IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. ___________________

FORT COLLINS MENNONITE FELLOWSHIP, a Colorado nonprofit corporation, and
STEVE RAMER,

Plaintiffs,

v.

THE CITY OF FORT COLLINS, a home rule municipality,
THE CITY OF FORT COLLINS CITY COUNCIL, and
LAURIE DAVIS,
ROBERT DAVIS,
MARY RAY,
H. STUART MACMILLAN,
HOLLY JOHNSON,
LAURA PETRICK,
DAVE PETRICK,
KATHERINE ACOTT,
WALTER HICKMAN,
PATRICIA DIEHL,
LISA EATON,
FERAH AZIZ,
TARA MCCORMAC,
JENNIFER PETRIK,
PAMELA REFREM,
NICK MATTHEWS,
DENNIS BOOKSTABER,
BELL GOULD LINDER & SCOTT, P.C.
TOM HALL, and
STEVE ACKERMAN, in their individual capacities.

Defendants.

COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiffs Fort Collins Mennonite Fellowship, a Colorado nonprofit corporation (the "**Fellowship**"), and Steve Ramer, Lead Pastor ("**Ramer**"), by and through their undersigned

counsel, and for their Complaint and Request for Declaratory Judgment and Injunctive Relief against Defendants, the City of Fort Collins (the "**City**"), the City of Fort Collins City Council (the "**City Council**," and collectively with the City, the "**City Defendants**"), Laurie Davis ("**L. Davis**"), Robert Davis ("**R. Davis**"), Mary Ray ("**Ray**"), H. Stuart MacMillan ("**MacMillan**"), Holly Johnson ("**Johnson**"), Laura Petrick ("**L. Petrick**"), Dave Petrick ("**D. Petrick**"), Katherine Acott ("**Acott**"), Walter Hickman ("**Hickman**"), Patricia Diehl ("**Diehl**"), Lisa Eaton ("**Eaton**"), Ferah Aziz ("**Aziz**"), Tara McCormac ("**McCormac**"), Jennifer Petrik ("**Petrik**"), Pamela Refrem ("**Refrem**"), Nick Matthews ("**Matthews**"), Dennis Bookstaber ("**Bookstaber**"), Bell Gould Linder & Scott, P.C. ("**BGLS**"), Tom Hall ("**Hall**"), and Steve Ackerman ("**Ackerman**," and collectively with L. Davis, R. Davis, Ray, MacMillan, Johnson, L. Petrick, D. Petrick, Acott, Hickman, Diehl, Eaton, Aziz, McCormac, Petrik, Refrem, Matthews, Bookstaber, BGLS and Hall, "**Individual Defendants**," and collectively with the City Defendants, "**Defendants**"), allege as follows:

NATURE OF THE CASE

1. As part of their religious practice of the "radical inclusivity" of Jesus Christ, which "means working with, having compassion for, and getting to know people who, as Jesus said, are the 'least of us' and are often on the margins of society," the Fellowship and Ramer, planned to provide a bank of lockers outside and immediately abutting the church building so that up to 20 persons experiencing homelessness would have an opportunity to safely store their meager belongings (the "**Locker Program**"). City staff directed the proposal to the City's Planning and Zoning Board ("**PZB**"), which unanimously approved the proposal with one condition. Individual Defendants appealed the PZB's approval to the City Council which, on appeal, imposed

burdensome and restrictive conditions on the Locker Program with which the Fellowship and Ramer cannot comply. As a result, without intervention from this Court, the Fellowship and Ramer must abandon their plan to provide the Locker Program for the impoverished and destitute City residents the Fellowship had hoped to serve.

2. In this action, the Plaintiffs seek prospective relief under state and federal law, including the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. ("**RLUIPA**"); 42 U.S.C. § 1983, for violations of the United States Constitution; the Colorado constitution; Colorado Rule of Civil Procedure 57 ("**C.R.C.P. 57**"); and Colorado Rule of Civil Procedure 106(a)(4) ("**C.R.C.P. 106(a)(4)**") in connection with Defendants' discriminatory and unlawful application of the Fort Collins Land Use Code (the "**LUC**") and the Fort Collins Municipal Code (the "**FCMC**") and imposition of unreasonable, vague, and overly burdensome conditions on Plaintiffs' religious practice of ministering to individuals experiencing homelessness, by among other things, creating an opportunity for such individuals to store their limited possessions.

