



Northern
California

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VIA EMAIL

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RE: Conditions of Approval for West Valley Muslim Association Conditional Use Permit

Dear Mr. Mullin:

We are writing again on behalf of the ACLU and the ACLU Foundation of Northern California regarding the West Valley Muslim Association's (WVMA) pending Conditional Use Permit (CUP) at 16769 Farley Road.

In September 2024, the Town requested that WVMA file to modify its CUP to extend its hours to allow for indoor, non-amplified pre-sunrise and evening prayers, in addition to nightly Ramadan prayers in accordance with the Islamic faith.¹ In response, Los Gatos (the Town) provided recommended Conditions of Approval that would extend the hours of the mosque under the CUP, but additionally imposed several highly restrictive requirements on how WVMA may use its space. Other CUPs for similarly situated non-religious and religious institutions in R-1 zoning areas do not impose comparable restrictions. We again hope to remind the Town of its obligations under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Under RLUIPA, the government cannot impose or implement "a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination."² Further, it mandates that "[n]o 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."³ The statute also stipulates that municipalities

¹ Town of Los Gatos, *Pending Planning Projects* (last accessed Nov. 17, 2025), <https://www.losgatosca.gov/2386/F>.

² 42 U.S.C. § 2000cc(b)(2).

³ *Id.* § 2000cc(b)(1).

cannot impose a “substantial burden” on a permit applicant’s religious exercise unless that burden is “in furtherance of a compelling governmental interest” and “is the least restrictive means of furthering that compelling governmental interest.”⁴ The restrictions set out by the Town in its recommended Conditions of Approval for WVMA’s CUP could impose undue burdens that are inconsistent with the protections under these RLUIPA provisions.

I. Unequal Land Use Conditions May Evidence Intentional Denominational Discrimination Under RLUIPA.

Courts have specifically recognized the “vulnerability of religious institutions—especially those that are not affiliated with the mainstream Protestant sects or the Roman Catholic Church—to subtle forms of discrimination . . . [in] the grant or denial of zoning variances.⁵ In RLUIPA cases, a government’s unequal application of land use regulations to similarly situated religious institutions may constitute evidence of intentional discrimination on the basis of denomination.⁶

Here, Los Gatos recently issued a CUP to a similarly situated religious institution, Faith Lutheran, in April 2025 with terms that are much less restrictive than what the Town has proposed to impose upon WVMA. These much less restrictive conditions show that the Town can impose similarly limited conditions on WVMA as well, and its decision not to do so will raise RLUIPA concerns.

Like WVMA, Faith Lutheran is located in a R-1 zone, a low-density area surrounded by single-family residences, and sits on a 8,000 square foot lot.⁷ Further, like WVMA, Faith Lutheran’s maximum hours of operation under the CUP extend beyond the Town’s quiet hours.⁸ The Church’s CUP allows it to hold committee meetings as late as midnight daily and to hold services as early as 7:00 a.m. on Sundays.⁹

Yet, despite the identical zoning conditions of Faith Lutheran’s lot and the similarities in its allowed use of its premises, Faith Lutheran’s approved CUP is not burdened by many of the restrictions that the Town proposes to place on WVMA. For example, the recommended Conditions of Approval the Town provided to WVMA require that one year after its permit

⁴ *Id.* § 2000cc(a).

⁵ *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 900 (7th Cir. 2005).

⁶ 42 U.S.C. § 2000cc(b)(2); *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 199 (2d Cir. 2014) (finding that government treatment of similarly situated institutions is “germane” to assessing RLUIPA nondiscrimination claims).

⁷ See Los Gatos Planning Commission, *Conditions of Approval 16548 Ferris Avenue* (Apr. 23, 2025), <https://mccmeetingspublic.blob.core.usgovcloudapi.net/losgatos-meet-fd16a2b9d1f24ecaba20c1ca9a3cd1df/ITEM-Attachment-005-2e7c41ee25964434b4d3b7f6b1220ea9.pdf> [hereinafter Faith Lutheran CUP Conditions of Approval].

⁸ Los Gatos Code of Ordinances § 16.20.010 (prohibiting noise disturbances between 10 p.m. and 8:00 a.m.).

