

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

KAMAL ANWIYA YOUKHANNA,  
*et al.*,

Plaintiffs,

v.

CITY OF STERLING HEIGHTS,  
*et al.*,

Defendants.

No. 2:17-cv-10787-GAD-APP

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION  
& BRIEF IN SUPPORT**

[Fed. R. Civ. P. 65]

AMERICAN FREEDOM LAW CENTER  
Robert J. Muise, Esq. (P62849)  
P.O. Box 131098  
Ann Arbor, Michigan 48113  
rmuise@americanfreedomlawcenter.org  
(734) 635-3756

David Yerushalmi, Esq. (Ariz. Bar No.  
009616; DC Bar No. 978179; Cal. Bar No.  
132011; NY Bar No. 4632568)  
1901 Pennsylvania Avenue NW, Suite 201  
Washington, D.C. 20006  
david.yerushalmi@verizon.net  
(646) 262-0500

*Counsel for Plaintiffs*

O'REILLY RANCILIO PC  
Marc D. Kaszubski (P60333)  
Linda McGrail Belau (P55732)  
Sterling Town Center  
12900 Hall Road, Suite 350  
Sterling Heights, MI 48313-1174  
mkaszubski@orlaw.com  
(586) 726-1000

*Counsel for Defendants*

---

Plaintiffs Kamal Anwiya Youkhanna, Josephine Soro, Wafa Catcho, Marey Jabbo, Debi Rassi, Jeffrey Norgrove, and Megan McHugh (hereinafter collectively referred to as "Plaintiffs"), by and through undersigned counsel, hereby move this Court for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil

Procedure and E.D. Mich. LR 65.1 in order to prevent irreparable injury to Plaintiffs and the general public while this case proceeds.

In support of this motion, Plaintiffs rely upon the pleadings and papers of record, as well as their brief filed with this motion and the declarations in support.

For the reasons set forth more fully in their brief, Plaintiffs hereby request that this Court preliminarily enjoin Defendants from enforcing the Consent Judgment entered on March 10, 2017 in *American Islamic Community Center, Inc. v. City of Sterling Heights*, No. 1:16-cv-12920 (E.D. Mich. filed Aug. 10, 2016) (ECF No. 20) (hereinafter “Consent Judgment”), which permits the building of a Mosque on 15 Mile Road in Defendant City of Sterling Heights, Michigan (hereinafter “City”), in violation of state law.

As argued in Plaintiffs’ supporting brief, a federal consent decree or settlement agreement, such as the Consent Judgment, cannot be a means for state officials to evade state law. Consequently, municipalities, such as the City, may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public—including Plaintiffs, who will be directly harmed by the construction of the Mosque—by entering into such a decree or agreement, which is what the City has done here.

Moreover, the City violated the Michigan Open Meetings Act when it voted, in secret, to enter into the Consent Judgment during a City Council meeting held

on February 21, 2017. This provides yet another reason as to why the Consent Judgment is invalid.

Plaintiffs are City residents who reside in the neighborhood where the Mosque will be built and who frequently travel along 15 Mile Road. Plaintiffs will be impacted directly by the Mosque's construction. In fact, Plaintiffs Catcho, Jabbo, and Rrasi reside on 15 Mile Road and directly across the street from the property where the Mosque is to be built. Plaintiffs' interests will be irreparably harmed should the plans to construct the Mosque proceed prior to the final and full resolution of the claims advanced in this case.

Pursuant to E.D. Mich. LR 7.1, on March 16, 2017, a meet-and-confer was held between Plaintiffs' counsel and Defendants' counsel. During this conference, Plaintiffs' counsel explained the nature of this motion and its legal basis. Plaintiffs' counsel sought but did not receive concurrence from Defendants' counsel in the relief sought by this motion.

WHEREFORE, Plaintiffs hereby request that this Court grant this motion and enter an order preliminarily enjoining the City from enforcing the Consent Judgment, thereby staying its enforcement and maintaining the *status quo* while this challenge proceeds.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

/s/ David Yerushalmi

David Yerushalmi, Esq.

*Counsel for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

KAMAL ANWIYA YOUKHANNA,  
*et al.*,

Plaintiffs,

v.

