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## **WHERE ARE WE NOW? RLUIPA and Religious Land Uses**

**Arthur J. Anderson**

Author contact information:

Arthur J. Anderson  
Winstead PC  
Dallas, TX

[aanderson@winstead.com](mailto:aanderson@winstead.com)  
214-745-5745

# **WHERE ARE WE NOW?**

## **RLUIPA and Religious Land Uses<sup>1</sup>**

### **A. Introduction**

One of the most controversial issues that cities address is the use of land for religious purposes. Churches are often unpopular in residential zones because they may generate too much traffic, noise, and congestion. They can be unpopular in commercial zones because they allegedly generate too little traffic and are tax exempt. Sometimes they are unpopular simply because their religion is not viewed as mainstream. Addressing these potential incompatibilities can result in major planning challenges.

Politically, cities need to be wary of supporting only mainstream churches and discriminating against smaller and often ethnically diverse religions. The author has represented congregations trying to overcome local opposition to building a Hindu temple, a mosque, a Mar Thoma church, a black Pentecostal church, and a Mormon temple. First Baptist and First Methodist churches usually have no problem in obtaining approval of permit requests. Of course, not all cases involve hostility to racial or religious minorities, but a substantial fraction of cases do. The Department of Justice has the authority to investigate alleged violations of RLUIPA. Jews, Muslims, Buddhists, and Hindus constitute only about 3% of the United States population. During the first ten years under RLUIPA, 64% of all DOJ investigations involved racial or religious minorities.

### **B. Zoning Regulations in Texas**

Because of the legal impact of RLUIPA and TRFRA, many Texas cities allow a “church” use on all land within the corporate boundaries. Others require a special or conditional use permit. Defining a “church” use with precision can be problematic. In addition, legal issues arise when applying general land use and zoning ordinances to a “church” use results in the imposition of overly burdensome restrictions on the practice of religion. For example, while a city may legally apply the same building code requirements to a religious sanctuary as it does to secular auditoriums, it generally may not establish more onerous standards than required of similar uses.

Governmental entities do not generally like to be in the business of determining when a certain land use is considered religious. For this reason, religious land use regulations are usually broadly defined. For example, the Dallas Development Code defines a “church” use as “[a] facility principally used for people to gather together for public worship, religious training, or other religious activities.” DALLAS, TEX., DALLAS CITY CODE ch. 51A, art. IV, § 204(4)(A) (2015). Notably, the terms “religion” and “religious” are not defined.

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Although churches are allowed in every zoning district within the City of Dallas, *id.* § 204(4)(B), other mechanisms, such as off-street parking requirements, often prevent churches from being able to locate in certain parts of the city such as residential neighborhoods. *See, e.g., id.* § 204(4)(C)(i) (requiring “one [parking] space per 333 square feet in floor area if a church has less than 5,000 square feet of floor area and is located in a shopping center with more than 20,000 square feet in floor area, otherwise one space for each four fixed seats in the sanctuary or auditorium.”). The Dallas Development Code also provides that a church use “does not include home meetings or other religious activities conducted in a privately occupied residence.” *Id.* § 204(4)(A).

Certain characteristics of a particular church that are similar to other uses specifically defined in a city’s development code may cause local officials to classify the use as something other than a church. For example, a church that has substantial storage facilities for the distribution of donations, drug and alcohol rehabilitation programs, shower facilities, and/or a commercial kitchen for serving meals, may be classified as a community service center instead of a church even if it has a sanctuary and hosts bible studies in addition to these other characteristics. Moreover, a facility occupied by a charitable organization that is religiously based may be classified as an office instead of a church if the main purpose of the facility is administrative rather than ministerial. From a practical standpoint, if there are any overnight guests, staff will generally classify the use as lodging or an overnight shelter, despite the religious characteristics of the use. The more similarities the church has to another defined use in the city’s code, the more inclined the city will be to classify the “church” as a different, secular use.

On the other hand, the more that city staff is convinced that all aspects of the use have a religious basis, the more likely the city will be to classify the use as a church. For example, the applicant could show that every aspect of the facility is oriented towards ministry and discipleship. If the organization’s leadership consists of recognized religious figureheads (e.g., priests, rabbis, pastors, imams, etc.), the building does not have a large storage facility, does not engage in on-site food preparation, and does not host overnight guests, the city will be more likely to classify the use as a church.

Although churches are generally allowed in any zoning district within a city, this is not interpreted to mean that uses generally related to churches (such as cemeteries) are also allowed anywhere in a city. In *Beaumont v. Jones*, the City of Beaumont sought an injunction preventing a cemetery from using for cemetery purposes two lots adjacent to the cemetery that were zoned residential under the city’s zoning ordinance. *Beaumont v. Jones*, 560 S.W.2d 710 (Tex. Civ. App.—Beaumont 1977, writ ref’d n.r.e.). A cemetery was not an allowed use under the residential zoning district, but the cemetery argued that because churches were allowed in any zoning district in the city and a state statute would allow any church in the city to have a columbarium (a form of cemetery), that a cemetery could exist anywhere in the city. *Id.* at 711-13. The court disagreed and held that simply because a church with a columbarium could be located anywhere in the city did not mean that a cemetery (or columbarium) could exist anywhere in the city without a church. *Id.* at 713.

Texas courts will apply zoning ordinances to church-operated schools so long as the regulation is generally applicable. Schools, however, will generally be distinguished as a separate use, even where the school use is affiliated with or in the same building as the church or religious

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