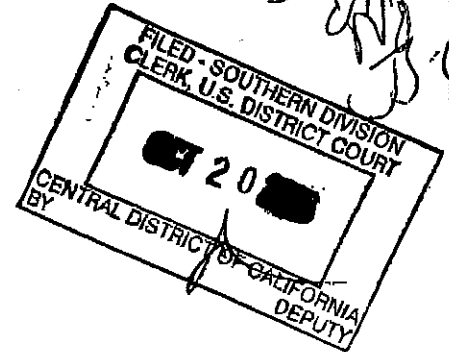


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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 **VIETNAMESE BUDDHISM**
12 **STUDY TEMPLE IN AMERICA**
13 **a/k/a/ CHUA QUAN AM, and TRI**
14 **NGUYEN THICH a/k/a/ THICH**
15 **DAO QUANG,**

14 **Plaintiffs,**

15 **v.**

16 **CITY OF GARDEN GROVE, et al.,**

17 **Defendants.**

CASE NO. SACV 06-728 CJC (RNBx)

ORDER ISSUING PRELIMINARY INJUNCTION

18
19 Plaintiffs Vietnamese Buddhism Study Temple in America (a/k/a Chua Quan Am)
20 (the "Temple") and Abbot Thich Dao Quang (a/k/a Tri Nguyen Thich) (the "Abbot")
21 seek a preliminary injunction to suspend the enforcement of sections 9.08.030, 9.08.050,
22 and 9.24.030 of the Garden Grove Municipal Code. After carefully considering the
23 evidence presented by the parties, the Court finds an injunction is appropriate and
24 necessary. See Order Granting Plaintiffs' Motion for Preliminary Injunction, October 20,
25 2006.

26
27 It is hereby ordered that the City of Garden Grove ("City" or "Garden Grove"), as
28 well as its officers, agents, servants, employees, and attorneys and those persons in

1 active concert or participation with them who receive actual notice of the preliminary
2 injunction order, is restrained and enjoined from enforcing, by any means, including
3 threatened enforcement, citation, and/or fining, Sections 9.08.030, 9.08.050, and
4 9.24.030 of the Garden Grove Municipal Code with respect to the use by the Temple and
5 its various members and representatives of the property located at 10510 Chapman
6 Avenue in Garden Grove ("Chapwood Property"), subject to the following provisions:

7 (1) The Temple is permitted to use the following suites, portions of suites, or
8 rooms, located in the existing one-story building located at the Chapwood Property for
9 assembly purposes, whether religious or non-religious, subject to the following
10 maximum occupancy limits:

- 11 (A) Suite 1200, referred to as the main worship hall, with a maximum
12 occupancy of 49 persons;
- 13 (B) The portion of Suite 400 referred to as the Tea Room and designated
14 as Suite 400A, with a maximum occupancy of 15 persons;
- 15 (C) The portion of Suite 400 referred to as the Conference/Visitors'
16 Room and designated as Suite 400B, with a maximum occupancy of
17 15 persons;
- 18 (D) The portion of Suite 1000 referred to as "the breakfast area" and
19 designated as Suite 1000A, with a maximum occupancy of 15
20 persons;
- 21 (E) The portion of Suite 1300 designated as Suite 1300A, with a
22 maximum occupancy of 10 persons;
- 23 (F) The portion of Suite 1300 designated as Suite 1300B, with a
24 maximum occupancy of 10 persons.

25 (2) The Temple shall not exceed the maximum occupancy requirements of the
26 suites, portions of suites, or rooms identified in Paragraph 1(A) through (F) above.
27
28

1 (3) The suites portions of suites, or rooms not specifically identified for assembly
2 in Paragraph 1(A) through (F) above remain subject to applicable California Building
3 Code requirements for a building with a "B" occupancy designation.

4 (4) Within 1 day after issuance of this order, in each suite, portion of suite, or
5 room designated for assembly in Paragraph 1(A) through (F) above, the Temple shall
6 conspicuously post, in English and Vietnamese, the designated suite number and
7 maximum occupancy therein. These notices may be prepared on a personal computer.

8 (5) Within 5 business days after issuance of this order, the Temple shall submit to
9 the City a rough site plan showing the location and suite numbers, including any letter
10 designations, for each of the suites, portions of suites, or rooms designated for assembly
11 in Paragraph 1(A) through (F) above.

12 (6) No person shall be permitted to spend the night at the Chapwood Property.

13 (7) There shall be no cooking on the property with an open flame or stove.

14 (8) The Temple is permitted to have and use a refrigerator, microwave, coffee
15 machine, electric tea kettle, toaster, and electric rice cooker. Any electric rice cooker
16 used by the Temple must be equipped with an automatic shut-off feature.

17 (9) Within 5 business days after issuance of this order, the Temple will apply for
18 an open candle permit from the Garden Grove Fire Department.

19 (10) By the close of the first business day following issuance of this order, the
20 Temple will provide keys for all gates and exterior locks to be placed in the Knox Boxes
21 at the Chapwood Property.

22 (11) The Temple will make no un-permitted structural modifications to the
23 building on the Chapwood Property.

