



City of Somerton

110 N. State Avenue
P.O. Box 638
Somerton, Arizona 85350

(928) 722-7400
Fax: (928) 627-3794

August 17, 2017

Evan Daniels
Assistant Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: City of Somerton Zoning Ordinance

Dear Mr. Daniels,

The City of Somerton is in receipt of your letter dated August 10, 2017. I would like to inform you that the City has initiated a process to amend our Zoning Ordinance in reference to Religious Assemblies, following recommendation from the US Department of Justice.

I have attached, for your reference, the latest communication with the Department of Justice, Civil Rights Division-Housing and Civil Enforcement Section, including the changes we are proposing as well as a Project Schedule showing each step of the amendment process along with specific timelines.

Please, review the attached information and if you need additional information or have any questions, feel free to contact me at 928-722-7399 or Attorney William Sims at 602-772-5501. Mr. Sims is handling this investigation from the Department of Justice.

Respectfully,

Carmen J. Juarez
Community Development Director



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CIVIL LITIGATION DIVISION
GOVERNMENT ACCOUNTABILITY & SPECIAL LITIGATION UNIT

EVAN DANIELS
ASSISTANT ATTORNEY GENERAL
(602) 542-7751
EVAN.DANIELS@AZAG.GOV

August 10, 2017

Carmen J. Juarez
Director, Community Development
City of Somerton
150 W Main Street
P.O. Box 638
Somerton, AZ 85350

Re: City of Somerton Zoning Ordinance

Dear Director Juarez,

It has come to the attention of the Arizona Attorney General that the City of Somerton's zoning ordinance may directly conflict with Arizona law. The purpose of this letter is to encourage the City to amend its zoning ordinance to avoid any potential legal action.

In 2010, the Arizona Legislature added a land use provision to the state's Free Exercise of Religion Act ("FERA") that mirrors federal law and generally protects Arizona citizens' right to practice religion without undue government interference. The added provision, A.R.S. § 41-1493.03, states in relevant part: "Government 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, regardless of a compelling government interest."

Despite this provision, the City of Somerton's zoning ordinance requires religious assemblies to obtain conditional use permits in "mixed use districts." However, the ordinance provides that similar non-religious assemblies, including community recreation centers, fraternal or social clubs, and social service facilities, do not have the same permitting requirement. Thus, the City's zoning ordinance treats religious assemblies "on less than equal terms" with non-religious assemblies—a seemingly direct violation of A.R.S. § 41-1493.03.

Please let me know if you have any questions.

Sincerely,

Evan Daniels
Assistant Attorney General

SIMS ■ MURRAY

2020 North Central Avenue
Suite 670
Phoenix, Arizona 85004
P: 602-772-5500 F: 602-772-5509

William J. Sims III
Direct Line: 602-772-5501
wjsims@simsmurray.com

July 14, 2017

Eliza H. Simon
U.S. Department of Justice
Civil Rights Division-Housing and Civil Enforcement Section
1800 G Street, NW, Suite 7002
Washington, DC 20006

Re: RLUIPA Investigation

Dear Ms. Simon:

I thank you for your patience in awaiting my response. We pulled together all the zoning materials to address the questions you raised but were not able to connect with the City Prosecutor until today.

Attached as Exhibit A is the proposed Zoning Text Amendment that will be processed as Zoning Ordinance Text Amendment Case #ZOTA01-17 in accordance with the Schedule attached as Exhibit B that we previously submitted. This schedule reflects the City Code requirement for two readings. Not every city or town in the State of Arizona requires two readings, but Somerton does so that the members of the public become better aware of changes to city ordinances. I could send you the relevant City Ordinance that requires two readings if that would be helpful.

I confirmed with the Somerton City Prosecutor this afternoon that the matter of *State v. Stephen Henry*, Case No. M1442CR01700007, currently in the City of Somerton Municipal Court, arising out of the failure to obtain a Conditional Use Permit will be dismissed with prejudice. That dismissal has not yet occurred because the Prosecutor has not been able to finalize the dismissal with Mr. Henry's counsel.

Again, thank you for your patience. If I can provide any additional information, please let me know.

