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Via Email, Confirmation Copy Via US Certified Mail

Melissa Arrighi
Town Manager
26 Court Street
Plymouth, MA 02360

Jonathan Beder
Town of Plymouth Director of Public Works
26 Court Street
Plymouth, MA 02360

Dear Ms. Arrighi and Mr. Beder:

This law firm represents the Holy Ghost Society of Plymouth (“Holy Ghost Society”) in connection with this matter.

The Holy Ghost Society respectfully submits this request for relief from the Town of Plymouth Sewer Connection Permit Policy, Effective September 10, 2019 (“Bylaw”), pursuant to Part 7, Special Considerations and Appeals, of the Bylaw. On April 1, 2019, the Holy Ghost Society received a notice requiring its property located at 12 South Cherry Street in Plymouth (the “Property”) to connect to the Town of Plymouth’s municipal sewer collection system pursuant to the Bylaw. In October 2019, the Town of Plymouth granted the Holy Ghost Society and a group of businesses a 6-month extension to address the Bylaw.

The Holy Ghost Society is exempt from the Bylaw because the Bylaw imposes a substantial burden on the Holy Ghost Society under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc (2012). The Town also has no compelling reason to enforce the Bylaw—indeed, the Holy Ghost Society has averaged use of approximately 1 bathtub of water per year on the Property over the past 10 years. Furthermore, the estimated \$30,000 in outlays to comply with the Bylaw represents over 150% of the Holy Ghost Society’s annual budget. Imposition of the Bylaw will cause extreme harm and, indeed, spell the likely destruction of the Holy Ghost Society itself.

For at least these and the other reasons set forth below, we respectfully request that you recommend to the Select Board that it relieve the Holy Ghost Society from the overly burdensome requirements of the Bylaw. We are operating under the customary understanding that any and all daily fines and/or other related charges including those for noncompliance under the Bylaw are suspended throughout this appeal process.



A. The Holy Ghost Society and the Subject Property

1. Background on the Holy Ghost Society

The Holy Ghost Society is a not-for-profit religious organization that was founded over 100 years ago to support the religious activities of Plymouth's Portuguese immigrant community. The Trustees of the Holy Ghost Society are charged with, *inter alia*, holding the Property (as defined below) "for the benefit of Portuguese-American, Roman Catholic inhabitants of the North Plymouth and Plymouth areas and the Roman Catholic Church or Churches of North Plymouth; to do works of charity among and for the benefit of such persons and institutions . . ."

One of the major cultural traditions of the Holy Ghost Society is its "Feast of the Holy Ghost" (the "Feast"), which originated centuries ago in the Azores. It originated from the sixth Queen of Portugal, Isabel, who had unsurpassed devotion to the Roman Catholic Church and great faith in the Holy Ghost. The Feast has been held in Plymouth since the early 1900s when the first major immigration of Portuguese people came to work in Plymouth, primarily for the Plymouth Cordage Company.

The Feast is traditionally a religious event that includes music and celebration, blessing of meats and bread, feeding the poor and decorating religious statues. The event concludes with a procession of religious statues. The parade procession begins at the Young American Club on Ocean View Avenue, continues down Standish Avenue to Hamilton Street and then onto Court Street stopping at St. Mary Parish.

At St. Mary Parish, there is a full mass where the priest blesses and crowns the Holy Ghost Queen, who is representing Queen Isabel, a major focus of tribute for this event. Upon completion of the mass, the parade proceeds up Cherry Street and onto South Cherry Street where it ends at the Property (i.e., Holy Ghost Field). At the Property the crown is placed in the Holy Ghost Society's crown house where all patrons can pay their respects.

2. Subject Property and Costs to Comply with the Town Bylaws

The field at 12 South Cherry Street is the focus of this relief request ("Property"). At the Property, the Holy Ghost Society has an approximate 80' x 25' pavilion that is connected to the municipal water supply. The Property also has a functioning septic soil absorption system.

Along with its feast, the Holy Ghost Society loans the Property to two other local organizations for their annual private outings. The Holy Ghost Society spends a significant portion of its budget to maintain the Property annually.

Based on the historic water usage data, the Holy Ghost Society's use of water has averaged approximately 12 cubic feet of water per year for the past 10 years. This converts to about 90 gallons of water per year, just over the volume of one standard bath tub.



3. The Holy Ghost Society's Budget and Charitable Outlays

The Holy Ghost Society's sole source of income is philanthropic contributions. Its annual gross income is approximately \$20,000 and its annual expenses are approximately as follows: \$10,000 for Feast Costs; \$3,000 for Property Maintenance; \$2,000 for Taxes, Electric & Water; \$1,500 for Scholarships; and \$1,000 for a Church Donation.

The funds raised from the Feast go toward the Holy Ghost Society's donation to St. Mary Parish and college scholarships to one graduating senior of Portuguese descent from each of Plymouth North, Plymouth South, and Silverlake high schools.

B. The Select Board Should Grant the Requested Relief

1. Imposition of the Bylaw Would Run Afoul of the Religious Land Use and Institutionalized Persons Act ("RLUIPA")

The Holy Ghost Society's Property is exempt from the Bylaw's sewer connection requirement pursuant to the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc (2012). In enacting RLUIPA, Congress recognized that places of assembly are necessary to facilitate religious practice and sought to address concerns that local governments may use zoning ordinances to prevent religious organizations from using land for such purposes.