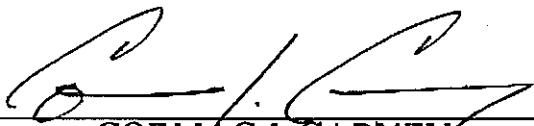
24 (12) Within 30 days after issuance of this order, the Temple will submit to the City
25 a floor plan of the areas of the building located at the Chapwood Property that will be
26 used by the Temple for any purpose. This floor plan will be drawn by a professional
27 architect in accordance with the standards of that profession and accurately depict all
28 existing exits.

1 (13) Within 30 days after the submission of the plans, the Temple will complete all
2 improvements necessary to bring the occupied rooms and/or areas into compliance with
3 applicable California Building Code requirements for buildings with a "B" occupancy
4 designation. These improvements may include, but are not limited to, such things as
5 panic bars on exterior doors and gates, exit signs, and exit lighting.

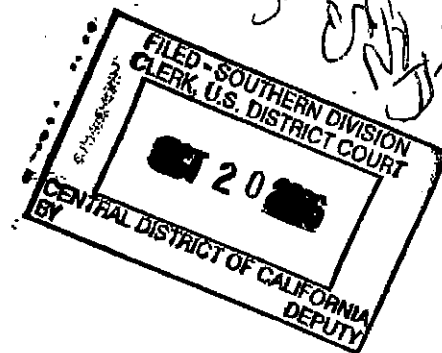
6 (14) This injunction will remain in force until a final adjudication is rendered on
7 the merits of this lawsuit, subject to modification by the Court as justice requires. If
8 either party seeks modification or revocation of the injunction, on any grounds, that party
9 must request such relief from the Court.

10
11 It is further ordered that the Temple is not required to post a bond. This order
12 shall become effective immediately.

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15 DATED: October 20, 2006

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18 CORMAC J. CARNEY
19 UNITED STATES DISTRICT JUDGE
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ORIGINAL



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

**VIETNAMESE BUDDHISM
STUDY TEMPLE IN AMERICA
a/k/a/ CHUA QUAN AM, and TRI
NGUYEN THICH a/k/a/ THICH
DAO QUANG,**

Plaintiffs,

v.

CITY OF GARDEN GROVE, et al.,

Defendants.

CASE NO. SACV 06-728 CJC (RNBx)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION

The Vietnamese Buddhism Study Temple in America (a/k/a Chua Quan Am) (the "Temple") and its spiritual leader, Abbot Thich Dao Quang (a/k/a Tri Nguyen Thich) (the "Abbot") seek a preliminary injunction against the City of Garden Grove¹ to allow

¹The defendants in this action are the City of Garden Grove ("City" or "Garden Grove"); the City Council of the City of Garden Grove ("City Council"); the City of Garden Grove Planning Commission ("City Planning Commission" or "Commission"); William Dalton, in his individual and official capacity as Mayor of Garden Grove; Mark Rosen, Harry Krebs, Mark Leyes, and Janet Nguyen, in their individual and official capacities and members of the City Council; Larry Callahan, Steve Jones, Roland Chi, Nick Lecong, and Jerry Margolin, in their individual and official capacities as members of the City

1 the Abbot and his devoted congregation to assemble and practice their Buddhist faith on
2 the property the Temple owns in the city. After carefully considering the evidence
3 presented by the parties, the Court finds that the issuance of a preliminary injunction,
4 limited in scope and duration, is appropriate and necessary. The Temple has shown that
5 the City's zoning ordinance discriminates between religious assemblies and nonreligious
6 assemblies. Specifically, the City permits nonreligious assemblies to operate as a matter
7 of right in zones where religious assemblies are completely forbidden. One of these
8 zones is the office professional zone where the Temple's property is located. The
9 Temple has also shown that the Abbot and his congregation are suffering substantial
10 hardship by being denied their First Amendment right to practice their faith peaceably on
11 the Temple's property. The City can currently impose criminal and civil liability against
12 any member of the Temple simply for practicing the Buddhist faith on the Temple's
13 property. In response to this threat, the Abbot has been forced to completely shut down
14 his services, even though they cause no harm to the community, do not create any noise
15 or disturbance in the neighborhood, and do not pose a threat to the health and safety of
16 the citizens of Garden Grove. To protect the First Amendment rights of the Abbot and
17 his congregation to freely practice their religion, the Court must preliminarily enjoin the
18 City from enforcing the zoning ordinance against them.

19 20 **II. FACTUAL BACKGROUND**

21 22 **A. History of the Temple**

23
24 The Abbot, a Vietnamese refugee, is a devout follower of the Pure Land school of
25 Buddhism. Verified Complaint ¶¶ 22, 24 ("Compl."). Pure Land is a more conservative,

26
27 _____
28 Planning Commission; Matthew Fertal, in his individual and official capacity as City Manager for the
City; and Does 1 through 10. In this order, "City" and "Garden Grove" will refer to the city itself, and to
all defendants collectively.