Sincerely,



William J. Sims

cc: Bill Lee
Carmen Juarez

EXHIBIT A

SECTION 2 – ZONING DISTRICTS

Table 2.2-1: TABLE OF ALLOWED USES FOR AGRICULTURE DISTRICTS					
Use Category	Specific Use Type	P = Permitted Use C = Conditional Use X = Prohibited Use			
		Agriculture Zoning Districts			
		AG-20	AG-10	AG-5	Supplemental Use Regulations
Residential Use Category	Dwelling, Modular Home	P	P	P	
	Dwelling, Manufactured Home	P	P	P	3.1.3.B
	Dwelling, Mobile Home	C	C	C	3.1.3.A
	Assisted Living Home	C	C	C	
	Group Home	P	P	P	3.1.3.J
	Day Care, Home	C	C	C	3.1.3.E
Public and Semi Public Use Category	Arboretum or botanical garden	C	C	C	
	Campground and Camps	C	C	C	
	Cemetery	C	C	C	3.1.4.B
	Community Playfields and Parks	P	P	P	
	Nature Preserves, Non-Profit	P	P	P	
	Public Safety Facility	P	P	P	
	Religious Assembly	P	P	P	
	School, Boarding	C	C	C	3.1.4.D
	School, Public or Private, K-8	C	C	C	3.1.4.D
	School, Public or Private, 9-12	C	C	C	3.1.4.D
	Solar Generation Facility	C	C	C	3.1.4.E
	Utility Facility and Service Yard, Major	C	C	C	
	Utility Facility, Minor	P	P	P	
Wireless Facility (including tower and supporting facilities)	C	C	C	3.1.4.F	
Agriculture Use Category	Agribusiness, Entertainment Farming	P	P	P	
	Agriculture, General	P	P	P	3.1.2.A
	Agriculture, Processing	C	C	X	
	Agriculture, Storage	P	P	P	
	Greenhouse	P	P	C	
	Intensive Animal Operation	P	C	X	3.1.2.B
	Nursery, Commercial	P	P	C	
	Nursery, Wholesale	P	P	C	
	Ranching, Commercial	P	C	C	3.1.2.C
Commercial Use Category	Animal, Kennel	P	P	P	
	Animal Training School	P	P	C	
	Bed and Breakfast	C	C	C	3.1.5.B
	Farmers Market	P	P	P	
	Feed Store	P	P	P	
	Flea Market	P	P	P	
	Resort, Cabins, Lodges	C	C	X	

SECTION 2 – ZONING DISTRICTS

Table 2.3-1: TABLE OF ALLOWED USES FOR RESIDENTIAL DISTRICTS											
Use Category	Specific Use Type	P = Permitted Use C = Conditional Use X = Prohibited Use									
		Residential Zoning Districts									
		SR	R1-18	R1-10	R1-8	R1-6	MH/RV	R-2	R-3	Supplemental Use Regulations	
	Manufactured Home, park or subdivision	X	X	X	X	X	P	X	X	3.1.3.C	
	Recreational Vehicle, Park	X	X	X	X	X	P	X	X	3.1.3.D	
	Assisted Living Center	X	X	X	X	X	X	C	C	3.1.3.G	
	Assisted Living Home	P	P	P	C	C	C	C	C	3.1.3.H	
	Nursing Home	X	X	X	X	X	X	C	C	3.1.3.I	
	Group Care Home	P	P	P	P	P	X	P	C	3.1.3.J	
	Day Care Home	C	C	C	C	C	X	C	C	3.1.3.E	
Public and Semi Public Use Category	Arboretum or Botanical Garden	C	C	C	C	C	X	C	C		
	Assembly Hall/Auditorium	C	C	C	C	C	C	C	C		
	Campground and Camps	C	X	X	X	X	X	X	X		
	Cemetery	C	C	C	C	C	C	C	C	3.1.4.B	
	College or University	X	X	X	X	X	X	C	C	3.1.4.D	
	Community Playfields and Parks	P	P	P	P	P	P	P	P		
	Community Recreation Center	P	P	P	P	P	P	P	P		
	Country Club, Private Membership	P	P	P	P	P	P	P	P		
	Day Care, Center	X	X	X	X	X	X	C	C	3.1.3.F	
	Fraternal or social Club, Nonprofit	X	X	X	X	X	X	C	C		
	Library	X	P	P	P	C	X	C	C		
	Public Safety Facility	P	P	P	P	P	P	P	P		
	Religious Assembly	C	C	C	C	C	C	C	C	C	3.1.4.A
	School, Boarding	C	C	C	X	X	X	C	C	3.1.4.D	
	School, Public or Private, K-8	C	C	C	C	C	X	C	C	3.1.4.D	
School, Public or Private, 9-12	C	C	C	C	C	X	C	C	3.1.4.D		