PARTIES AND PROPERTY

3. The Fellowship is a Colorado nonprofit corporation, and a "religious assembly or institution" under RLUIPA.

4. Ramer is the Pastor for the Fellowship.

5. The Fellowship intends to implement the Locker Program on its property at 300 East Oak Street, in the City (the "**Property**").

6. The City is a home rule municipality existing pursuant to Article XX of the Constitution of the State of Colorado; a "government" pursuant to RLUIPA; and a person acting under color of state law for purposes of 42 U.S.C. § 1983.

7. The City Council is the governing body of the City which has authority to adopt the FCMC and the LUC pursuant to the City's Home Rule Charter, and such other authorities and provisions as are established pursuant thereto, and is a government pursuant to RLUIPA and a person acting under color of state law for purposes of 42 U.S.C. § 1983. The City Council has authority to hear and decide appeals from decisions of the PZB pursuant to FCMC § 2-47.

8. Individual Defendants are individuals or entities who appealed the PZB's approval of the Locker Program to the City Council.

JURISDICTION AND VENUE

9. This Court has jurisdiction over all federal claims in this Complaint under 28 U.S.C. §§ 1331 and 1343(a).

10. This Court has supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367(a) as such claims are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy."

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391. All Plaintiffs and all Defendants are located in this district, and all events giving rise to this action occurred in this district.

GENERAL ALLEGATIONS

The Fellowship's Religious Practice

12. The Mennonite faith is a denomination of Anabaptist Christianity founded on principles of active faith, where members are charged with living their lives outwardly in accordance with the scripture of Jesus Christ.

13. The Mennonite belief in active faith includes a call of service and outreach to the most vulnerable members of the community because, according to the Fellowship's value statement (attached hereto as **Exhibit 1**) "Spirituality and Social Justice are Integrally Interwoven."

14. The Fellowship was founded in 1975 and is one of only four Mennonite congregations in the Northern Colorado region.

15. The Fellowship has owned and occupied the Property since 2002.

16. There are approximately 60 active worshipers in the Fellowship's congregation.

17. Ramer has acted in his role as Pastor for the Fellowship since 2006.

18. According to its website, the Fellowship is "called by Christ to be inclusive, compassionate, justice seeking, and peace making." In fulfilling this call, the Fellowship practices the "radical inclusivity" of Jesus, which "means working with, having compassion for, and getting to know people who, as Jesus said, are the 'least of us' and are often on the margins of society."

19. The Property has been and continues to be used for the Fellowship's religious ministry and outreach activities.

20. In accordance with its practice of "radical inclusivity," the Fellowship has a long history of ministering to individuals experiencing homelessness, including but not limited to:

twice-weekly dinners, temporary indoor living quarters, provision for a warming shelter during winter months, and educational programming, all of which occur on the Property.

21. In addition to its ministry to individuals experiencing homelessness, the Fellowship hosts a wide variety of neighborhood and community organizations every night of the week, has administrative offices for Fellowship staff on site, provides week-long shelter for low income families in partnership with a local non-profit called Faith Family Hospitality, and hosts traditional worship services open to members of the public on Sunday mornings.

22. The Fellowship has several outdoor storage sheds on the Property, which it uses to store items related to the Fellowship's religious ministry.

23. The Locker Program is a logical and integral extension of the Fellowship's religious practice of "radical inclusivity."

The City's Past Treatment of People Experiencing Homelessness and the Pilot Locker Program

24. On March 21, 2017, the City Council passed an "Appropriate Use of Public Facilities" ordinance (the "**AUPF Ordinance**"), which makes it an offense to sit, kneel, or lie on unapproved objects near transit facilities and public restrooms, and also prohibits citizens from leaving personal belongings unattended in public spaces.

25. The City Council's consideration of the AUPF Ordinance prompted fierce discussion among the City Council, the City, and City residents regarding the issue of homeless persons having no safe place to store their belongings.

26. Recognizing these consequences of the AUPF Ordinance, the City explored establishing and funding a locker project for individuals experiencing homelessness, and sought a service agency to host this pilot project.