1 orthodox style of Buddhism that emphasizes faith, prayer, study, good works, and
2 devotional chanting. *Id.* Pure Land teaches its practitioners to utilize the basic Buddhist
3 principles of selflessness, patience, equanimity, generosity, and compassion for the
4 benefit and fulfillment of others. *Id.* The Abbot's reputation for orthodoxy in this
5 school of Buddhism has attracted a devoted group of monks and nuns (referred to as the
6 Temple's *sangha*), as well as a large community of lay followers. Compl. ¶ 23. Many of
7 the Temple's congregation hold the Abbot in especially high esteem due to a struggle
8 during his escape from Vietnam by boat in 1986, when he was beaten and stabbed while
9 trying to protect women on board from being raped by pirates. Declaration of Khanh-
10 Van Nguyen ¶ 4; *see also* Christopher Goffard, *Buddhist Temple Sues to Worship*, L.A.
11 TIMES, Aug. 10, 2006 (Orange County Edition), at B1.

12
13 The Abbot founded the Temple in 1999. Compl. ¶ 22. The religious practice of
14 the Temple is one strongly centered in concepts of community. The Temple's *sangha*
15 believe that they should pray, meditate, chant, and read the *sutras* (Buddhist spiritual
16 scriptures) together with each other and the Abbot. Compl. ¶ 25. Much of the daily
17 ritual schedule for the *sangha* is designed to be performed as a community. Compl. ¶ 26.
18 This includes morning meditation, several recitations of the Pure Land *sutras*, all meals
19 (which have spiritual and ritualized components), and offerings of devotions to departed
20 ancestors.² *Id.*

21
22 Prior to 2005, when it suspended operations, the Temple provided a wide range of
23 services to the lay community. Congregants were invited to participate in several of the
24 daily rituals along with the *sangha*. Compl. ¶ 29. Weekend services were held every
25 Sunday. Compl. ¶ 30. The Abbot and the *sangha* conducted special religious

26
27 ²The Temple's congregants entrust the Temple and the Abbot with pictures of their family
28 members who have died. Declaration of Dang Quoc Khanh ("Dang Decl.") ¶ 9. They believe that this
will ensure that the spirit of their ancestors will be looked after on a daily basis. *Id.*

1 ceremonies, such as funerals, memorial services, and weddings. Compl. ¶ 27. They held
2 special ceremonies celebrating the changing of the seasons. Compl. ¶ 29. The
3 congregation was invited to regular *sam hoi*, a repentance ceremony held on the new and
4 full moons. Compl. ¶ 30. The Temple and the Abbot acted as custodian over the spirits
5 of the lay followers' departed ancestors. Compl. ¶ 29. Also, the Temple ran a youth
6 group that taught children about both Buddhist doctrine and history, as well as
7 Vietnamese language and culture. Compl. ¶ 32. As a result of the veneration for the
8 Abbot and the desire to participate in these services as part of the Temple community,
9 the Temple established a monastic family of seven monks and five nuns, and a larger lay
10 following of around 300 people. Compl. ¶ 5.

11
12 When the Abbot first established the Temple, it operated exclusively out of a
13 ranch-style house in a residential neighborhood in Garden Grove. Compl. ¶ 33. By
14 2003, not only had the Temple's congregation outgrown the house, but it had drawn
15 complaints from neighboring residents about the increase in traffic, loss of parking, and
16 noise caused by the Temple's operation. *Id.* In order to avoid a legal dispute with the
17 neighbors or the City, the Temple sought a new property that would serve as a monastery
18 for the *sangha* and place of worship for the community. *Id.* They found an available 1.8
19 acre parcel, currently improved with a one-story medical office building, at 10510
20 Chapman Avenue in Garden Grove, at the intersection with Nutwood Street ("Chapwood
21 Property"). Compl. ¶ 34. Thanks to a generous loan from Anthony Giang, a lay
22 follower, the Temple was able to acquire the property. Declaration of Anthony Giang
23 ("Giang Decl.") ¶ 7. Mr. Giang purchased the property for just under \$2 million in
24 February 2004, and transferred title to the Temple in June 2004. Giang Decl. ¶ 8.

1 **B. The Garden Grove Zoning Plan**

2
3 Title 9 of Garden Grove's Municipal Code (the "GGZO") implements the zoning
4 plan for the city of Garden Grove. Overall, the city is divided into ten zoning districts.
5 *See* GGZO § 9.04.050. For each of those districts, the GGZO indicates which uses will
6 be permitted as a matter of right, and which uses will be permitted only through a
7 conditional use permit ("CUP"). *See* GGZO § 9.08.030. Garden Grove's zoning scheme
8 is permissive; any use not specifically permitted is prohibited. *Id.* Churches and
9 religious centers are not permitted as a matter of right in any of the ten zoning districts.
10 *See id.* They are permitted in four zones if they first obtain a CUP from the City: R-1
11 (single-family residential), R-2 (limited multiple residential), R-3 (multiple-family
12 residential), and O-S (open space). *Id.*