SECTION 2 – ZONING DISTRICTS

Table 2.4-1: TABLE OF ALLOWED USES FOR MIXED-USE DISTRICTS			
Use Category	Specific Use Type	P = Permitted Use C = Conditional Use X = Prohibited Use	
		Mixed-Use Zoning Districts	
		MSC	Supplemental Use Regulations
Residential Use Category	Dwelling, Single-Family Attached	P	2.3.5
	Dwelling, Multi-Family	P	2.3.5
	Dwelling, Townhouse	P	2.3.5
	Assisted Living Center	C	3.1.3.G
	Assisted Living Home	C	3.1.3.H
	Nursing Home	C	3.1.3.I
	Group Care Home	C	3.1.3.J
	Group Recovery Home/Treatment Facility	C	
	Day Care, Home	C	3.1.3.E
Public and Semi Public Use Category	Arboretum or botanical garden	P	
	Assembly Hall/Auditorium	C	
	Bus Terminal	P	
	College or University	P	3.1.4.D
	Community Playfields and Parks	P	
	Community Recreation Center	P	
	Day Care, Center	C	3.1.3.F
	Fraternal or Social Club, Nonprofit	P	
	Government Offices and Civic Buildings	P	
	Health Care Related Facility or Clinic	P	
	Hospitals	P	3.1.4.C
	Library	P	
	Museum, Cultural Facility (Public)	P	
	Public Safety Facility	P	
	Religious Assembly	C	3.1.4.A
	School, Boarding	C	3.1.4.D
	School, Public or Private, K-8	C	3.1.4.D
	School, Public or Private, 9-12	C	3.1.4.D
	Social Service Facility	P	
	Utility Facility, Minor	P	
Commercial Use Category	Alcoholic Beverages, Retail Sale	P	
	Animal Hospital	C	3.1.5.A
	Automobile, Repair Minor	C	
	Automobile, Sales And Leasing	C	
	Bar, Lounge, or Tavern	P	
	Business Services	P	
	Car Wash	C	3.1.5.I

SECTION 2 – ZONING DISTRICTS

5. High traffic-generating uses that are likely to generate “significant” levels of vehicular traffic (e.g. due to shipping, receiving, and/or customer traffic) in the MSC district shall require a Conditional Use Permit. “Significant traffic” means that the average number of daily trips, or the average number of peak-hour trips, on any existing street would increase by ten (10) percent or more as a result of the development. The City may require a traffic impact analysis prepared by a qualified professional prior to accepting a land use application and determining whether the proposed use requires a Conditional Use Permit. The Conditional Use Permit shall include appropriate transportation improvement requirements, as identified by the traffic analysis.

2.5. COMMERCIAL DISTRICTS

2.5.1. General Purpose of Commercial Districts

One of the major purposes of the regulations governing development in commercial zoning districts is to ensure that a full range of retail and office uses are available throughout the city so that residents can fulfill all or most of their needs within easy driving and, ideally within easy walking and/or biking distance of their homes. The location of land within each commercial district must be carefully selected and design and development standards created to minimize the potential adverse impacts of commercial activity on established residential areas.

2.5.2. Commercial Districts

The commercial districts are:

Neighborhood Commercial (C-1). The Neighborhood Commercial (C-1) Zoning District is intended to promote and preserve convenient shopping areas, which contain retail and service establishments to meet the needs of nearby residents and local neighborhoods.

General Commercial (C-2). The General Commercial (C-2) Zoning District is intended to permit the full range of commercial activities deemed suitable to serve the community at large. This district typically includes uses associated with regional shopping centers. The C-2 zoning district identifies areas along major corridors appropriate for medium to large scale commercial uses, emphasizing community serving retail, office and service uses.

2.5.3. Commercial Use Standards

Table 2.5-1 (Table of Allowed Uses for Commercial District) identifies the uses of land allowed by this Zoning Code in each Commercial Zoning District, and the land use permit required to establish each use. In the Table, the land use regulations for each Commercial Zoning District are established by letter designations as follows:

- “P” designates use classifications permitted.
- “C” designates use classifications permitted on approval of a Conditional Use Permit.
- “X” designates a prohibited use.