27. These efforts culminated in a service agreement between the City and the Fellowship, entered into on September 29, 2017 (the "**Service Agreement**") (attached hereto as **Exhibit 2**). Pursuant to the Service Agreement, the Fellowship agreed to supply a row of lockers on the Property.

28. Under the Service Agreement, the City agreed to consider funding the installation and maintenance of lockers on the Property.

29. Nonetheless, on February 6, 2018, City Council voted against providing funds for the Fellowship's project.

The Fellowship Proceeds With the Locker Program

30. Following City Council's denial of funding for the Locker Program, City staff informed the Fellowship that lockers would be permitted on the Property, and that the Fellowship could proceed with the Locker Program if it was capable of securing private funding for locker installation.

31. Shortly thereafter, Ramer and the Fellowship's Leadership Board of Elders (the "**Elders**") held a meeting to discuss whether the Fellowship should proceed with a locker program. Believing that it would serve a vital function in the Fellowship's ministry and outreach to individuals experiencing homelessness, the Elders agreed to proceed with and implement the Locker Program.

32. The Fellowship conducted its own fundraising, eventually receiving a donation of thirteen lockers. The Fellowship then installed eleven lockers on the Property in a manner consistent with the previous Service Agreement.

33. The Fellowship planned to purchase seven additional lockers, in order to eventually install a total of twenty lockers on the Property.

34. On April 18, 2018, the Fellowship received a letter from the City's Planning, Development and Transportation Department ("**PDT**") purporting to require the Fellowship to seek approval for locker installation via the Minor Amendment process set forth in LUC § 2.2.10. The letter offered no rationale or explanation establishing the applicability of the Minor Amendment process to the Locker Program.

35. In response to PDT's letter, the Fellowship completed and filed the newly required Minor Amendment application (the "**Application**").

36. When Ramer asked why the City was requiring zoning approvals for the Locker Program, a City official responded by stating that it was because the lockers served members of the public.

37. The Locker Program does not purport to serve "members of the public." The Locker Program is controlled by the Fellowship and only available to individuals experiencing homelessness to whom the Fellowship ministers. The Fellowship considers the Locker Program participants to be members of the Fellowship's religious community.

<u>The City's Inconsistent Application of the Minor Amendment Process</u>

38. The LUC is the City's zoning code, containing the City's land use regulations. Relevant provisions of the LUC are attached hereto as **Exhibit 3**.

39. The Minor Amendment process is described in LUC § 2.2.10.

40. LUC § 2.2.10 is titled "Step 10: Amendments and Changes of Use," and is the tenth step in a process that otherwise includes approvals of development plans for new structures or uses.

41. The LUC does not specify what actions trigger the Minor Amendment process, and it does not define the term "minor amendment."

42. LUC § 2.2.10(A) applies the Minor Amendment process in only two scenarios: (1) "[m]inor amendments to any approved development plan, including any Overall Development Plan or Project Development Plan, any site specific development plan, or the existing condition of a platted property," or (2) "[c]hanges of use."

43. Where the development plan or site specific development plan in question was previously approved administratively—that is, by City staff—the Minor Amendment application must meet seven approval criteria set forth in LUC § 2.2.10(A)(1) in order to be approved.

44. The seven approval criteria in LUC § 2.2.10(A)(1) pertain exclusively to size, bulk, use, and character of the subject of the Minor Amendment application.

45. Pursuant to LUC § 2.2.10(A), a Minor Amendment may be approved, conditionally approved, or denied by the Director of PDT (the "**Director**").

46. LUC § 2.2.10(A)(4) authorizes the Director to refer an application for a Minor Amendment to "the decision maker who approved the development plan proposed to be amended," which may include the PZB. In such cases, "[t]he referral of minor amendments or changes of use to project development plans or final plans approved under [the] Code shall be reviewed and processed in the same manner as required for the original development plan for which the amendment or change of use is sought."

47. LUC § 2.2.10(A)(4) contains no standards to guide the Director's determination as to when a Minor Amendment application should be referred to the PZB.

48. On information and belief, the City has not historically required Minor Amendment approval for a representative sample of other small installations intended for use by non-occupants of the properties on which they are located ("**Non-Occupant Facilities**").

49. The attached **Exhibit 4** provides a summary of a public records search relating to a representative sample of Non-Occupant Facilities, including storage sheds, Little Free Libraries, bike racks, video vending machines, and ATMs, for which the City has no record indicating a Minor Amendment was required, processed, or approved.