13
14 In order to obtain a CUP, a religious center must meet several enumerated
15 conditions, including a minimum lot size of 1 acre, specific setbacks, sufficient parking,
16 and access from at least one public street. GGZO § 9.08.050(10). Once the church
17 meets those conditions, the City must then make several findings before the CUP can be
18 issued. GGMC § 9.24.030(D)(4)(b). The church (1) must be consistent with the city's
19 adopted general plan; (2) must not adversely affect the health, peace, comfort, or welfare
20 of persons residing or working in the surrounding area; (3) must not unreasonably
21 interfere with the use, enjoyment, or valuation of surrounding property; and (4) must not
22 jeopardize or endanger the public health, safety, or general welfare. *Id.* The City must
23 also find that the site is adequate in size and shape to accommodate the special
24 conditions and restrictions applicable to churches, and that the site is adequately served
25 by public streets or highways and the required public or private service facilities. *Id.*
26 The hearing body is instructed to deny applications for a CUP if the applicant fails to
27 provide sufficient evidence to support these findings. *Id.*

1 Private clubs and other secular meeting facilities receive much different treatment
2 under the GGZO. They are permitted as a matter of right in four zones: O-P (office
3 professional), C-1 (neighborhood commercial), C-2 (community commercial), and O-S.
4 Private clubs do not need to obtain a CUP to operate in any of these four zones. GGZO
5 § 9.08.030. Private clubs are additionally permitted in the R-3 zone, provided they first
6 obtain a CUP. *Id.*

7
8 The Chapwood Property purchased by the Temple is located in an O-P zone.
9 Churches and religious centers are wholly prohibited from locating in O-P zones. Thus,
10 in order to use the existing facility as a religious temple, and get ultimate approval to
11 construct a new facility on the site, the Temple first needed a general plan amendment to
12 the GGZO, changing the zone of the Chapwood Property from O-P to R-1. *See* GGZO §
13 09.24.030(D). Once the Chapwood Property was zoned residential, the Temple then
14 needed a CUP in order to operate or construct a religious center on that site. When
15 considering a general plan amendment, the City must make three threshold findings: (1)
16 that the amendment is consistent with the goals, objectives, and elements of the general
17 plan as a whole; (2) that the amendment promotes the public interest, health, safety, and
18 welfare; and (3) that the property is physically suitable for the requested land use
19 designation, compatible with surrounding uses, and consistent with the general plan.
20 GGZO § 9.24.030(D)(1)(b).³

21 22 **C. The Temple's Land Use and Zoning Applications**

23
24 The Temple filed its first application with the City Planning Commission in
25 December 2004. Compl. ¶ 45. This application requested that the general plan be

26
27 ³The required findings for a zone change are similar. The City must find: (1) that the zone
28 change is consistent with the general plan; and (2) that it will insure a degree of compatibility with
surrounding properties and uses. GGZO § 9.24.030(D)(2)(b).

1 amended to change the designation of the Chapwood Property from Office Professional
2 to Low Density Residential, and that the property be re-zoned R-1. *Id.* The Temple also
3 sought approval of a Site Plan⁴ for the construction of a 15,000 square foot, two-story
4 temple on the property, and a CUP for the operation of a religious facility. *Id.* During
5 the preliminary stages of the application, the City identified concerns about the potential
6 traffic problems a temple facility might cause, as well as the loss of tax revenue the City
7 would suffer.⁵ Compl. ¶ 46. In response, the Temple commissioned a traffic study,
8 showing that no improvements to the existing infrastructure would be required, and that
9 the proposed project would have a negligible impact on overall traffic. Compl. ¶ 47 and
10 Ex. A. The Abbot also agreed to compensate the City for any loss in property tax
11 revenue it might suffer by permitting the Temple to occupy the Chapwood Property.
12 Compl. ¶ 48. City staff initially recommended approval of the the Temple's requests,
13 finding that the project met all the threshold requirements. Compl. ¶ 49. However, the
14 Commission denied the request by a 2-2 vote. *Id.* The Temple appealed the decision to
15 the City Council, which affirmed the denial. *Id.*

16
17 The Temple filed its second application in October 2005. Compl. ¶ 51. In that
18 application, it reduced the proposed square footage and height of the temple building,
19 and increased the number of on-site parking spaces available. Compl. ¶ 52. In order to
20 further alleviate parking concerns expressed by the City, the Temple also agreed to
21 provide a shuttle service to its congregants during the three major holiday celebrations of
22
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24

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26 ⁴Approval of a Site Plan is required before a building permit can issue for any construction in a
27 residential zone. See GGZO § 9.24.030(D)(3)(a). The City must make six required threshold findings
before a Site Plan can be approved. See GGZO § 9.24.030(D)(3)(b).

28 ⁵The Temple, as a non-profit organization, is exempt from property tax. See CAL. CONST. Art.
XIII §§ 3, 5; CAL. REV. & TAX. CODE § 206.