Use classifications not listed are prohibited. The “Supplemental Use Regulations” refers to additional regulations that are applicable to the subject use and denotes the section in which the information is located; however, provisions in other sections of this Ordinance may also apply.

SECTION 2 – ZONING DISTRICTS

Table 2.5-1: TABLE OF ALLOWED USES FOR COMMERCIAL DISTRICTS				
Use Category	Specific Use Type	P = Permitted Use C = Conditional Use X = Prohibited Use		
		Commercial Zoning Districts		
		C-1	C-2	Supplemental Use Regulations
Residential Use Category	Assisted Living	C	P	3.1.3.G
	Nursing Home	C	P	3.1.3.I
Public and Semi Public Use Category	Arboretum or Botanical Garden	X	P	
	Assembly Hall/Auditorium	C	P	
	Bus Terminal	X	P	
	Cemetery	C	P	3.1.4.B
	College or University	X	P	3.1.4.D
	Community Playfields and Parks	P	P	
	Community Recreation Center	P	P	
	Crematorium or Funeral Parlor	X	P	
	Day Care, Center	P	P	3.1.3.F
	Fraternal or Social Club, Nonprofit	C	P	
	Government Offices And Civic Buildings	P	P	
	Health Care Related Facility or Clinic	P	P	
	Hospitals	X	P	3.1.4.C
	Library	X	P	
	Museum, Cultural Facility (Public)	P	P	
	Public Safety Facility	P	P	
	Religious Assembly	P	P	3.1.4.A
	School, Boarding	C	C	3.1.4.D
	School, Public or Private, K-8	C	C	3.1.4.D
	School, Public or Private, 9-12	C	C	3.1.4.D
Social Service Facility	P	P		
Utility Facility And Service Yard, Major	C	C		
Utility Facility, Minor	C	C		
Wireless Facility (Including Tower and Supporting Facilities)	C	C	3.1.4.F	
Commercial Use Category	Adult Oriented Business	X	C	3.1.5.L
	Alcoholic Beverages, Retail Sale	P	P	
	Animal, Hospital	C	P	3.1.5.A
	Animal, Kennel	C	P	3.1.5.A
	Automobile, Rentals	C	P	
	Automobile, Repair Major	X	P	
	Automobile, Repair Minor	C	P	
	Automobile, Sales And Leasing	C	P	

SECTION 2 – ZONING DISTRICTS

Heavy Industrial (H-I). The principal purpose of the Heavy Industrial (H-I) Zoning District is to provide adequate space for heavy industrial operations. This district is also intended to permit the establishment of commercial uses serving the industrial areas.

2.6.3. Industrial Use Standards

Table 2.6-1 (Table of Allowed Uses for Industrial District) identifies the uses of land allowed by this Zoning Code in each Industrial Zoning District, and the land use permit required to establish each use. In the Table, the land use regulations for each Industrial Zoning District are established by letter designations as follows:

- “P” designates use classifications permitted.
- “C” designates use classifications permitted on approval of a Conditional Use Permit.
- “X” designates a prohibited use.

Use classifications not listed are prohibited. The “Supplemental Use Regulations” refers to additional regulations that are applicable to the subject use and denotes the section in which the information is located; however, provisions in other sections of this Ordinance may also apply.

Table 2.6-1: TABLE OF ALLOWED USES FOR INDUSTRIAL DISTRICTS				
Use Category	Specific Use Type	P = Permitted Use C = Conditional Use X = Prohibited Use		
		Industrial Zoning Districts		
		L-I	H-I	Supplemental Use Regulations
Public and Semi Public Use Category	Assembly Hall/Auditorium	C	X	
	Bus Terminal	P	P	
	Cemetery	P	X	3.1.4.B
	Crematorium or Funeral Parlor	P	X	
	Detention Facility	X	C	
	Government Offices and Civic Buildings	P	P	
	Hospitals	P	X	3.1.4.C
	Public Safety Facility	P	P	
	Religious Assembly	C _P	X _P	3.1.4.A
	Solar Generation Facility	P	P	3.1.4.E
	Utility Facility and Service Yard, Major	C	P	
	Utility Facility, Minor	P	P	
	Wireless Facility (Including Tower and Supporting Facilities)	P	P	3.1.4.F
Commercial Use Category	Adult Oriented Business	C	C	
	Animal Training	C	P	
	Animal, Hospital	P	X	