50. On information and belief, the City has required Minor Amendment approval for outdoor storage facilities ("**Storage Facilities**") only four times dating back to at least 1970, despite processing dozens of building permits for sheds during the same timeframe. The Fellowship's own outdoor storage sheds were constructed and installed without undergoing a Minor Amendment process.

51. A Minor Amendment application referred to the PZB requires notice and a public hearing, and therefore undergoes a more burdensome review process than an administratively-reviewed application.

52. City Attorney Carrie Daggett ("**Daggett**") indicated in a letter dated July 9, 2018 that the Director has referred on a discretionary basis, "at least three" Minor Amendment applications to a hearing officer or the PZB.

53. The City's website indicates that, as of the date of filing of this Complaint, the City is currently processing over 100 applications for Minor Amendments.[1]

54. Thus, when the City does apply the Minor Amendment process, the vast majority of applications are processed administratively, as contemplated in LUC § 2.2.10(A).

The City Improperly and In a Discriminatory Manner Applied the Minor Amendment Process to the Fellowship

55. To date, the City has neither provided any LUC citation, nor does one exist, triggering any requirement for Minor Amendment approval for the Locker Program.

56. To date, the City has neither offered any justification based on the LUC, nor does one exist, for the referral of the Fellowship's Minor Amendment Application to the PZB.

57. The City has neither presented any records, nor do such records exist, indicating that the current use and development of the Property were approved by the PZB.

58. The Locker Program does not change any approved development plan, including any Overall Development Plan or Project Development Plan, any site specific development plan, or the existing condition of the Property, and it does not change the use of the Property.

59. City officials have offered shifting and ambiguous interpretations as to the applicability of the Minor Amendment process to the Locker Program, including the above-referenced statement that the Minor Amendment process applied because the Locker Program would serve members of the public.

60. In an email dated May 31, 2018, addressed to various City staff members and on which Ramer was copied, Daggett stated "the approach being taken [by the City] is not quite the

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[1] https://www.fcgov.com/developmentreview/proposals/

same as the usual process . . .” and cautioned other staff members that “the special discussions amongst staff could be used as a basis for arguing that we are treating the Church less favorably than other applicants based on the Church’s religious practices (ministering to the homeless)” (the “**May 31 Email**” attached hereto as **Exhibit 5**).

61. In her email, Daggett recognized both that the Minor Amendment process was abnormally applied in this case, and that ministering to the homeless is a distinct religious practice of the Fellowship.

62. At the PZB work session on July 13, 2018, a City staff member stated in reference to the Application that “this is one of those projects that’s **in a gray area in terms of the land use code, its applicability**. It’s, from a land use perspective, **it’s borderline how much [the Minor Amendment process] really applies** . . . .” (emphasis added).

63. Pursuant to the clear terms of the LUC, the Minor Amendment process does not apply to the Locker Program.

64. Nevertheless, the City proceeded with review of the Application under the Minor Amendment process.

65. Despite the fact that the City has no record of the PZB approving any development plan for the Property, and despite the fact that LUC § 2.2.10(A)(4) only authorizes the referral of applications where the original development plan was approved by the PZB, the Director nevertheless referred the Application to the PZB for a public hearing that was initially scheduled for May 31, 2018.

66. Prior to the scheduled PZB hearing on the Application, City staff prepared a report, dated May 31, 2018, recommending approval of the Application, on the following conditions:

(1) "[n]ightime illumination of the lockers in compliance with Land Use Code Section 3.2.4"; (2) "[i]nstallation of a security camera to monitor activity around the lockers 24/7; and (3) "[a] 24/7 contact person to respond to issues that may occur related to the storage lockers."

67. Ramer had previously offered to add a security camera and lighting.

68. In its report, City staff stated that it evaluated the Application and recommended the conditions of approval on the basis of LUC § 1.2.2(C), which states that a general purpose of the LUC is "fostering the safe, efficient, and economic use of the land, the city's transportation infrastructure, and other public facilities and services."

69. The Minor Amendment approval criteria set forth in LUC § 2.2.10(A)(1) do not include any reference to LUC § 1.2.2(C).

70. One day before the scheduled PZB hearing, on May 30, 2018, Deputy City Manager Jeff Mihelich ("**Mihelich**") informed Ramer via email that the hearing had been postponed due to "some reservations regarding the safety of the proposed use."