1 the Buddhist calendar.⁶ Compl. ¶ 53. However, the Commission once again denied the
2 Temple's application. Compl. ¶ 54 and Exs. B, C. The Commission found that the
3 Temple's proposal was not internally consistent with the goals and objectives of the
4 City's general plan. Compl. Ex. B It cited specific compatibility problems posed by
5 increases in traffic and on-street parking. *Id.* The Commission also held that use of the
6 site as a temple would be inconsistent with the surrounding area, both in terms of
7 architecture and intensity of use. *Id.* Finally, the Commission expressed a desire to
8 retain the Office Professional designation of the Chapwood Property. *Id.* Again, the
9 Temple appealed the decision to the City Council, which affirmed the denial in February
10 of 2006. Compl. ¶ 56.

11

12 **D. Current Status of the Temple**

13

14 While the first land use application was pending before the City Planning
15 Commission, the City ordered the Abbot and the *sangha* to stop living and conducting
16 services at the Chapwood Property. Compl. ¶ 50. City code enforcement officers
17 occasionally visit the property to ensure that no religious practices are conducted there.
18 Compl. ¶ 57. The Abbot and the *sangha* have rented a house near the Chapwood
19 Property where they currently reside. Compl. ¶ 50. Since the City ordered the Abbot out
20 of the Chapwood Property, he has discontinued religious services for the lay community
21 and ceased the daily ritual practice of the *sangha*.⁷ Compl. ¶¶ 58-61. The *sangha* no
22

23
24 ⁶These celebrations are Tet (Buddhist New Year), Buddha's Birthday, and Vu Lan (Ancestral
25 Remembrance Day). Compl. ¶ 53. The Temple enjoys its greatest attendance figures during those
26 celebrations.

26 ⁷The GGZO provides: "Violation of any provision of this title or any condition of any permit,
27 including but expressly not limited to any conditional use permit . . . shall be a public nuisance and a
28 misdemeanor." GGZO § 9.24.020. Thus the Abbot, the *sangha*, and the congregation are subject to
misdemeanor liability if they are found conducting or participating in religious services at either the
Chapwood Property or the rental house.

1 longer meditate or recite the *sutra* together, and the traditional spiritual purpose and
2 benefit of their meals has been undermined. Compl. ¶ 63. The Temple has also virtually
3 eliminated its services for the lay community. Compl. ¶¶ 58-61. The Temple has held
4 no prayer, meditation, or repentance sessions,⁸ no weekend services, no holiday
5 celebrations, and no special religious services, such as funerals or weddings. *Id.* Many
6 lay supporters have refrained from associating with the Temple because they fear
7 causing further hardship to the Temple. Dang Decl. ¶ 10; Declaration of Nguyen Van
8 Hien (“Hien Decl.”) ¶ 9; Declaration of Molan Doan (“Doan Decl.”) ¶ 12. This has been
9 especially problematic for those who believe that the Abbot and Temple are custodians
10 of the spirits of their deceased ancestors. Dang Decl. ¶ 10; Hien Decl. ¶ 9. These
11 congregants have been unable to visit the Temple to pay homage to those spirits, and are
12 left feeling in derelict of their duty to their ancestors. Dang Decl. ¶ 10; Hien Decl. ¶ 9.
13 The inability of the Temple to hold services for the congregation has also caused
14 financial problems. Declaration of Abbot Thich Dao Quang (“Abbot Decl.”) ¶ 10. The
15 Temple relies heavily on donations and contributions, which have greatly reduced while
16 services are not being performed. *Id.* There is a danger that if the Abbot cannot resume
17 services soon, he will be forced to shut down the Temple altogether. Abbot Decl. ¶ 14.

19 III. ANALYSIS

21 The First Amendment to the Constitution provides every citizen with the right to
22 practice his religion freely on his own property and to assemble peaceably there with
23 other members of his faith. James Madison, the author of the First Amendment, wrote
24 that the “religion then of every man must be left to the conviction and conscience of
25 every man; and it is the right of every man to exercise it as these may dictate. This right
26

27 ⁸According to the tenets of Pure Land Buddhism, prayer and meditation services should be held
28 for lay practitioners at least once a day, and repentance sessions should be held at least twice a month.
Compl. ¶ 59.

1 is in its nature an unalienable right." James Madison, *Memorial and Remonstrance*
2 *Against Religious Assessments* (June 20, 1785), reprinted in 8 THE PAPERS OF JAMES
3 MADISON 295, 299 (Robert A. Rutland et al. eds., 1973). In order to provide the
4 necessary protection for this right, the government's power to interfere with or inhibit an
5 individual's practice of his religious faith is highly limited. "The legitimate powers of
6 government extend to such acts only as are injurious to others. But it does me no injury
7 for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor
8 breaks my leg." Thomas Jefferson, NOTES ON THE STATE OF VIRGINIA 159 (Query 17)
9 (William Peden ed., Univ. of N.C. Press 1982) (1784). Any law burdening religious
10 practice that is "not neutral or not of general application must undergo the most rigorous
11 of scrutiny." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,
12 546 (1993) ("*Lukumi*").