CITY OF STERLING HEIGHTS,  
*et al.*,

Defendants.

No. 2:17-cv-10787-GAD-APP

**PLAINTIFFS' BRIEF IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

[Fed. R. Civ. P. 65]

## **ISSUE PRESENTED**

Whether Plaintiffs are likely to succeed in their challenge to the Consent Judgment such that a preliminary injunction should issue preventing its enforcement during the pendency of this action since Plaintiffs will be irreparably harmed absent such relief, the injunction will not cause substantial harm to others, and granting the injunction is in the public interest.

## CONTROLLING AND MOST APPROPRIATE AUTHORITY

*Connection Distributing Co. v. Reno*,  
154 F.3d 281 (6th Cir. 1998)

*Winter v. Natural Res. Def. Council, Inc.*,  
555 U.S. 7 (2008)

*League of Residential Neighborhood Advocates v. City of Los Angeles*,  
498 F.3d 1052 (9th Cir. 2007)

*St. Charles Tower, Inc. v. Kurtz*,  
643 F.3d 264 (8th Cir. 2011)

Mich. Comp. Laws § 125.3101, *et seq.*

Mich. Comp. Laws § 15.263

Fed. R. Civ. P. 65

## BRIEF IN SUPPORT OF MOTION

This case challenges the lawfulness of the Consent Judgment entered into between the City and the American Islamic Community Center, Inc. (“AICC”) by which the City granted AICC approval to build a large Mosque on 15 Mile Road in violation of the City of Sterling Heights Zoning Ordinance (“Zoning Ordinance”) and the Michigan Zoning Enabling Act. Mich. Comp. Laws § 125.3101, *et seq.* Moreover, the process by which the City voted to enter into the Consent Judgment violated the Michigan Open Meetings Act and the constitutional rights of Plaintiffs.

The legal basis for the requested injunction, and this Court’s authority for issuing the injunction, was set forth by the Ninth Circuit in *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007), in which the court invalidated a Settlement Agreement approved by a federal district court that granted an Orthodox Jewish congregation approval to operate a synagogue in a residential-zoned area. In that case, the Ninth Circuit explained that “[a] federal consent decree or settlement agreement cannot be a means for state officials to evade state law. . . . Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public.” *Id.* at 1055-56 (emphasis added).

Here, the City has approved by way of the Consent Judgment the application of AICC to construct and operate a Mosque in a residential-zoned area in the City in violation of state law. Consequently, this Consent Judgment is invalid and unenforceable, and Plaintiffs are asking this Court to preliminarily enjoin its enforcement so as to maintain the *status quo* while this case proceeds.

## STATEMENT OF FACTS<sup>1</sup>

### I. AICC Litigation and Consent Judgment.

On August 10, 2016, AICC filed a lawsuit against the City, alleging violations, *inter alia*, of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc. *American Islamic Community Center, Inc. v. City of Sterling Heights*, No. 1:16-cv-12920 (E.D. Mich. filed Aug. 10, 2016). (Muisse Decl. ¶ 3, Ex. A [AICC Verified Compl., ECF No. 1] at Ex. 1).

On August 30, 2016, the City filed its Answer, denying all wrongdoing. (Muisse Decl. ¶ 4, Ex. B [Answer, ECF No. 5]).

On February 21, 2017, following a public hearing held by the City Council, the City entered into the Consent Judgment with AICC. (Muisse Decl. ¶ 5, Ex. C [Consent Judgment, ECF No. 18]). During the City Council meeting, the Mayor

---

<sup>1</sup> The facts in support of this motion are taken from the pleadings filed in *American Islamic Community Center, Inc. v. City of Sterling Heights*, No. 1:16-cv-12920 (E.D. Mich. filed Aug. 10, 2016), and the declarations of attorney Robert J. Muise (Exhibit 1), Plaintiff Rrasi (Exhibit 2), and Plaintiff Norgrove (Exhibit 3), all of which are filed along with this motion.

ordered everyone out of the public hearing when it came time for the Council to actually vote on the Consent Judgment agenda item. (Rrasi Decl. ¶ 5 at Ex. 2).

