms and operation of the Jacksonville Beach Land Development Code, as well as Defendants' application of the code as alleged herein, burdens Plaintiff's exercise of religion and are not neutral or of general application.

121. As the text and application of the Jacksonville Beach Land Development Code discriminates against Plaintiff and other religious institutions by permitting operationally similar non-religious assemblies as of right in some zoning districts but requiring religious assemblies to apply for special dispensation in the form of a CUP, Defendants have unjustifiably violated Plaintiff's right to the free exercise of religion.

122. The Defendant Planning Commission's decisions to twice deny Plaintiff a CUP for operation of a religious facility at the Property imposes a substantial burden on Church's religious exercise, in violation of Article 1, Section 3 of the Florida Constitution.

123. Defendants, by denying religious assembly to the Church, have imposed and continue to implement a land use regulation that discriminates against assemblies or institutions on the basis of religion.

124. The decision to deny the CUP on two separate votes of the Jacksonville Beach Planning Commission is a substantial burden imposed on Plaintiff's religious exercise, is not in furtherance of a compelling governmental interest, and is not the least restrictive means of furthering any compelling governmental interest.

125. Defendants' discrimination against religious exercise is not justified by, or narrowly tailored to further, any compelling governmental interest.

126. As a direct result of Defendants' violations of the Church's right to the free exercise of religion under Article 1, Section 3 of the Florida Constitution, as alleged above, the Church is suffering irreparable harm for which there is no adequate remedy at law and Church is entitled to injunctive relief.

127. As a direct result of the Defendants' violations, Plaintiff has suffered and is entitled to equitable relief, costs and attorney fees.

***Count VII***  
***Violation of Article 1, Section 4 & Section 5 of the Florida Constitution***  
***Free Speech and Free Assembly***

128. Plaintiff restates the allegations in paragraphs 1 through 128 as if fully rewritten herein.

129. In circumstances in which religious and non-religious assembly uses are operationally similar (from the perspective of the proper purposes and objectives of government zoning authority), Defendants, through the implementation and application of the Land Development Code, nonetheless treat differently religious and non-religious assemblies.

130. The City's Land Development Code differentiates religious assemblies and uses from similar secular assemblies and uses by means of analysis of the content of the speech of those who would use the property for assembling and assigns discriminatory burdens to those users whose speech is religious.

131. Defendants' discriminatory treatment of religious land uses, including that of the Plaintiff, constitutes a content-based and viewpoint-based restriction on speech.

132. Defendants' content- and viewpoint-based restrictions on Plaintiff are not supported by a compelling governmental interest and are not narrowly tailored to accomplish the same compelling governmental interest.

133. Defendants' regulation of religious uses, as governed by the City's Land Development Code, is not a legitimate time, place, or manner regulation, as it does not serve a significant government interest, and does not leave open ample alternative channels for communication.

134. The City's Land Development Code, to the extent it requires Plaintiff to obtain special dispensation from the City to use land for assembly and for religious purposes and affords the City unfettered discretion to decide whether to allow religious speech and does not contain in that process the procedural safeguards necessary for a speech-related permit scheme, constitutes a prior restraint on Plaintiff's speech in violation of the First Amendment to the United States Constitution.

135. By discriminating against churches and similar religious land uses, Defendants have violated and continues to violate Plaintiff's right to the Freedom of Speech under the First Amendment.

136. Similarly, Defendants, to the extent its Land Development Code imposes discriminatory burdens on those who seek to assemble for religious exercise and speech, are violating Plaintiff's right to assemble and associate for the purpose of engaging in activities protected by the First Amendment.

137. As a direct result of the Defendants' violations of Plaintiff's right to freedom of speech and assembly under Article 1, Section 4 and Section 5 of the Florida Constitution, as alleged above, Plaintiff is suffering irreparable harm for which there is no adequate remedy at law, entitling Plaintiff to injunctive relief.

***Count VIII***  
***Violation of the Florida Religious Freedom Restoration Act,***  
***Florida Code 761.01 et. seq.***

138. Plaintiff restates the allegations in paragraphs 1 through 138 as if fully rewritten herein.

139. The City's Land Development Code is a land use regulation or system of land use regulations under which the Defendant City of Jacksonville Beach makes, through formal or informal procedures or practices of the Planning Commission, individualized assessments of the proposed uses for property in its jurisdiction.

140. Plaintiff's intended future use of the Property is for the purpose of the Church's religious exercise.

141. Defendants' repeated denial of the Church's proposed use of the Property for religious assembly, as alleged above, imposes a substantial burden on the Church's religious exercise.

142. The substantial burden imposed on the Church's religious exercise is not in furtherance of a compelling governmental interest and is not the least restrictive means of furthering any compelling governmental interest.

143. Accordingly, Defendants, through their denial of Plaintiff's religious assembly at the Property as alleged herein, have violated Church's rights recognized under the Florida Religious Freedom Restoration Act of 1998. Fla. Stat. § 761.03.

144. As a direct result of Defendants' violations of the Church's rights under the Florida Religious Freedom Restoration Act of 1998, the Church is suffering irreparable harm for which there is no adequate remedy at law, and the Church is entitled to recover equitable relief, costs and attorney fees.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff prays for a judgment against Defendants, and that this Honorable Court:

- a. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declaration shall have the force and effect of final judgment and that the Court retains jurisdiction of this matter for the purpose of enforcing the Court's Order;
- b. Pursuant to 28 U.S.C. § 2201, declare the decision by Defendants to deny Plaintiff's religious assembly to be in violation of the Religious Land Use and Institutionalized Persons Act, the Free Speech, Assembly, and Exercise Clause of the First Amendment and the parallel clauses to the Florida Constitution, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the Florida Religious Freedom Restoration Act, and further declare that Plaintiff is permitted as of right to use the Property as a religious organization for all of its intended and stated purposes;
- c. Pursuant to 28 U.S.C. § 2202, Fed. R. Civ. P. 64, 42 U.S.C. § 1983, 42 U.S.C. § 2000cc-4 and 71 P.S. § 2401, (i) permanently enjoin Defendants from denying Plaintiff the right to use its Property for religious assembly, and (ii) preliminarily and permanently enjoin Defendants from enforcing the Jacksonville Beach Land Development Code or any other code or land use restriction to prevent Plaintiff from using the Property as a church with religious assembly and to process and



issue all permits and grant all other rights and privileges to Plaintiff to use the Property as a “church” for religious assembly;

- d. Pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 2000cc-4(d), Fed. R. Civ. Pro. 54(d), and other applicable law, award Plaintiff its reasonable attorney fees, costs; and
- e. Grant such other and further relief as the Court deems equitable, just and proper.

**[Signatures on following page]**

**VERIFICATION**

Pursuant to 28 USC § 1746, I, Kent Steen, declare under penalty of perjury that I have personal knowledge of matters contained in paragraphs 7 through 76 of this Complaint and that the allegations contained therein are true and accurate.

Executed this 14<sup>th</sup> day of October, 2013

*Church of our Savior*



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By: Kent Steen  
Its: Senior Warden

Respectfully submitted,

**Dalton & Tomich plc**

/s/ Daniel P. Dalton

By: Daniel P. Dalton  
Lead Attorney for Plaintiff – *Pro Hac Vice*  
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Dated: October 15, 2013