13
14 In 2000, Congress passed the Religious Land Use and Institutionalized Persons
15 Act ("RLUIPA"), codified at 42 U.S.C. §§ 2000cc *et seq.* This law was designed to
16 protect churches and religious assemblies from the effect of zoning laws that
17 impermissibly discriminate against religious assemblies and interfere with the free
18 exercise of religion. Congress recognized that it was essential for religious groups to
19 have a place of worship where their members can congregate and practice their faith
20 together. "The right to assemble for worship is at the very core of the free exercise of
21 religion. Churches and synagogues cannot function without a physical space adequate to
22 their needs and consistent with their theological requirements. The right to build, buy, or
23 rent such a space is an indispensable adjunct of the core First Amendment right to
24 assemble for religious purposes." 146 Cong. Rec. S7774-01, Exhibit 1 (daily ed. July
25 27, 2000) (joint statement of Senator Hatch and Senator Kennedy on the Religious Land
26 Use and Institutionalized Persons Act of 2000). RLUIPA was enacted in response to
27 congressional findings that churches and other religious assemblies were being
28

1 discriminated against both on the face of zoning ordinances and by the discriminatory
2 exercise of discretion by zoning boards. *See id.*

3
4 A city or county can violate RLUIPA in two distinct ways. First, governments
5 may not “impose or implement a land use regulation in a manner that imposes a
6 substantial burden on the religious exercise of a person, including a religious assembly
7 or institution.” 42 U.S.C. § 2000cc(a)(1). The most common violation of this provision
8 occurs when a government makes “individualized assessments of the proposed uses for
9 the property involved.” *Id.* § 2000cc(a)(2)(C). Second, governments may not
10 discriminate against religious assemblies through a land use regulation “that treats a
11 religious assembly or institution on less than equal terms with a nonreligious assembly or
12 institution.” *Id.* § 2000cc(b)(1). The substantial burden provisions of § (a) and the
13 nondiscrimination provisions of § (b) are “operatively independent of one another.”
14 *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 762 (7th Cir.
15 2003). Violation of either provision will result in liability against the government unless
16 its conduct can survive strict scrutiny. *See* 42 U.S.C. § 2000cc(a)(1); *Midrash Sephardi,*
17 *Inc. v. Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004).

18
19 The Temple’s complaint against the City seeks relief for violations of both
20 provisions of RLUIPA. The Temple has also made various claims under the federal
21 Constitution and the California Constitution, alleging violations of its rights to freedom
22 of speech, freedom of assembly, and freedom of religion. As explained in more detail
23 below, the Court finds that the Temple is entitled to preliminary injunctive relief by
24 demonstrating serious questions on the merits of its equal terms claim. It is thus
25 unnecessary for the Court to consider the Temple’s likelihood of success on the merits of
26 its other claims in this action.

1 **A. The Temple Is Entitled To A Preliminary Injunction**

2
3 The standard for a preliminary injunction balances the plaintiff's likelihood of
4 success against the relative hardship to the parties. *Sun Microsystems, Inc. v. Microsoft*
5 *Corp.*, 188 F.3d 1115, 1118 (9th Cir. 1999). To obtain a preliminary injunction here, the
6 Temple must demonstrate either: "(1) a likelihood of success on the merits and the
7 possibility of irreparable injury; or (2) that serious questions going to the merits were
8 raised and the balance of hardships tips sharply in its favor." *Walczak v. EPL Prolong,*
9 *Inc.*, 198 F.3d 725, 731 (9th Cir. 1999). These two alternatives represent extremes of a
10 single continuum, rather than two separate tests. *Nike, Inc. v. McCarthy*, 379 F.3d 576,
11 580 (9th Cir. 2004) (quoting *Walczak*, 198 F.3d at 731). Thus, "the greater the relative
12 hardship to the moving party, the less probability of success must be shown" to warrant
13 injunctive relief. *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369
14 (9th Cir. 1984).

15
16 **1. The Balance of Hardships Tips Sharply in Favor of the Temple**

17
18 The Temple has shown that it will suffer clear irreparable injury if the Abbot and
19 his followers are barred from practicing their religion on the Chapwood Property. Every
20 day the Abbot is forced to deny religious services to his congregation is a day that the
21 Temple congregation is denied the First Amendment rights of freedom of speech,
22 freedom of association, and free exercise of religion. "The loss of First Amendment
23 freedoms, for even minimal periods of time, unquestionably constitutes irreparable
24 injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United*
25 *States*, 403 U.S. 713 (1971)). In the Ninth Circuit, "a party seeking preliminary
26 injunctive relief in a First Amendment context can establish irreparable injury sufficient
27 to merit the grant of relief by demonstrating the existence of a colorable First
28 Amendment claim." *Warsoldier v. Woodford*, 418 F.3d 989, 1001 (9th Cir. 2005)

1 (*quoting Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 973-74 (9th Cir.
2 2002)). The plaintiff in *Warsoldier* was a prisoner who sought to enjoin the prison's
3 grooming policy because his religion forbids him from cutting his hair. *Id.* at 991-92.
4 The Ninth Circuit found that the prison's policy subjected Mr. Warsoldier to irreparable
5 injury because it forced him to "choose between following his religious beliefs and
6 suffering continual punishment, and abandoning his religious beliefs to avoid such
7 punishment." *Id.* At 1001. Government imposition of such choices "puts the same kind
8 of burden upon the free exercise of religion as would a fine imposed against appellant for
9 her Saturday worship." *Sherbert v. Verner*, 374 U.S. 398, 404 (1963).