⁹ Faith Lutheran CUP Conditions of Approval at ¶¶ 5, 9.

approval, the mosque fund a compliance review.¹⁰ Under this condition, if the Town determines there are unmitigated impacts of WVMA’s increased hours, then the Town can develop reasonable additional conditions of approval that WVMA cannot “unreasonably reject.”¹¹ This condition opens the door for WVMA to have to essentially redo the CUP process in a year. It is our understanding that no such condition exists within Faith Lutheran’s CUP.

Further, Faith Lutheran’s CUP also includes a less stringent parking control plan as compared to what the Town seeks to impose on WVMA. The recommended Conditions of Approval provided to WVMA stipulate that the mosque may need to implement a parking overflow plan whenever it hosts an event with more than 100 attendees—even though WVMA’s parking lot has 180 spots.¹² Under this condition, the mosque must provide for overflow parking and implement a shuttle program to the mosque as part of the parking overflow plan.¹³ The recommended Conditions of Approval also stipulate that WVMA must create a passenger loading zone on-site for the sole purpose of facilitating convenient drop-off, pick-up, or short duration loading.¹⁴ By contrast, Faith Lutheran’s CUP only requires it to create a parking overflow plan in the express event that it cannot accommodate parking for attendees.¹⁵ The conditions also give Faith Lutheran more options for managing parking than just implementing a overflow parking/shuttle plan, allowing it to provide “additional overflow parking which meets Town standards, stagger or modify activities/event times or days, provide an off-site park-n-ride program, and /or [implement] other measures to mitigate the parking impacts as required by the Town.” The conditions also do not require that Faith Lutheran implement a passenger loading zone.¹⁶

Additionally, WVMA’s Recommended Conditions of Approval contain several more conditions that restrict WVMA and burden its religious exercise beyond those applied to Faith Lutheran:

- While WVMA’s Recommended Conditions of Approval restrict deliveries occurring outside 8:00 a.m. to 8:00 p.m. Monday through Friday, Faith Lutheran’s CUP contains no restrictions on delivery times.¹⁷

¹⁰ Los Gatos Planning Commission, *Recommended Conditions of Approval 16769 Farley Road* (Aug. 29, 2025) ¶ 34 [hereinafter WVMA Recommended Conditions of Approval].

¹¹ *Id.*

¹² WVMA Recommended Conditions of Approval ¶ 24

¹³ *Id.* We note that this could also constitute a substantial burden on religious exercise. Given the required prayer times, and the short window between breaking fast and the night prayer in Ramadan, offsite parking may make it such that congregants are unable to attend prayer in accordance with their faith.

¹⁴ WVMA Recommended Conditions of Approval ¶ 20.

¹⁵ Faith Lutheran CUP Conditions of Approval at ¶ 12.

¹⁶ *Id.*

¹⁷ See WVMA Recommended Conditions of Approval ¶ 31; Faith Lutheran CUP Conditions of Approval.

- While WVMA’s Recommended Conditions of Approval do not allow it to use the mosque for any commercial activities or allow use of the mosque by any separate entity without approval by the Community Development Director, Faith Lutheran’s CUP contains no such restriction.¹⁸
- While WVMA’s Recommended Conditions of Approval state that where there is ambiguity concerning the provisions of the CUP, the more restrictive interpretation will govern by default, Faith Lutheran’s CUP contains no such provision.¹⁹

The Town’s proposal to impose stricter conditions on WVMA than on Faith Lutheran, despite both being in an identical zoning category and using their premises similarly, raises concerns under RLUIPA.

The Town contends that the restrictive nature of the conditions it attempts to impose on WVMA are not discriminatory. Instead, it argues that it is beginning to impose stricter conditions on all non-residential institutions that exist in R-1 zones. But WVMA filed its request to modify its CUP in September 2024, four months before Faith Lutheran filed for a modified CUP in January 2025.²⁰ Even though the more restrictive recommended Conditions of Approval were not delivered to WVMA until August 2025, a few months after Faith Lutheran’s CUP was approved in April 2025, the close timing between the consideration of the CUPs and the vastly different imposition of recommended restrictions begs the question of what prompted the Town to change its permitting policies.

