ALLIANCE DEFENDING
FREEDOM
FOR FAITH. FOR JUSTICE.

July 9, 2014

Mayor H. L. Roy Tyler
620 E. Main Street
Haines City, FL 33844

**Re: Haines City's Land Development Ordinance Violates the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §2000cc, *et seq.***

Dear Mayor Tyler:

It has come to our attention that Haines City's Land Development Ordinance treats churches on less than equal terms with other public assemblies or institutions, in violation of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). We write to inform you of these issues and urge you to rectify them as soon as possible.

By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to freely live out their faith. We are dedicated to ensuring that religious institutions are able to live and operate in their communities free from discrimination, and on an equal footing with other public assembly uses.

## I. Secular assemblies and institutions are treated more favorably in the Haines City Land Development Ordinance than religious assemblies or institutions.

There is unequal treatment in the Haines City Land Development Ordinance between religious institutions and assemblies and secular institutions and assemblies. For example:

- In the Agricultural Uses district, churches are required to locate on a minimum of two acres, while country clubs, private clubs, recreation clubs, and public or nonpublic academic schools have no minimum acreage requirements.

- In Single Family Residential districts, churches are required to locate on a

minimum of two acres, while public or nonpublic academic schools, public recreational facilities, and private childcare facilities have no minimum acreage requirements.

- In Multiple Family Residential districts, churches are required to locate on a minimum of two acres, while public or nonpublic academic schools and public recreational facilities have no minimum acreage requirements.

- In the Residential, Institutional, and Office district, churches are required to locate on a minimum of two acres, while public recreational facilities, public or nonpublic academic schools, private childcare facilities, private fraternal or social clubs, museums, community centers, and foster care homes have no minimum acreage requirements.

- In the General Commercial district, churches are required to locate on a minimum of two acres, while convention centers and commercial recreational facilities have no minimum acreage requirements.

## II. RLUIPA requires churches to be treated equally with other public assembly uses.

RLUIPA states: "No government shall 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." 42 U.S.C. §2000cc(b)(1).

There is a straightforward test for determining whether a church is receiving equal treatment: is a religious assembly or institution subject to a land use regulation that treats it less favorably than nonreligious assemblies or institutions? *See Primera Iglesia Bautista Hispana v. Broward County*, 450 F.3d 1295, 1307 (11th Cir. 2006). If so, then "the offending conduct may be upheld if the defendant establishes that the conduct employs a *narrowly* tailored means of achieving a *compelling* government interest." *Id.* at 1308 (emphasis original). Thus, a zoning code violates RLUIPA unless the government can show some compelling, narrowly tailored reason why a secular assembly or institution should be given preferential treatment. It is extremely rare for a compelling reason to exist to treat secular assemblies or institutions on less than equal terms with religious assemblies or institutions.

In *Midrash Shephardi, Inc. v. Surfside*, 366 F.3d 1214 (11th Cir. 2004), the Eleventh Circuit held that allowing private clubs but prohibiting churches in a zoning district violated RLUIPA. The Surfside zoning code excluded churches from the business district, but allowed private clubs. The court first determined that both churches and private clubs qualified as an "assembly or institution":

> The SZO's definition of private club comports with a natural and ordinary understanding of "assembly" as a group gathered for a common purpose. Like churches and synagogues, private clubs are places in which groups or individuals dedicated to similar purposes—whether social, educational, recreational, or otherwise—can meet together to pursue their interests. We conclude therefore that churches and synagogues, as well as private clubs and lodges, fall within the natural perimeter of "assembly or institution."

*Id.* at 1231.

Finding that churches and private clubs were both public assemblies and were treated unequally, the court then analyzed whether the Town's reasons for such unequal treatment were compelling and narrowly tailored. The court concluded that that they were not. *See id.* at 1235 (finding no difference in the effects on a city or its residents between the two uses).

Schools, lodges, daycares, private clubs, fraternal organizations, museums, and cultural institutions plainly meet the definition of secular assemblies or institutions. *See Chabad Nova, Inc. v. City of Cooper City*, 533 F. Supp.2d 1220, 1223 (S.D. Fla. 2008) (concluding that daycare uses undoubtedly meet the definition of assemblies under RLUIPA); *Digrugilliers v. City of Indianapolis*, 506 F.3d 612, 617 (7th Cir. 2007) (holding that daycare centers are "like" churches so far as anything connected with the interests protected by zoning are concerned); *Hollywood Community Synagogue, Inc. v. City of Hollywood*, 430 F. Supp. 2d 1296, 1319 (S.D. Fla. 2006) (same); *Third Church of Christ, Scientist v. City of New York*, 626 F.3d 667 (2d Cir. 2010) (holding that hotels that catered events were a valid secular comparator to a church that wanted to cater events); *Lighthouse Institute for Evangelism v. City of Long Branch*, 510 F.3d 253, 272-73 (3d Cir. 2007) (assembly halls); *Elijah Group v. City of Leon Valley*, 643 F.3d 419, 424 (5th Cir. 2011) (clubs and lodges); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011) (holding that "membership organizations" are valid comparators to a religious assembly or institution); *Chabad Nova*, 533 F. Supp. 2d at 1223 (indoor recreation facilities which includes movie theatres).

Because churches are not treated equally with these other uses, the Haines City Land Development Ordinance violates RLUIPA, thereby exposing the City to potential liability for violating federal law. You should know that RLUIPA contains a provision for the City to reimburse the attorneys' fees and costs of a successful litigant. *See* 42 U.S.C. §1988(b).

## III. Recommendation.

The City should amend its unlawful Land Development Ordinance to treat churches on equal terms with secular assemblies or institutions. In the examples listed above, the City can remedy the RLUIPA violation by amending its Land Development Ordinance in the following ways:

- Remove the two acre requirement for churches in the Agricultural Uses districts; Single Family Residential districts; Multiple Family Residential districts; Residential, Institutional, and Office district; and General Commercial district.

## IV. Conclusion.

While Haines City is enforcing its unlawful Land Development Ordinance, this letter is being sent in a spirit of cooperation. We hope the information will assist you in correcting the Ordinance, and we are available to assist with these revisions if you so desire. If the City wishes to avoid litigation, please advise us by **August 8, 2014** of the revisions you intend to make.

We look forward to hearing from you and trust that the City will take appropriate steps to protect the rights of its churches from unequal treatment.

Sincerely,

Christiana Holcomb, Litigation Counsel
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
cholcomb@alliancedefendingfreedom.org

Joshua Grosshans
Mateer Harbert
Suite 600, Two Landmark Center
225 E. Robinson Street
Orlando, FL 32801
jgrosshans@mateerharbert.com

cc: Kenneth Kipp, Vice Mayor, City Commissioner Seat No. 5
Don Mason, City Commissioner Seat No. 1
Horace West, City Commissioner Seat No. 2
Ronnie Cotton, City Commissioner Seat No. 3