71. Under the LUC, Mihelich has no authority to review Minor Amendment applications.

72. After the postponement of the PZB hearing, City staff rescinded the initial staff report and issued a revised report, dated July 19, 2018, again recommending approval of the Application, with the following conditions: (1) "[i]nstall a security camera to monitor activities around the lockers and retain security footage for 7 days"; (2) "[c]hurch staff must be present during hours of operation"; (3) "[l]imit locker operation between 8 AM and 8 PM"; and (4) "[r]estrict access to the lockers outside of normal hours of operation of the lockers."

73. City staff once again relied on LUC § 1.2.2(C)'s general purpose of "fostering the safe, efficient, and economic use of the land" in offering the updated recommendation.

74. On July 19, 2018, at the rescheduled public hearing, the PZB considered the Application. Ramer and representatives of the Fellowship testified in support of the Application and stated that approval of the Application with the conditions as proposed by City staff would effectively prohibit the Fellowship from operating the Locker Program.

75. At the PZB hearing, several neighbors of the Property offered testimony for and against the Application. Neighbors opposed to the Application offered comments regarding a variety of unsubstantiated fears and vague safety concerns.

76. After considering the testimony at the hearing and record of the Application, the PZB subsequently approved the Application with only one condition: that the Fellowship install a security camera to monitor activities around the lockers with footage retained for seven days (the "**Approval**," relevant portions of the hearing transcript referencing the motion made for, and final approval of, the Application are attached hereto as **Exhibit 6**).

77. Following the Approval, Ramer and the Fellowship complied with the condition of approval by installing a security camera, opened some of the lockers, and began allowing Locker Program participants to store their belongings in the opened lockers.

Neighbors Appeal the PZB's Approval

78. On August 2, 2018, L. Davis filed a Notice of Appeal on behalf of herself and 46 other individuals, challenging the Approval (the "**Appeal**"). In a statement appended to the Appeal, the appellants argued, *inter alia*, that the PZB erred in approving the Application because it failed to apply all of the conditions recommended in the staff report.

79. City Council conducted a public hearing considering the Appeal on October 9, 2018 (the "**Appeal Hearing**").

80. Under FCMC § 2-48, only a "party-in-interest" may appeal a decision of the PZB.

81. FCMC § 2-46 defines "parties-in-interest" as: (1) the applicant of the project appealed; (2) parties holding a possessory or proprietary interest in the property at issue; (3) those who received a City mailed notice of the hearing that resulted in the decision being appealed; (4) those who submitted written comments to City staff for delivery to the decision maker prior to the hearing resulting in the decision being appealed; or (5) those who addressed the decision maker at the hearing that resulted in the decision being appealed.

82. Individual Defendants each appeared at the Appeal Hearing and identified themselves as "parties-in-interest."

83. At the Appeal Hearing, Mayor Wade Troxell stated that the remaining appellants listed on the initial Notice of Appeal would not be considered "parties-in-interest" for the purposes of the Appeal and would be dismissed from the Appeal.

84. On information and belief, prior to the Appeal Hearing, the City Council prepared a draft motion imposing new conditions on the Approval.

85. At the Appeal Hearing, the City Council received testimony from City staff, counsel for the certain of the appellants, Ramer, and counsel for the Fellowship.

86. During the Appeal Hearing, in response to a question from City Council member Ray Martinez ("**Martinez**") about whether the Fellowship could provide staff supervision of the Locker Program, undersigned counsel responded that it would be financially prohibitive for the Fellowship to have staff present for the explicit purpose of monitoring the Locker Program.

87. During the Appeal Hearing, in response to a question from Martinez about whether volunteers could monitor the Locker Program, Ramer responded that it wasn't realistically feasible to set up a 24/7 supervision unit of volunteers.

88. Mayor Pro Tem Gerry Horak ("**Horak**") admitted during the Appeal Hearing that it was not feasible for ATM's and other similar facilities to have 24-hour supervision or monitoring.

89. On information and belief, the City has not imposed supervision requirements on any facility applying for Minor Amendments or otherwise operating outdoor property storage and retrieval facilities.