Proper notice was not provided to affected landowners, such as Plaintiff Rrasi, and Plaintiffs were not provided with a copy of the proposed Consent Judgment prior to the meeting.<sup>2</sup> (Rrasi Decl. ¶ 4). In fact, the terms and conditions of the Consent Judgment were not fully disclosed until it was filed by counsel for AICC in its litigation on February 28, 2017. (Rrasi Decl. ¶ 4; *see also* Muise Decl. ¶ 5, Ex. C [Consent Judgment, ECF No. 18]).

In the Consent Judgment, the City expressly denied all wrongdoing. (Muise Decl. ¶ 5, Ex. C [Consent Judgment ¶ 6, ECF No. 18] [stating the parties' intent to resolve the dispute "without any admission of liability"]).

As noted, AICC filed the Consent Judgment on February 28, 2017; however, it was subsequently stricken by the Court due to a filing issue. (Muise Decl. ¶ 6, Ex. D [Docket Sheet]).

On March 10, 2017, the Court signed and entered the Consent Judgment, *without making any findings that there has been or will be an actual violation of federal law.* (Muise Decl. ¶ 7, Ex. E [Consent Judgment, ECF No. 20] [finding

---

<sup>2</sup> Plaintiff Rrasi heard late on Friday, February 17, 2017, through rumors, that the City Council was going to consider the Consent Judgment at this meeting. She found out for certain that it was taking place on the day of the meeting through the City's website. She received no other notice. Moreover, she never saw, nor was she provided a copy of, the terms and conditions of the Consent Judgment prior to the City approving it. (Rrasi Decl. ¶ 4).

that the parties desire “to resolve their disputes relative without any admission of liability”)).

## **II. AICC Special Approval Land Use Application.**

On or about June 16, 2015, AICC submitted a Special Approval Land Use application (“AICC Application”) to the City’s Planning Commission. (Muisse Decl. ¶ 3, Ex. A [AICC Verified Compl. ¶ 33, ECF No. 1]). The City’s Planning Commission “is the final decision maker” for the City as to whether the application meets the standards set forth in the Zoning Ordinance. (Muisse Decl. ¶ 3, Ex. A [AICC Verified Compl. ¶ 32, ECF No. 1]; Norgrove Decl. ¶ 6 at Ex. 3). The AICC Application was ultimately denied “based upon [AICC’s] failure to address the concerns of the Planning Commission to satisfy the discretionary criteria applied to the special land use application,” and “[t]he decision of the Planning Commission was based upon criteria contained in the Zoning Ordinance and was not based upon religion or religious denomination.” (Muisse Decl. ¶ 4, Ex. B [City Answer, Affirmative Defenses ¶¶ 16, 17, ECF No. 5]). Moreover, “[AICC] has an existing place of worship in Madison Heights, Michigan, and [AICC] has continued to be able to exercise its religious beliefs throughout all relevant periods of time.” (Muisse Decl. ¶ 4, Ex. B [Answer, Affirmative Defenses ¶ 14, ECF No. 5], Ex. A [AICC Verified Compl. ¶ 8, ECF No. 1]; *see also* Norgrove Decl. ¶ 24).

### **III. The Consent Judgment Violates the Zoning Laws.**

As set forth in greater detail in the declaration of Plaintiff Norgrove, a member of the City Planning Commission, approving the AICC Application violates the Zoning Ordinance and the Michigan Zoning Enabling Act.<sup>3</sup> (Norgrove

---

<sup>3</sup> Section 125.3504 of the Michigan Zoning Enabling Act provides as follows:

- (1) If the zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments under section 502 or 503 or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance.
- (2) The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government.
- (3) A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.
- (4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:
  - (a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

Decl. ¶¶ 5-30, Ex. A [AICC Application], Ex. B [August 13 Staff Report], Ex. C [September 10 Staff Report]). And the terms and conditions of the Consent Judgment are vague and inadequate, leaving Plaintiffs at great risk of future harm (Norgrove Decl. ¶¶ 27, 28), as set forth further below.