SECTION 3 – SUPPLEMENTARY USE STANDARDS

3.1.4. Public and Semi Public Use Category

A. (RESERVED)

~~A. Religious Assembly~~

- ~~1. The facility shall meet fire code, building code and any other applicable regulations.~~
- ~~2. Building setbacks and building height shall comply with the zoning district for which the facility is located, unless modified as part of the Conditional Use Permit process.~~
- ~~3. The facility shall comply with all parking requirements as specified in Section 4.3.~~
- ~~4. The facility shall comply with all landscaping and screening as specified in Section 4.4.~~
- ~~5. All vehicular access to the facility shall be onto an Arterial or Collector road. Prior to Conditional Use Permit approval (in residential or mixed zoning districts) or Construction Plan approval (in non-residential zoning districts):~~
- ~~6. Wherever an off-street parking area is adjacent to a residential district, a continuous obscuring wall, fence and/or landscaped area at least five (5) feet in height shall be provided.~~
- ~~7. In residential or mixed-use districts, a separate Conditional Use Permit shall be required for any additional accessory, parish house, parsonage, rectories, seminaries, recreational facility, day care or schools which were not specifically described when the CUP was originally approved.~~
- ~~8. In non-residential districts, a separate Conditional Use Permit shall be required for any accessory, recreational facility, day care or school.~~
- ~~9. Prior to Conditional Use Permit approval (in residential or mixed zoning districts) or Construction Plan approval (in non-residential zoning districts) the City may require a Traffic impact Study, particularly if the facility has a seating capacity of over three hundred (300) persons or will have services or activities during peak times on the roadway, or if there are other religious institutions or uses in the vicinity which could create traffic conflicts.~~

B. Cemetery

1. All commercial buildings on site shall meet fire code, building code and any other applicable regulations. A private on-site fire hydrant shall be provided for any structure over 500 square feet in size and over 500 linear feet from an existing fire hydrant.
2. A cemetery shall have a minimum net area of 20 acres.
3. All principle vehicular entrances and exits shall be on arterial or collector streets.
4. Uses and structures accessory to the cemetery use may include a business office, chapel, columbarium, mausoleum, and equipment storage. A funeral home or crematorium is not an accessory use.
5. All gravesites shall be setback at least 100 feet from all property lines or a future street right-of-way. All accessory buildings and structures shall be setback at least 50 feet from all property lines or a future street right-of-way.

SECTION 4 – GENERAL DEVELOPMENT REGULATIONS

Zoning Administrator, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use.

E. High traffic and parking generating uses that are likely to create "significant" levels of vehicular traffic or parking demand (e.g. due to shipping, receiving and/or customer traffic) in any District, may be required to prepare a traffic impact and/or parking analysis by a qualified professional. "Significant" traffic or parking levels means that the average number of daily trips or the average number of peak hour trips, on any existing street would increase by ten (10) percent or more as result of the use; or if the use has a seating capacity of over three hundred (300) persons; or the use will have activities during peak times that could create traffic and/or parking conflicts with other uses in the vicinity. The analysis shall propose mitigation measures as warranted.

E.F. Basis of Calculation

When calculating the number of parking spaces required results in a fractional number, any fraction exceeding one half (0.5) shall be rounded up to the nearest whole number.

4.3.5. Required Parking in Mixed Use District

Off-street parking within the Main Street Retail Core of the Main Street Corridor (MSC) zoning district, as defined by the Somerton Redevelopment Plan, shall be provided in accordance with the provisions of this Section unless specifically modified as follows:

- A. For buildings erected with building permits issued on or before October 7, 2008, no off-street parking shall be required, however any existing off-street parking previously provided for such buildings shall be maintained in accordance with Section 4.3.3.A2 of the Zoning Ordinance;
- B. For buildings containing 5,000 square feet or less gross floor area, erected with building permits issued after October 7, 2008, or for expansions of existing buildings and uses not exceeding 25% of the total existing square footage, no off-street parking shall be required; and
- C. For change of use of up to 5,000 square feet in existing buildings, no additional off-street parking shall be required, however any existing off-street parking previously provided shall be maintained in accordance with Section 4.3.3.A2 of the Zoning Ordinance; and
- D. For buildings containing more than 5,000 square feet gross floor area, erected with building permits issued after October 7, 2008, off-street parking shall be provided for the portion of the building in excess of 5,000 square feet as required by Section 4.3 of the Zoning Ordinance or pay a cash-in-lieu Parking Payment of \$2,500 per space for required parking not provided. The cash-in-lieu of payment shall be due at initial occupancy of the building, unless a Development Agreement or extended payment plan is approved by the City altering this provision.
- E. Additional parking controls and limitations may be applied to any property acquired and disposed of by the City, or for which any public assistance in development and rehabilitation is provided.

4.3.6. Alternative Parking Provisions

Where conditions preclude the provision of the number of off-street parking spaces required by Table 4.3-1, the following alternative parking provisions may be available, subject to City approval:

4.3.10. Parking Area Design and Layout Standards

In addition to meeting the applicable off-street parking requirements of this section, the following parking area design and layout regulations shall be complied with for all uses allowed in each zoning district; excluding uses in the R-1, R-2 and SR districts, unless expressly modified in the following provisions.

A. Parking Area Placement

1. Where possible for new construction, off-street parking areas should be placed behind buildings. If locating parking areas behind buildings is not possible, locating parking to the side of buildings is the next best choice. Only when it has been demonstrated that neither of these locations is feasible may parking areas be located in front of buildings or uses.

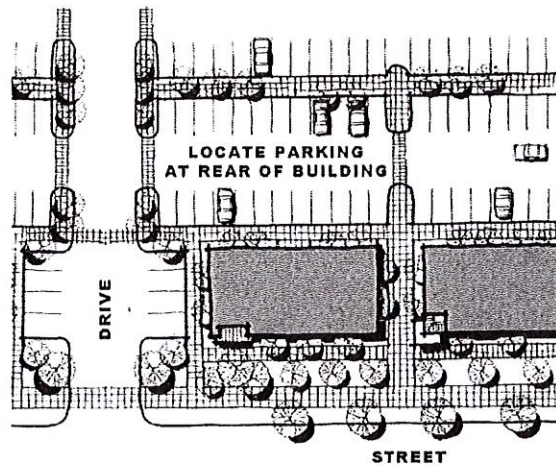


Figure 4.3-C

B. Access to Parking Areas and Parking Spaces

1. All parking areas shall provide access to a public street by means of a paved driveway that extends on-site to a point not less than twenty (20) feet from the property line.

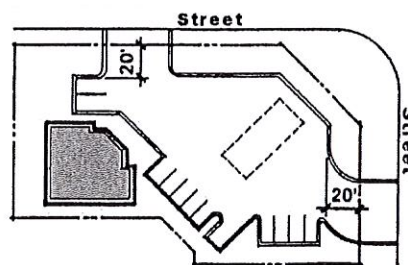


Figure 4.3-D

2. Vehicular access to non-residential parking areas located in residential districts shall be provided along Collector or above roadway classifications. Exceptions may be granted when a traffic analysis is completed by a qualified professional, at the applicants cost, that demonstrates minimal impact to local traffic conditions as a result of use of a lower roadway classification for access.

EXHIBIT B

Project Name: Zoning Ordinance Text Amendment Case #ZOTA01-17

Case Type: Minor text amendment to Zoning Ordinance

Submittal date: 7/10/17

Project Schedule:

	JUL-17	AUG-17	SEP-17	OCT-17
Pre-application meeting				
Application submittal	7/10/17			
Citizen Review Process Meeting public notice mail out by applicant with date/time/location:		Week of Aug 14-18, 2017		
Citizen Review Process Meeting held by applicant date/time/location:		Week of Aug 28- Sep 1, 2017		
Legal ad newspaper publication for 1 st public hearing, Sign posting, and 300' mail out			9/2/17	
First Public Hearing PZC			9/18/17 at 6PM	
2 nd Public Hearing CC-Ordinance 1 st reading				10/3/17 at 7PM
Ordinance 2 nd reading				10/17/17 at 7PM
Effective 30 days after 2 nd reading				Effective date: 11/17/17

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William J. Sims III
Direct Line: 602-772-5501
wjsims@simsmurray.com

July 27, 2017

Eliza H. Simon
U.S. Department of Justice
Civil Rights Division-Housing and Civil Enforcement Section
1800 G Street, NW, Suite 7002
Washington, DC 20006

Re: RLUIPA Investigation

Dear Ms. Simon:

This letter responds to your email of July 21, 2017.