90. At the conclusion of the Appeal Hearing, the City Council unanimously voted to uphold the Approval, but added additional conditions (the "**Conditions**") as follows: (1) "Locker access shall be limited to between the hours of 6 a.m. and 8 p.m. daily"; (2) "A Fellowship representative must be present at all times during which locker access is allowed"; and (3) The Fellowship shall restrict access to the lockers outside of the times when locker access is allowed. These conditions were memorialized in City Council Resolution 2018-104 (the "**Resolution**"), which the City Council approved, as amended, on October 16, 2018 (attached hereto as **Exhibit 7**).

91. The City has no specific standards regarding the imposition of the Conditions.

<u>The Conditions of Approval Are Discriminatory</u>

92. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any limitation or restriction on the hours of operation of any religious practice of any other religious assembly or institution operating in the City.

93. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any limitation or restriction on the hours of operation of any other Non-Occupant Facilities in the City, whether operated by a religious or nonreligious entity.

94. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any limitation or restriction on the hours of operation of any other similarly-situated institutional or assembly land use in the City, whether operated by a religious or nonreligious entity.

95. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any supervision or monitoring requirement on the religious practice of any other religious assembly or institution operating in the City.

96. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any supervision or monitoring requirement on the operation of any other Non-Occupant Facilities in the City, whether operated by a religious or nonreligious entity.

97. On information and belief, the City has not, whether pursuant to the LUC or other enactment of the City Council, imposed any supervision or monitoring requirement on the operation of any other similarly-situated institutional or assembly use in the City, whether operated by a religious or nonreligious entity.

Locker Program Shut Down

98. Due to its financial limitations and the administrative burdens of recruiting and coordinating volunteers from its small group of participants, the Fellowship cannot provide on-site monitoring of the Locker Program every day from 6:00 A.M. to 8:00 P.M.

99. The Condition that a Fellowship "representative" be "present at all times during which locker access is allowed" is vague, confusing, and overly burdensome.

100. The Resolution does not define the term "Fellowship representative," and City Council did not do so at the Appeal Hearing.

101. The Resolution does not define what it means to be "present" while the lockers are in use, and the City Council did not do so at the Appeal Hearing.

102. The Resolution does not define "supervision" with respect to the Locker Program, and the City Council did not clarify at the Appeal Hearing what it meant by "supervision" of the lockers.

103. The second Condition, pertaining to supervision of the Locker Program, is so vague and unreasonable that Ramer and the Fellowship do not know how to comply with City Council's resolution.

104. City Council neither identified any LUC provision, nor does such a provision exist, authorizing the City Council to impose the Conditions.

105. City Council neither identified any LUC provision, nor does such a provision exist, clarifying or otherwise defining the supervision requirement.

106. Every day the Fellowship operates the Locker Program, it risks imposition of a fine, yet it is unsure whether it is complying with the Resolution or not. If the Fellowship is found to

be in violation of the Conditions, it risks a separate fine for each separate day that it is regarded as being in violation. Given the Fellowship's limited resources, it cannot reasonably afford to pay any such fine.

107. Due to the uncertainties and burdens associated with compliance with the Conditions, the Fellowship notified its locker participants that it intends to terminate the Locker Program on November 30, 2018.

108. As a direct and proximate result of the City Defendants: (1) acting outside of their jurisdiction under the LUC and FCMC to require a Minor Amendment application; (2) abusing their discretion and applying the LUC in an inconsistent and targeted manner; and (3) imposing overly burdensome Conditions that find no basis in any identifiable regulation or LUC provision, the City Defendants have impermissibly discriminated against the Plaintiffs and prevented them from exercising the core Mennonite religious belief of ministering to individuals experiencing homelessness.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment, C.R.C.P. Rule 57)
Against the City Defendants

109. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 108 above.

110. Plaintiffs' rights, status, or other legal relations are affected by the FCMC and LUC, which together are municipal ordinances within the meaning of C.R.C.P. 57(b).

111. There is a present controversy between Plaintiffs and the City Defendants with respect to the applicability of LUC § 2.2.10 to the Locker Program.

112. LUC § 2.2.10(A) identifies only two conditions under which an applicant must apply for a Minor Amendment.

113. The Locker Program does not, based upon the text of LUC § 2.2.10(A) or the City's prior practice with respect to Non-Occupant Facilities and Storage Facilities, satisfy either of the two conditions under which an applicant must apply for a Minor Amendment.