To summarize, the AICC Application violates the Zoning Ordinance and Michigan Zoning Enabling Act as follows:

- The location and height of the proposed building interferes with and discourages the appropriate development and use of adjacent land and buildings, with the height exceeding that of other structures in the immediate areas by more than 30' at some points of the proposed building. Zoning Ordinance §§ 25.02 A & D.
- The square footage of the proposed building in comparison to the size of the parcel is excessive and not compatible with the established long-term development patterns in this R-60 zoning district. Zoning

---

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

(5) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed.

Mich. Comp. Laws § 125.3504.

Ordinance §§ 25.02 A & D.

- Given the approximately 20,500 square foot size of the proposed *main floor* of the building (not counting dedicated meeting space in the basement) and the allocation of floor space to ancillary uses, there is a likely shortage of off-street parking when the principal and ancillary uses of the building are combined, particularly during times of maximum capacity prayer hall usage. Zoning Ordinance §25.02 B.
- The scale of the proposed building on the site is not harmonious with the scale of the existing buildings situated in this R-60 zoning district and neighboring areas. Zoning Ordinance §§ 25.02 A, E, F & G.

(Norgrove Decl. ¶¶ 5-17, Ex. B [August 13 Staff Report]).

The Planning Commission denied the AICC Application on September 10, 2015 according to state and City ordinances, specifically including the Zoning Ordinance, and incorporated guidance. When AICC returned after the one month postponement that was offered for the purpose of allowing AICC to “provide additional information to the Planning Commission” and affording the Planning Commission time to address questions to “Mr. Mende (Planning Department) and the planning office,” AICC returned to the Planning Commission with no substantive revisions in the Mosque design. The submitted plan change was simply a 9’ reduction in the height of the spires and a 7’ increase in the height of

the dome. These two adjustments provided little relative difference and did nothing to mitigate the overall height concerns. (Norgrove Decl. ¶¶ 18, 19, Ex. C [September 10 Staff Report]).

In fact, AICC's changes did not resolve the concerns. Rather, the changes worsened the situation by increasing the volume of the structure. Consequently, it was evident to the Planning Commission, and the City Planner, that AICC had no interest in complying with the Planning Commission's concerns and the Zoning Ordinance. (Norgrove Decl. ¶ 20).

Rather than addressing the concerns and working with the Planning Commission to resolve the zoning issues, AICC filed its lawsuit. As a result, the Planning Commission did not have an opportunity to pursue the remaining concerns (discussed further below) that AICC was required to satisfy before the Planning Commission could have fulfilled its duty under the Zoning Ordinance (and the Michigan Zoning Enabling Act). (Norgrove Decl. ¶¶ 21, 22; *see also* ¶ 4).

AICC's blueprints indicate 7,874 square feet of space in the basement that is not counted in the square footage for the main floor (20,500 square feet) addressed in the application for special use. This space will accommodate offices as well as a "women's meeting area." The main floor also indicates spaces for a banquet hall, multi-purpose room, kitchen and meeting spaces that are separate from the prayer space that is traditionally dedicated to men. (Norgrove Decl. ¶ 23).

AICC is currently worshipping at a Madison Heights location that advertises a broad range of activities beyond those included in the application. AICC represented that the scheduled events will only include daily prayer, Friday prayer service and some Ramadan services (these occur during the entire month of observance). But, in fact, upon information and belief, AICC is looking for new space for the purpose of offering “educational activities, youth activities, and special events” that the existing space would not accommodate. The potential for concurrent or sequential use of the facility for different activities at the same time or in close proximity is contemplated by the Ancillary Parking provision for church and temple parking space requirements, which requires additional parking spaces “for ancillary facilities, such as social halls, schools, etc.” Zoning Ordinance § 23.02 B.1. (Norgrove Decl. ¶ 24).

The August 13 Staff Report upon which the August 13, 2015, Planning Commission deliberations and potential decision were based, described the activities that were submitted for special use review by AICC as “individual prayer daily, typically in the afternoon, and group worship to be held on Friday afternoons. Additional services are held during special religious occasions such as Ramadan.” Consequently, it is still not clear as to what activities will be occurring at the proposed Mosque, and when that question was raised by the Planning Commission, it was met with resistance by AICC. (Norgrove Decl. ¶ 25).