RLUIPA prohibits the imposition or implementation of any "land use regulation" by a government in a manner that "imposes a substantial burden on the religious exercises of a...religious assembly or institution." 42 U.S.C. § 2000cc. Under this statute, "religious exercise" includes the "use, building, or conversion of real property for the purpose of religious exercise." 42 U.S.C. § 2000cc-5.

The religion of the Holy Ghost Society focuses on praying to its saints and providing for the poor during the Feast. As the primary use for the Property is for assembly for religious celebrations and has been at the heart of the Holy Ghost Society's religious exercise for over 100 years, it undoubtedly concerns "religious exercise" within the meaning of RLUIPA. See, e.g., *Mintz v. Roman Catholic Bishop of Springfield*, 424 F.Supp.2d 309 (D. Mass. March 30, 2006) (finding that activities at a parish center encompass "religious exercise" where the center would be used as a "locus of small gatherings for church services" and agreeing with the Town of Lenox's decision that enforcing its bylaw would violate RLUIPA).

The Bylaw falls within the purview of RLUIPA as it constitutes a "land use regulation" within the meaning of the statute. Several courts have held that public health ordinances and water and sewer regulations are within the purview of RLUIPA. See, e.g., *Fortress Bible Church v. Feiner*, 694 F.3d 208 (2d Cir. 2012) (finding RLUIPA applied to an environment law intertwined with locality's zoning regulation); *Reaching Hearts Int'l, Inc. v. Prince George's Cty.*, 368 Fed. Appx. 370, 371-73 (4th Cir. 2010) (holding that county's denial of church's water and sewer category change applications violated RLUIPA); *US v. Cty of Culpeper, Virginia*, 245 F. Supp. 3d 758, 766 (W.D. Va. March 29, 2017) (finding RLUIPA applies even though "the pump-and-haul permit process is not part of the County's formal zoning scheme."). RLUIPA further requires that its provisions "be construed in favor of a broad

protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.” 42 U.S.C. § 2000cc-3 (emphasis added).

Enforcement of the Bylaw places not only a substantial burden on the Holy Ghost Society but an insurmountable one. *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531, 539 (7th Cir. 2009) (“[W]hether a given burden is substantial depends on its magnitude in relation to the needs and resources of the religious organization in question”); *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 96 (1st Cir. 2013) (declining to adopt standard requiring that “nothing short of coercion to change or abandon one’s religious beliefs can meet the substantial burden test.”).

In order to comply with the requirements, the Holy Ghost Society would be required to spend over \$30,000. The Holy Ghost Society’s annual gross income would not even come close to covering the required costs. See *Reaching Hearts Int’l, Inc. v. Prince George’s Cty*, 584 F.Supp.2d 766, 785-86 (D. Md. Nov. 4, 2008) (finding “substantial burden” where denials of church’s water and sewer category change applications prohibited it from building on its property and caused church to suffer financial loss). As such, the Holy Ghost Society would have no alternative but to shut down – a result Congress undoubtedly sought to prevent with the passing of RLUIPA.

Furthermore, the Town may only impose such a substantial burden if it is in furtherance of a compelling government interest and if the imposition is the least restrictive means of achieving that interest. See 42 U.S.C. § 2000cc. No such compelling government interest exists for enforcing this Bylaw against the Holy Ghost Society. Indeed, the Holy Ghost Society’s records indicate that its average water usage over the past ten years was 12 cubic feet per year (about one bathtub). Because of its infinitesimal annual water usage, the Holy Ghost Society’s usage poses neither an environmental nor public health concern to the Town of Plymouth.

2. Imposition of the Bylaw Would Impose Undue Hardship on the Holy Ghost Society

In order to comply with the Bylaw, it is estimated that the Holy Ghost Society would be required to spend over \$30,000, comprised of (at least) \$15,000 in Town application fees and \$15,000 in engineering, materials and construction costs.

As a small not-for-profit religious organization, the Holy Ghost Society does not have the capital for such an exorbitant expenditure (indeed, representing 150% of its total annual budget). The Holy Ghost Society’s sole source of income is through philanthropic contributions, and those funds are used to provide scholarships to graduating students at local high schools. It has neither the means nor the funds to comply with the Bylaw. A payment of \$30,000 would severely harm the Holy Ghost Society and potentially cause it to cease to exist.

The Holy Ghost Society’s records indicate that the water usage on those three days over the past several years averages out to be 12 cubic feet per year. It would be knowingly reckless for the Town of Plymouth to force the Holy Ghost Society to comply with this regulation when it is aware that such action will greatly harm and potentially destroy the Holy Ghost Society when the Town has no compelling interest under the Bylaw.



While the Holy Ghost Society seeks to work through the Town's established special circumstances appeal process, should the Select Board not grant the relief requested, the Holy Ghost Society is prepared to file a lawsuit to obtain relief. The Holy Ghost Society reserves all rights to make claims under RLUIPA, the First Amendment, and any and all claims not listed herein, and reserves all rights to seek all levels of damages and costs including attorneys' fees under such a lawsuit. We are operating with the customary understanding that any and all daily fines and/or other related charges including those for noncompliance under the Bylaw are suspended throughout this appeal and potential forthcoming legal process. Please advise if the Town intends to approach it differently.

We appreciate your consideration of this request. Going forward, please contact me directly for all communications relating to this matter.

Very truly yours,

Daniel Shores
of ROTHWELL FIGG

cc: James L. Shores, TR, President, Holy Ghost Society of Plymouth
Nicole M. DeAbrantes, Esq.