10
11 Allowing the City to continue to enforce its zoning ordinance against the Temple
12 and its congregants subjects them to the same burdensome choice as those in *Warsoldier*
13 and *Sherbert*. The Abbot and his followers are subject to misdemeanor liability if they
14 practice their faith at their chosen site of worship. *See* GGZO § 9.24.030. The injury
15 caused by the City's zoning ordinance is especially burdensome because it impacts the
16 free exercise of not just one individual, as in *Warsoldier* and *Sherbert*, but of all 300
17 members of the Temple's congregation. The Abbot has been forced to discontinue all
18 services to his lay congregation, rather than incur multiple civil and criminal penalties
19 imposed by the City. This has left the entire congregation without a place to worship,
20 without a haven to seek spiritual guidance, and without the ability to pay homage to the
21 spirits of their ancestors.⁹ Simply put, the congregation has been completely denied their
22 right to practice their faith in the manner of their choosing. The Temple has also
23 suffered financial difficulties as a result of suspending services since the beginning of
24

25 ⁹Although there are other Buddhist temples in Garden Grove, each of the venerable presiding
26 monks of the various temples instructs followers in their own teachings and disciplines. Doan Decl. ¶
27 13. If the congregants of the Temple were forced elsewhere to practice their Buddhism, they would be
28 essentially switching to a new path of spiritual worship. This is not a desirable solution for many of the
Abbot's followers. *Id.* Also, because many believe that the Temple houses the spirits of their ancestors,
to go to another temple would be to abandon those ancestors. Dang Decl. ¶ 10.

1 2005. The Abbot declared that the continued existence of the Temple as a viable
2 religious organization would be jeopardized if it were unable to resume services. The
3 Temple has thus clearly demonstrated that it would suffer substantial and irreparable
4 injury if an injunction were not issued.

5
6 The City certainly is not without hardship if an injunction were to issue. A court
7 order enjoining Garden Grove from enforcing the GGZO against the Temple directly
8 impacts the authority of the City to regulate land use within its borders. This has the
9 effect of limiting the City's use of its police power to impose regulations designed to
10 protect the health, safety, and welfare of its citizens. However, the harm caused to the
11 City is significantly decreased by the fact that this preliminary injunction is limited in
12 duration, scope, and effect. Specifically, this injunction will have no effect on the City's
13 authority with respect to all other landowners and all other parcels of land in Garden
14 Grove. The City is only required to make the limited accommodations necessary to
15 allow the Temple and its congregation to engage in some meaningful religious activity at
16 the Chapwood Property. The impact of the injunction on the City's police power is
17 minimal, particularly in comparison to the seriousness of the harm the Temple and its
18 congregants suffer through the denial of their First Amendment rights. The balance of
19 hardships thus clearly tips in favor of the Temple.

20 21 **2. The Temple Has Raised Serious Questions Going to the Merits of Its Claims**

22
23 There are four elements of a violation of the equal terms provision of RLUIPA: (1)
24 the plaintiff must be a religious assembly or institution, (2) subject to a land use
25 regulation, that (3) treats the religious assembly on less than equal terms, with (4) a
26 similarly situated nonreligious assembly or institution. *See Primera Iglesia Bautista*
27 *Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1307 (11th Cir. 2006).
28 The Temple bears the initial burden of producing *prima facie* evidence to support a claim

1 alleging an equal terms violation. *See* 42 U.S.C. § 2000cc-2(b). Once the plaintiff
2 satisfies that burden, the city bears the ultimate burden of persuasion on all elements of
3 the claim. *See id.* If a city's zoning laws are found to violate the equal terms provision,
4 they may still be upheld if the government establishes that the law embodies the least
5 restrictive means of achieving a compelling government interest. *Primera Iglesia*, 450
6 F.3d at 1308. "To satisfy the commands of the First Amendment, a law restrictive of
7 religious practice must advance interests of the highest order and must be narrowly
8 tailored in pursuit of those interests." *Lukumi*, 508 U.S. at 546 (internal quotations
9 omitted).

10
11 The Temple has put forth sufficient evidence to make a *prima facie* claim alleging
12 an equal terms violation. The Temple is a religious institution, and is subject to several
13 land use regulations under the GGZO involving its use of the Chapwood Property. The
14 GGZO, on its face, treats churches and religious centers on less than equal terms than it
15 treats private clubs and other secular assemblies. It allows private clubs to operate
16 without a CUP in the office professional zone, while religious assemblies are banned
17 from that zone entirely. The GGZO also allows private clubs to operate without a CUP
18 in the open space zone, while churches are subject to the CUP requirements. Indeed,
19 private clubs and assemblies may operate, as a matter of right, in four of the City's ten
20 zones, while churches are not permitted as a matter of right anywhere in Garden Grove.