Zoning Text Amendment

You suggested clarifications so that the text amendment was not so closely modeled after the deleted language that had related solely to religious assemblies. Your clarification had the added benefit of referring to a potentially larger class of uses. You will see that change at the note marked #2 on Exhibit A. You also asked about clarifying that the new language did not directly relate to the title of Section 4.3.4: "*Number of Parking Spaces Required.*" To rename that entire section caused challenges regarding other references in the Code. We propose titling the Subsection E: "*Additional Requirements for Significant Traffic and Parking Impacts*" and make it clear that this Subsection E addresses requirements in addition to the other provisions of Section 4.3.4. You will note this change at the note marked #1 on Exhibit A.

Two Separate Readings for Ordinances

You asked for an explanation for the two separate reading requirements for ordinances. That is explained more fully in Article 2-5 of the City Code: "*Ordinances, Resolutions and Contracts,*" Exhibit B.

State of Arizona v. Stephen E. Henry (M1442CR201700007)

Finally, you asked about the status of the matter of *State v Henry*. The Prosecutor's Motion for Dismissal with prejudice is Exhibit C.

July 27, 2017
Page 2

Again, thank you for your patience. If I can provide any additional information, please let me know.

Sincerely,



William J. Sims

WJS:al

cc: Bill Lee
Carmen Juarez

EXHIBIT A

SECTION 4 – GENERAL DEVELOPMENT REGULATIONS

Zoning Administrator, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use.

E. Additional Requirements for Significant Traffic and Parking Impacts

(1)

|| In addition to the requirements of Section 4.3.4, high traffic and parking generating uses that are likely to create "significant" levels of vehicular traffic or parking demand (e.g. due to shipping, receiving and/or customer traffic) in any District, may also be required to prepare a traffic impact and/or parking analysis by a qualified professional. "Significant" traffic or parking levels means that the average number of daily trips or the average number of peak hour trips, on any existing street would increase by ten (10) percent or more as result of the use; or if the use has a capacity of over three hundred (300) persons; or the use will have activities during peak times that could create traffic and/or parking conflicts with other uses in the vicinity. The analysis shall propose mitigation measures as warranted.

(2)

E-F. Basis of Calculation

When calculating the number of parking spaces required results in a fractional number, any fraction exceeding one half (0.5) shall be rounded up to the nearest whole number.

4.3.5. Required Parking in Mixed Use District

Off-street parking within the Main Street Retail Core of the Main Street Corridor (MSC) zoning district, as defined by the Somerton Redevelopment Plan, shall be provided in accordance with the provisions of this Section unless specifically modified as follows:

- A. For buildings erected with building permits issued on or before October 7, 2008, no off-street parking shall be required, however any existing off-street parking previously provided for such buildings shall be maintained in accordance with Section 4.3.3.A2 of the Zoning Ordinance;
- B. For buildings containing 5,000 square feet or less gross floor area, erected with building permits issued after October 7, 2008, or for expansions of existing buildings and uses not exceeding 25% of the total existing square footage, no off-street parking shall be required; and
- C. For change of use of up to 5,000 square feet in existing buildings, no additional off-street parking shall be required, however any existing off-street parking previously provided shall be maintained in accordance with Section 4.3.3.A2 of the Zoning Ordinance; and
- D. For buildings containing more than 5,000 square feet gross floor area, erected with building permits issued after October 7, 2008, off-street parking shall be provided for the portion of the building in excess of 5,000 square feet as required by Section 4.3 of the Zoning Ordinance or pay a cash-in-lieu Parking Payment of \$2,500 per space for required parking not provided. The cash-in-lieu of payment shall be due at initial occupancy of the building, unless a Development Agreement or extended payment plan is approved by the City altering this provision.
- E. Additional parking controls and limitations may be applied to any property acquired and disposed of by the City, or for which any public assistance in development and rehabilitation is provided.