114. No other LUC provision exists requiring the Locker Program to undergo the Minor Amendment process.

115. The Plaintiffs are entitled to declaratory judgment that the LUC does not require nor authorize the application of the Minor Amendment process for the Locker Program.

SECOND CLAIM FOR RELIEF

(Abuse of Discretion and Exceeding Jurisdiction, Colo. R. Civ. P. 106(a)(4))
Against All Defendants

116. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 115 above.

117. In hearing and approving the Application, the PZB was performing a quasi-judicial function.

118. In hearing and denying the Appeal while imposing the Conditions, the City Council was performing a quasi-judicial function.

119. Individual Defendants appealed the Approval.

120. Pursuant to Colo. R. Civ. P. 106(a)(4), Plaintiffs may obtain relief from this Court where any governmental body exercising a judicial or quasi-judicial function has exceeded its jurisdiction or abused its discretion.

121. In requiring the Plaintiffs to file and pursue a Minor Amendment application, when the LUC does not permit nor require such application, the City exceeded its jurisdiction and abused its discretion because the City failed to follow its own procedures and applicable law.

122. Colo. Rev. Stat. § 29-20-203(2) provides that "[n]o local government shall impose any discretionary condition upon a land-use approval unless the condition is based upon duly adopted standards that are sufficiently specific to ensure that the condition is imposed in a rational and consistent manner."

123. In conducting the Appeal Hearing for a Minor Amendment application over which it had no jurisdiction, and in imposing Conditions which it had no authority to pass or adopt, the City Council exceeded its jurisdiction and abused its discretion because the City Council failed to follow its own procedures and applicable law.

124. Plaintiffs are entitled to certiorari review pursuant to Colo. R. Civ. P. 106(a)(4) and is further entitled to an Order from this Court declaring that the City Defendants exceeded their jurisdiction and abused their discretion in the application of the Minor Amendment process to the Locker Program and the imposition of Conditions.

THIRD CLAIM FOR RELIEF

(Discrimination in Violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2))
Against the City Defendants

125. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 124 above.

126. RLUIPA, 42 U.S.C. § 2000cc(b)(2) provides that "[n]o government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination."

127. The City imposed and implemented the LUC against the Fellowship by requiring the Fellowship to apply and pursue the Minor Amendment process, including a public hearing before the PZB, for the Locker Program, when it had not historically required such approvals for other Non-Occupant Facilities owned and operated by other religious and nonreligious entities.

128. The City Defendants imposed and implemented the LUC against the Fellowship by imposing vague and burdensome Conditions on the Fellowship's use of the Property, when they have not historically imposed any similar conditions on similarly-situated religious and nonreligious property owners.

129. The City Council imposed the supervision Condition with knowledge that it was financially and administratively prohibitive for the Fellowship, while acknowledging that having constant supervision for other types of Non-Occupant Facilities was infeasible.

130. Plaintiffs are entitled to a declaration that the City Defendants imposed and implemented the LUC, and imposed and implemented conditions upon the Plaintiffs, in a discriminatory manner toward Plaintiffs in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2), and an order enjoining the City Defendants from imposing and implementing the LUC and the Conditions in a manner that would prohibit the use and operation of the Locker Program.

FOURTH CLAIM FOR RELIEF

(Treating a Religious Assembly on Less Than Equal Terms in Violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2)) Against the City Defendants

131. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 130 above.

132. RLUIPA, 42 U.S.C. § 2000cc(b)(1) provides 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."

133. The City Defendants imposed and implemented the LUC against the Fellowship by requiring the Fellowship to apply and pursue an arduous Minor Amendment process for the Locker Program, including a public hearing before the PZB, when they have not historically required Minor Amendment approval for other Non-Occupant Facilities owned and operated by nonreligious assemblies or institutions.

134. The City Defendants imposed and implemented the LUC against the Fellowship by imposing vague and burdensome Conditions on the Fellowship's use of the Property, when they have not historically imposed any similar conditions on the practices and operations of nonreligious assemblies or institutions.

135. Plaintiffs are entitled to a declaration that the City Defendants imposed and implemented the LUC, and imposed and implemented conditions upon the Plaintiffs, on less than equal terms with nonreligious assemblies or institutions in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1), and an order enjoining the City Defendants from imposing and implementing the LUC and the Conditions in a manner that would prohibit the use and operation of the Locker Program.