Moreover, no traffic study was ever completed for the proposed Mosque, despite the frequent and legitimate complaints of those living on 15 Mile Road that the increase in traffic will exacerbate the already serious congestion and safety issues in this residential neighborhood, particularly in light of the fact that a school is located in the neighborhood, thereby increasing “child-vehicle interfacing.” (Norgrove Decl. ¶ 26).

In addition to approving an application that violates the Zoning Ordinance, the Consent Judgment is vague and inadequate. It provides highly ambiguous standards, no concrete inspection criteria, and no structure to provide necessary enforcement mechanisms. In short, it leaves residents, particularly those living in close proximity to the proposed Mosque, such as Plaintiffs Wafa Catcho, Marey Jabbo, and Debi Rrasi, at great risk of future harm. (Norgrove Decl. ¶ 27).

For example, in addition to lacking the necessary detail to protect the interests of the residents of the City, the Consent Judgment includes the following vague and inadequate provisions and glaring omissions:

- There is no enforceable parking limitation condition. Where the Consent Judgment is based upon “anticipated” parking arrangements if more than 130 vehicles are expected, the AICC is excused from providing the mentioned shuttle service after “utiliz[ing] all reasonable efforts to obtain an alternative site in close proximity.”

This falls far short of the reasonable condition that would require a “proof of parking” certification. In fact, the entire permit condition may be nullified if AICC protests that all “reasonable efforts” failed.

- Through the Consent Judgment, the City failed to provide any meaningful parking limitations. Rather, it put the burden on nearby residents, providing for “residential permit parking” in not one, but two areas (ostensibly for equal treatment considerations). Residents, including Plaintiffs, have not been consulted on this significant burden that the City intends to impose upon them in the event of AICC’s failure to control parking.
- As AICC spokespersons have admitted that the current “100 members” indicated in the August 13 Staff Report is *at least* 300 attendees if family members are counted, it is easy to see that the parking lot as approved for 130 spaces would be filled at present for prayer services alone. This provides no consideration for concurrent meetings or activities.
- The AICC blueprints suggest an occupancy load of near 2,000 persons, potentially at one time. There are spaces that appear to be adaptable to several uses. The multi-purpose room could be used as a gym, and many spaces described as offices could be classrooms.

There has been no consideration for limiting concurrent or consecutive events suggested by this multiplicity of varied use spaces for the purpose of critical parking and traffic controls.

- The Consent Judgment specifically did not authorize “the operation of a school” at the site, but by the explicit instruction that a school would require a separate permit, the City left open the possibility of operating a day care facility at the site, as discussed at the Planning Commission hearing.
- There is no provision for the cessation of activity time and assured “quiet use and enjoyment” for neighborhood residents.
- There is no expressed setback requirement that would attempt to mitigate the 58 ½ foot dome and the 61 ½ foot height of the spires as required by the Zoning Ordinance.
- The Consent Judgment asks AICC to “monitor parking” to avoid overflow parking on “*adjacent* residential streets,” but the word “monitor” signals no intent to enforce and the use of the word “adjacent” leaves open many other residential street parking possibilities.
- Furthermore, there is no requirement for professional traffic control during heavy traffic hours as indicated by known commuter times

and/or concurrent and closely consecutive events at the Mosque.

- The height of the structure is still far from compliant with the standards expressed in the Zoning Ordinance that limit buildings in R-60 to 30 feet.
- Restrictions on the concurrent use of large meeting spaces in the building should have been provided: 3,204 square feet are allocated to worship space; 4,043 square feet are shown as lecture space; 4,201 square feet are indicated for recreational use; and there is additional space dedicated to women's prayer meeting.
- The Consent Judgment does not include a restriction against outdoor activities to preclude noisy youth and adult sport activities as instructed by the City Planning staff.
- The Consent Judgment does not include a provision that general meetings/services cannot begin or end within thirty minutes of the Hatherly Education Center's (which shares a property boundary with the proposed Mosque) start and dismissal times.
- There is no provision for the easement promised by the City Planner at the August 13, 2015, Planning Commission meeting that would protect two homeowners' rights to travel over AICC's property in order to access their homes.