21
22 The GGZO is substantially similar to the Surfside Zoning Ordinance ("SZO") that
23 the Eleventh Circuit found violated the equal terms provision of RLUIPA. *Midrash*
24 *Sephardi*, 366 F.3d at 1235. Churches and synagogues were permitted to operate in
25 Surfside only by way of a CUP, and only in a residential district. *Id.* at 1219. *Midrash*
26 *Sephardi*, an Orthodox Jewish synagogue, sought to operate a worship facility in
27 Surfside's business district. *Id.* at 1220. Among the uses permitted by the SZO in the
28 business district were private clubs and lodge halls. *Id.* Churches and synagogues were

1 entirely prohibited from the business district. *Id.* The Eleventh Circuit found that the
2 differential treatment between religious assemblies and private clubs and lodges resulted
3 in a facial violation of RLUIPA. *Id.* at 1231. The Court subjected the SZO to strict
4 scrutiny, and found “no evidence that private clubs and lodges *actually* contribute to the
5 business district in a way appreciably different than religious institutions.” *Id.* at 1234
6 (emphasis in original). The Court found that the treatment of synagogues as
7 categorically different than secular assemblies “indicates that [the zoning ordinance]
8 pursues Surfside’s interests only against conduct motivated by religious belief.” *Id.* at
9 1235. The zoning ordinance thus failed to survive strict scrutiny, and was struck down.
10 *Id.*

11
12 As in *Midrash Sephardi*, Garden Grove’s facial differentiation between religious
13 and nonreligious assemblies subjects the GGZO to strict scrutiny. The City must show
14 that the distinction made is the least restrictive means of furthering a compelling interest.
15 On the record before the Court, there is a serious question about the City’s ability to
16 meet this standard. The primary concerns raised in the City Planning Commission’s
17 denial of the Temple’s applications were increased traffic, increased on-street parking,
18 and loss of revenue. These three concerns simply do not justify facially unequal
19 treatment between a church and a private club. For example, a private association or
20 meeting facility located at the Chapwood Property could have an identical effect on
21 traffic and parking as would the Temple’s proposed uses.¹⁰ Similarly, if a tax exempt
22 non-profit private organization decides to purchase property in the office professional
23 zone, the City would suffer the same loss of revenue as it would if a religious association
24 operated the property as a church. The City has not shown that a church or religious
25 assembly would have a demonstrably different impact on the office professional zone
26

27 ¹⁰The traffic study commissioned by the Temple indicated that the use of the Chapwood Property
28 as a temple and monastery would actually result in less traffic than when the property was operated as a
medical office facility. Compl. Ex. A.

1 than would a private club or lodge. This strongly suggests that the zoning ordinance
2 impermissibly pursues Garden Grove's interests only against conduct motivated by
3 religious belief.

4
5 The City's failure at this stage in the proceedings to articulate a compelling
6 interest that requires it to treat churches and religious assemblies differently than private
7 clubs does not foreclose it from ultimately doing so at trial. The City may also attempt to
8 prove that the Temple is not similarly situated to the non-religious assembly uses
9 permitted as of right in the office professional zone. However, the Temple successfully
10 raises at least a serious question going to the merits of its equal terms claim. Given that
11 the balance of hardships tips heavily in the Temple's favor, the presence of this serious
12 question is sufficient to warrant the issuance of an injunction.

13
14 **B. Scope and Content of the Preliminary Injunction**

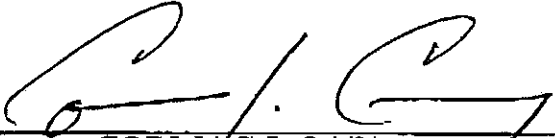
15
16 The preliminary injunction issued by the Court will grant the Temple the right to
17 use the Chapwood Property for certain religious services. The Temple's use of the
18 property will be subject to the restrictions and regulations that are applicable to all
19 similarly situated uses in the office professional zone. Religious and nonreligious
20 assembly will be limited to six designated rooms and suites. Use of the remainder of the
21 facility will be governed by the regulations contained in the California Building Code for
22 a property with a "B" occupancy designation. The Abbot and the *sangha* will be
23 permitted to perform the services described in the daily schedule submitted to the Court,
24 and members of the lay congregation will be able to participate along with the monastics
25 when appropriate. Use of the facility will be limited to religious and general
26 administrative purposes; it shall not be used as a residence by any person, and no one
27 will be allowed to sleep overnight at the property. This injunction will remain in force
28 until a final determination on the merits is issued in this case. Any alleged violations of

1 the injunction may be brought to the attention of the Court by either party, and the Court
2 will determine the appropriate remedy.

3
4
5 **IV. CONCLUSION**

6
7 For all the foregoing reasons, the Court hereby preliminarily enjoins the City from
8 enforcing those provisions of the Garden Grove Municipal Code enumerated in the
9 injunction against the Temple, the Abbot, and his congregation. The Temple, the Abbot,
10 and his congregation may peaceably practice their Buddhist faith at the Chapwood
11 Property immediately.

12
13
14 DATED: October 20, 2006

15 
16 CORMAC J. CARNEY
17 UNITED STATES DISTRICT JUDGE