EXHIBIT B

ARTICLE 2-5: ORDINANCES, RESOLUTIONS, AND CONTRACTS

Section

- 2-5-1 Prior approval
- 2-5-2 Introduction
- 2-5-3 Same-day passage prohibited
- 2-5-4 Two separate readings
- 2-5-5 Requirements for an ordinance
- 2-5-6 Effective date of ordinances
- 2-5-7 Signatures required
- 2-5-8 Publishing required
- 2-5-9 Posting required
- 2-5-10 City service fees to be adopted by resolution

2-5-1 PRIOR APPROVAL.

All ordinances, resolutions, and contract documents shall, before presentation to the Council, have been reviewed as to form by the Attorney and shall, when there are substantive matters of administration involved, be referred to the person who is charged with the administration of the matters. The person shall have an opportunity to present his or her objections, if any, prior to the passage of the ordinance, resolution, or acceptance of the contract.

2-5-2 INTRODUCTION.

Ordinances, resolutions, and other matters or subjects requiring action by the Council can be introduced and sponsored by a Council Member, except that the Attorney, city officials, or the Clerk may present ordinances, resolutions, and other matters or subjects to the Council, and any Council Member may assume sponsorship thereof by moving that the ordinance, resolution, matter, or subject be adopted; otherwise, they shall not be considered.

2-5-3 SAME-DAY PASSAGE PROHIBITED.

No ordinance except emergency ordinances shall be put on its final passage on the same day on which

2-5-4 TWO SEPARATE READINGS.

All ordinances, except emergency ordinances, shall have two separate readings, but the first and the second reading shall never be made on the same day. The first reading may be by title only, but the second reading shall be in full, unless the Council, in possession of printed copies of the ordinance, shall unanimously allow reading by title only.

2-5-5 REQUIREMENTS FOR AN ORDINANCE.

Each ordinance should have but one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this code or to an existing ordinance, and in that case, the title of the sections to be amended shall be included in the ordinance.

2-5-6 EFFECTIVE DATE OF ORDINANCES.

No ordinance, resolution, or franchise shall become operative until 30 days after its passage by the Council and approval by the Mayor, except measures necessary for the immediate preservation of the peace, health, or safety of the city, but such an emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative, and unless it is approved by the affirmative vote of three-fourths of all the Council Members, taken by ayes and nays.

2-5-7 SIGNATURES REQUIRED.

Every ordinance passed by the Council shall, before it becomes effective, be signed by the Mayor and attested by the Clerk.

2-5-8 PUBLISHING REQUIRED.

Only those orders, resolutions, motions, regulations, or proceedings of the Council shall be published as may be required by state statutes or expressly ordered by the Council.

2-5-9 POSTING REQUIRED.

EXHIBIT C

1 **CANDICE ORDUÑO-CROUSE**
2 **SOMERTON CITY PROSECUTOR**
3 1455 West 16th Street, Suite A-2
4 Yuma, AZ 85364
5 (928) 248-4400
6 State Bar No. 024499
7 Attorney for Plaintiff

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CITY OF SOMERTON
MUNICIPAL COURT

8 **IN THE SOMERTON MUNICIPAL COURT**
9 **COUNTY OF YUMA, STATE OF ARIZONA**

10 STATE OF ARIZONA

11 Plaintiff,

12 v.

13 STEPHEN E. HENRY,

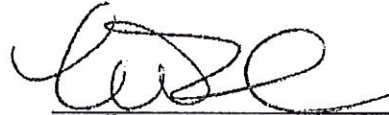
14 Defendant.

Case No.: M1442CR201700007

MOTION FOR DISMISSAL

15 Plaintiff, State of Arizona, by and through undersigned counsel, pursuant to Arizona Criminal
16 Rule 16.6, hereby moves for dismissal with prejudice of the citation issued in this matter i.e. Zoning
17 Code, CC § 2-7. This motion is made in good faith and is indispensable to the interest of justice.

18 DATED this 26th day of July, 2017.



19 Candice Orduño-Crouse
20 **SOMERTON CITY PROSECUTOR**

21 **COPY** of the foregoing mailed
22 this 26th day of July, 2017 to:

23 Ryan Hengl
24 256 S. 2nd Ave., Suite F
25 Yuma, AZ 85364
26 Attorney for Defendant

27 and **FILED** by mailing to:

28 Somerton Municipal Court
P.O. Box 458
Somerton, AZ 85350

By: AO