When analyzing whether discriminatory intent motivated certain land use regulations, courts, following equal protection precedent, will examine “the series of events leading up to a land use decision, the context in which the decision was made, whether the decision or decision-making process departed from established norms, statements made by the decision-making body and community members, reports issued by the decision-making body, whether a discriminatory impact was foreseeable, and whether less discriminatory avenues were available.”²¹ Here, the Town’s decision to depart from its established norms of issuing CUPs at the moment WVMA tried to modify its permit could suggest discriminatory intent.

¹⁸ See WVMA Recommended Conditions of Approval ¶ 9; Faith Lutheran CUP Conditions of Approval.

¹⁹ See WVMA Recommended Conditions of Approval ¶ 5; Faith Lutheran CUP Conditions of Approval.

²⁰ Letter from Joel Paulson, Community Development Director, to Los Gatos Planning Commission (Apr. 18, 2025) (Subject: Consider a Request for Approval to Modify an Existing Conditional Use Permit for an Increase in the Hours of Operation in a Nursery School (Mariposa Montessori School) on Property Zoned R-1:8).

²¹ *Calvary Chapel Bible Fellowship v. Cnty. of Riverside*, No. CV16-259 PSG (DTBX), 2017 WL 6883866, at *12 (C.D. Cal. Aug. 18, 2017), *aff’d*, 948 F.3d 1172 (9th Cir. 2020).

II. RLUIPA Prohibits Governments from Imposing Land Use Regulations that Treat a Religious Institution on Less Than Equal Terms with a Similarly Situated Nonreligious Institution.

Under RLUIPA's equal terms provision, a religious institution cannot be treated less than equally with a similarly situated non-religious institution if the two institutions cannot be distinguished on the basis of accepted zoning criteria.²² Accepted zoning criteria are the objective characteristics of a particular use that determine whether a use should be excluded from a zone, given the purpose for which the zone was established.²³ According to the Los Gatos Code of Ordinances, the R-1 zoning category, in which WVMA is located, is intended to "assure adequate light, air privacy and open space for each dwelling, minimize traffic and parking congestion, and reduce hazards from encroachment of industry and commercial activity."²⁴ Like WVMA, the Rinconada Country Club in Los Gatos operates within the R-1 zone under a CUP that allows it to remain open beyond the Town's quiet hours, from 7 a.m. to 1 a.m. daily.²⁵ Thus, the country club raises similar threats of creating additional traffic, parking congestion, and noise in a residential area.²⁶ But despite its similar situation to WVMA, the country club operates under more favorable terms under its CUP.

Unlike WVMA, La Rinconada Country Club is not subject to any compliance review and is not required to develop a parking overflow plan if it cannot accommodate all of its guests.²⁷ Its CUP does not require it to provide notice to neighbors for events where there may be more than 100 attendees.²⁸ The CUP also does not restrict the country club from receiving weekend deliveries or include any terms stipulating that where the permit is ambiguous, the more restrictive interpretation of each provision will apply.²⁹

The Town's treatment of La Rinconada Country Club shows that it can and does impose less restrictive requirements on similarly situated nonreligious institutions, yet WVMA faces stricter conditions that could violate RLUIPA's equal terms provision.

²² 42 U.S.C. § 2000cc(b)(1); *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1173 (9th Cir. 2011).

²³ *Id.*; *Corp. of the Cath. Archbishop of Seattle v. City of Seattle*, 28 F. Supp. 3d 1163, 1168 (W.D. Wash. 2014).

²⁴ Los Gatos Code of Ordinances § 29.40.380.

²⁵ *Id.* § 16.20.010 (prohibiting noise disturbances between 10 p.m. and 8:00 a.m.); Los Gatos Planning Commission, *Conditions of Approval 13595 Clearview Drive* (May 11, 2011), <https://www.losgatosca.gov/DocumentCenter/View/21927/14595-Clearview-Drive---U-11-002> [hereinafter *La Rinconada Country Club Conditions of Approval*].

²⁶ See Los Gatos Code of Ordinances § 29.40.380.

²⁷ See WVMA Recommended Conditions of Approval ¶¶ 24, 34; La Rinconada Country Club Conditions of Approval.

²⁸ See WVMA Recommended Conditions of Approval ¶ 29; La Rinconada Country Club Conditions of Approval.

²⁹ See WVMA Recommended Conditions of Approval ¶ 31; La Rinconada Country Club Conditions of Approval ¶¶ 9, 20 (restricting hours but not days of deliveries and requiring notice for deliveries of sand).