FIFTH CLAIM FOR RELIEF

(Imposition of a Substantial Burden in Violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1))
Against the City Defendants

136. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 135 above.

137. RLUIPA, 42 U.S.C. § 2000cc(a)(1) provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest."

138. RLUIPA, 42 U.S.C. § 2000cc(a)(1) applies where "the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C).

139. The City Defendants made, and the City has in place formal and informal procedures or practices that permit it to make, individualized assessments of a proposed use of the Property.

140. The City Defendants' actions imposing vague and burdensome Conditions on the Fellowship impose substantial burdens on the Plaintiffs' religious exercise.

141. The City Defendants have failed to articulate a compelling governmental interest that is served by the imposition of such burdens on the Plaintiffs' religious exercise.

142. The imposition of such burdens on the Fellowship are not the least restrictive means of furthering any governmental interest.

143. Plaintiffs are entitled to a declaration that the City Defendants imposed and implemented the LUC in a manner that imposes a substantial burden on the Plaintiffs without

establishing that such burden is the least restrictive means of furthering a compelling governmental interest in violation of RLUIPA, 42 U.S.C. § 2000cc(a)(1), and an order enjoining the City Defendants from imposing and implementing the LUC and the Conditions in a manner that would impose such burden.

SIXTH CLAIM FOR RELIEF

(Unconstitutional Vagueness in Violation of Fourteenth Amendment Right to Due Process, 42 U.S.C. § 1983) Against the City Defendants

144. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 143 above.

145. The Fourteenth Amendment of the United States Constitution prohibits a state or any political subdivision thereof from depriving any person of life, liberty, or property without due process of law ("**Due Process Clause**"). When a state or any political subdivision thereof passes a law or regulation, to comport with the Due Process Clause, that law or regulation must give a person of ordinary intelligence fair notice that his/her contemplated conduct is forbidden.

146. The Conditions, including but not limited to the requirement that the Fellowship must "supervise" the Locker Program at all hours of operation, are so vague that they do not give the Plaintiffs notice of forbidden conduct.

147. The Plaintiffs are entitled to a declaration that the City Defendants' imposition of vague Conditions on the Locker Program violated their rights under the Due Process Clause and 42 U.S.C. § 1983, and that such Conditions may not be enforced against the Plaintiffs in pursuing and implementing the Locker Program.

SEVENTH CLAIM FOR RELIEF

**(Unconstitutional Vagueness in Violation of
Right to Due Process, Art II. § 25 of the Colorado Constitution)
Against the City Defendants**

148. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 147 above.

149. Article II Section 25 of the Colorado Constitution guarantees due process of law, and Colorado courts have interpreted that provision as prohibiting laws or regulations that are so vague that persons of common intelligence must necessarily guess as to the meaning and differ as to the application ("**Colorado Due Process Clause**").

150. The City Defendants' actions, as set forth above, violated the Plaintiffs' rights under the Colorado Due Process Clause in the same manner as set forth above with respect to violations of the Due Process Clause.

151. The Plaintiffs are entitled to a declaration that the City Defendants' imposition of vague Conditions violated their rights under the Colorado Due Process Clause, and that the Conditions may not be enforced against the Plaintiffs in pursuing and implementing the Locker Program.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this honorable Court afford them the following relief:

A. Exercising jurisdiction in this action.

B. Issue the following declaratory relief and permanent injunctive relief by declaring that:

(1) The City improperly applied the Minor Amendment process to the Plaintiffs with respect to the Locker Program, in violation of the LUC;

(2) The City Defendants abused their discretion and exceeded their jurisdiction pursuant to C.R.C.P. 106(a)(4);

(3) The City Defendants violated RLUIPA, 42 U.S.C. §§ 2000cc(a)(1), (b)(1), and (b)(2); and

(4) The City Defendants violated 42 U.S.C. § 1983 and the Colorado Constitution.

C. Pursuant to, *inter alia*, 42 U.S.C. § 1988, awarding the Plaintiffs all of their attorneys' fees and costs in this action and related actions.

D. Granting the Plaintiffs such other relief as the Court deems just and proper.

Respectfully submitted this 6th day of November, 2018.

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