



# CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 10/02/08

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM 1

**TO:** Planning Commission

**FROM:** City Attorney

**SUBJECT:** Review and Comment on the Religious Land Use and Institutionalized Persons Act

## **Recommendation:**

It is recommended that the Planning Commission review and comment upon the following information.

## **Introduction:**

This report is presented to review the federal Religious Land Use and Institutionalized Persons Act and its relationship planning and zoning issues.

## **Discussion:**

The Religious Land Use and Institutionalized Persons Act ("RLUIPA") was enacted by Congress and signed into law by President Clinton on September 22, 2000. The RLUIPA was a response to the perception by some legislators that local agencies have used their zoning power to discriminate against or place excessive burdens and costs on religious groups. The predecessor statute to the RLUIPA was the Religious Freedom Restoration Act of 1993 ("RFRA"), which was declared unconstitutional in part by the United States Supreme Court in 1997. The RLUIPA attempted to cure the constitutional defects of the RFRA. The RFRA applied to all governmental actions, including neutral laws of general applicability, and provided that the government could not place a substantial burden on a person's exercise of religion without demonstrating a compelling government interest. In contrast, the RLUIPA is limited to a government's land use decisions and the right of certain institutionalized persons to exercise their religious beliefs.

## **Issues of Local Concern**

In the land use context, the RLUIPA prohibits the imposition of a "substantial burden" on the religious exercise of a person (including a religious assembly or institution) through a "land use regulation", unless the local agency demonstrates that the substantial burden is in furtherance of a "compelling government interest" and is the "least restrictive means" of furthering that compelling government interest. In addition, the local agency shall not 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. The local agency furthermore cannot totally exclude or "unreasonably limit" religious assemblies, institutions or structures. Finally, a local agency shall not impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

*Definitions:* The RLUIPA defines some of its terms but not others. A "land use regulation" is a zoning or landmarking law that restricts an applicant's use or development of land. This means that the RLUIPA does not affect a city's right to require compliance with building, fire or similar uniform codes, because these laws are not zoning laws. "Religious exercise" includes the exercise of any religion, whether or not compelled by, or central to, a system of religious belief. Under the RLUIPA, the use, building or conversion of real property shall be considered to be a religious exercise of the person or entity that uses or intends to use the property for that purpose. The legislative history of the RLUIPA suggests that it is possible the commercial activity of a religious institution (e.g, daycare or homeless shelters) may not be considered the exercise of religion, although the RLUIPA itself is silent on the issue.

The RLUIPA does not define what constitutes a "substantial burden" or an "unreasonable limitation." One Congressional representative's analysis states that an "unreasonable limitation" must be determined in light of all the facts, including the availability of land and the economics of the religious organization. Another analysis states that the RLUIPA does not provide applicants with immunity from land use regulation. At least one court has held that a substantial burden is one that is "oppressive to a significantly great extent."

The terms "compelling government interest" and "least restrictive means" likewise have not been defined under the RLUIPA. However, these terms have long been used in constitutional analysis of government regulation in other contexts. This standard of review is known as "strict scrutiny," which is the most stringent test for determining the constitutionality of governmental action.

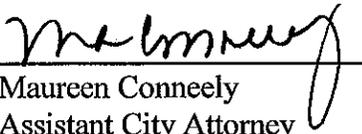
Hayward requires a conditional use permit for religious facilities and similar assemblies. Courts have held that it is not a violation of the RLUIPA for a city to require a conditional use permit for religious assemblies. It follows that a city may also condition the religious use, by imposing conditions of approval that address impacts created by the use, such as traffic, parking and noise. However, as with all conditional use permits, a city may not act in a manner that is arbitrary or capricious in imposing

conditions, and a city must support its approval or denial with factual findings specific to the application under consideration.

Judicial Action: The United States government or any interested person may bring a judicial action challenging a local agency's action in violation of the RLUIPA. A person who prevails on a RLUIPA claim may recover attorneys' fees and costs.

**Conclusion**

Local agencies must consider how best to address RLUIPA issues in its land use decisions. The burden to demonstrate that the land use regulation imposes a substantial burden is on the applicant. As in all land use decisions, the City should also make the appropriate findings to support its conclusions regarding these issues.

  
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