III. Governments Cannot Impose Land Use Regulations that Substantially Burden Religious Exercise Unless Narrowly Tailored to a Compelling Government Interest.

RLUIPA also prohibits the imposition of substantial burdens on religious exercise that are not narrowly tailored to a “compelling governmental interest.”³⁰

Under the statute, “religious exercise” encompasses more than prayer alone; it includes any exercise of religion, “whether or not compelled by, or central to, a system of religious belief.”³¹ This term has been interpreted broadly to include activities like feeding the hungry, creating religious transitional housing, and creating religious education institutions.³² Accordingly, RLUIPA does not only protect WVMA’s right to host patrons at prayer times; it also protects all religious activity that takes place at the mosque, including religious education classes, community activities, and religious ceremonies. Any land use regulations that create significant “delay, uncertainty, and expense” for these activities could thus violate RLUIPA if not narrowly tailored to a compelling government interest.³³ To justify such regulations with a “compelling interest,” the government must raise a concern of “the highest order.”³⁴ General appeals to public safety, health, traffic, and property values are typically not sufficiently compelling to meet this exacting standard.³⁵

Several restrictions in the recommended Conditions of Approval the Town provided for WVMA could burden religious exercise by creating “delay, uncertainty, and expense” without a compelling government interest. For example, WVMA has already submitted a parking study to increase its parking spaces from 180 to over 203. Nonetheless, the Town’s Recommended Conditions of Approval would require WVMA to submit another parking study by a specified date and may require the mosque to develop a parking overflow plan and shuttle service for any event with over 100 attendees.³⁶ These conditions are unnecessary given that WVMA has already submitted a recent parking study and that it can easily host up to 180 vehicles without creating parking congestion in the surrounding area. Moreover, these restrictive conditions would create great expense for WVMA and are delaying WVMA’s ability to obtain its permit allowing extended hours so its members can practice their faith.

³⁰ 42 U.S.C. § 2000cc(a).

³¹ 42 U.S.C. § 2000cc-5(7).

³² *St. Timothy's Episcopal Church by and through Diocese of Oregon v. City of Brookings*, 726 F.Supp.3d 1231, 1244 (D. Or. 2024); *City Walk - Urban Mission Inc. v. Wakulla County Florida*, 471 F.Supp.3d 1268, 1282-83 (N.D. Fla. 2020); *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona* 915 F.Supp.2d 574, 629 (S.D.N.Y. 2013).

³³ *Guru Nanak Sikh Soc. of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 991 (9th Cir. 2006).

³⁴ *Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007).

³⁵ *Id.*

³⁶ WVMA Recommended Conditions of Approval ¶ 24.

Other conditions, too, infringe upon WVMA members' ability to worship at the mosque. Though the Recommended Conditions extend the mosque's hours to allow for pre-sunrise and nightly prayers, they simultaneously require that all doors and windows facing residences be shut during the Town's quiet hours.³⁷ WVMA faces residences on all sides. Such a condition would prevent anyone from entering or leaving the mosque before or after prayers that take place during these hours, essentially blocking Muslim residents' ability to engage in evening (Isha) and pre-sunrise (Fajr) prayers in congregation, as is highly encouraged by the religion.³⁸

* * *

We urge the town to take seriously RLUIPA's religious-freedom protections and to provide new recommended Conditions of Approval that treat WVMA on equal ground with other religious and nonreligious institutions in Los Gatos. Please feel free to contact us if you have any questions.

Sincerely,

Angélica Salceda, Director
Democracy, Speech, and Technology Project
ACLU Foundation of Northern California

Daniel Mach, Director
ACLU Program on Freedom of Religion and Belief

Lauren Davis, Legal Fellow
ACLU Foundation of Northern California

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ACLU Foundation of Northern California

³⁷ WVMA Recommended Conditions of Approval ¶ 15(d).

³⁸ "Whoever prays Isha in congregation, it is as if he spent the night in prayer, and whoever prays Fajr in congregation, it is as if he spent the whole night in prayer." Saheeh Muslim 656. "If they knew the reward in Isha and Fajr prayer, they would come to [the prayers] even if they had to crawl." Al-Bukhaari 615; Saheeh Muslim 437.