(Norgrove Decl. ¶ 28).

## ARGUMENT

The standard for issuing a preliminary injunction in this Circuit is well established. In *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998), the court stated:

In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest.

*Id.*; see also *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”). The reviewing court will balance these factors, and no single factor will necessarily be determinative of whether or not to grant the injunction. *Connection Distributing Co.*, 154 F.3d at 288.

### **A. Plaintiffs’ Likelihood of Success on the Merits.**

Plaintiffs are likely to succeed on their claim that the Consent Judgment is invalid and unenforceable. As noted previously, “A federal consent decree or settlement agreement cannot be a means for state officials to evade state law. . . . Municipalities may not waive or consent to a violation of their zoning laws, which

*are enacted for the benefit of the public.” League of Residential Neighborhood Advocates*, 498 F.3d at 1055-56 (emphasis added).

*League of Residential Neighborhood Advocates* is dispositive. In this case, the city entered into a settlement agreement with a congregation allowing it to operate a synagogue in a residential-zoned area. The plaintiff neighbors sued alleging that the settlement agreement was void because a conditional use permit was granted without complying with the requirements of the local zoning ordinance. The district court dismissed the action, and the neighbors appealed. The Ninth Circuit reversed, holding the settlement agreement invalid and unenforceable. *Id.* at 1058. In its decision, the court observed that “[b]y placing its imprimatur on the Settlement Agreement, the district court effectively authorized the City to disregard its local ordinances in the name of RLUIPA.” *Id.* at 1058. That is precisely the situation here.

In *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264 (8th Cir. 2011), intervenors, who were not parties to a consent decree between plaintiffs and the defendant zoning board, challenged the consent decree on appeal. The court held the consent decree invalid, stating, “State actors cannot enter into an agreement allowing them to act outside their legal authority, even if that agreement is styled as a ‘consent judgment’ and approved by a court.” *Id.* at 270.

Here, the Court approved the Consent Judgment without making any findings that there was or will be an *actual* violation of federal law. Moreover, such a finding could not be made in this case. Indeed, the parties to the Consent Judgment specifically disavowed any liability. (Muisse Decl. ¶¶ 5, 7, Ex. C [Consent Judgment ¶ 6, ECF No. 18], Ex. E [disclaiming “any admission of liability”]; [Consent Judgment, ECF No. 20] [finding same]).

As stated by the Ninth Circuit:

Before approving any settlement agreement that authorizes a state or municipal entity to disregard its own statutes in the name of federal law, a district court must find that there has been or will be an *actual* violation of that federal law.

Such a finding could not have been made in this case. While a district court would not be bound by the parties’ stipulation that a violation of federal law had occurred or would occur, the district court here was presented with a settlement agreement that specifically reiterated the City’s denial of all of the allegations of the complaint, and disclaimed any “admission of liability . . . under any federal, state, or local law, including [RLUIPA].”

*League of Residential Neighborhood Advocates*, 498 F.3d at 1058. This is the precise situation presented by this case.

As stated by the Seventh Circuit,

[U]pon properly supported findings that such a remedy is *necessary* to rectify a *violation of federal law*, the district court can approve a consent decree which overrides state law provisions. Without such findings, however, parties can only agree to that which they have the power to do outside of litigation.

*Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995).

In sum, the basis for Plaintiffs' claim that the Consent Judgment is invalid and unenforceable is well established. Therefore, there is a reasonable likelihood that they will prevail. *See also Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 341-42 (7th Cir. 1987) ("A consent decree is not a method by which state agencies may liberate themselves from the statutes enacted by the legislature."); *Cleveland Cnty. Ass'n for Gov't by the People v. Cleveland Cnty. Bd. of Comm'rs*, 142 F.3d 468, 477-79 (D.C. Cir. 1998) (vacating a consent decree implementing an election plan, holding that "if a violation of federal law necessitates a remedy barred by state law, the state law must give way; if no such violation exists, principles of federalism dictate that state law governs"); *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) ("To the extent the parties to the Consent Decree intended to ban advertising displays next to I-105, they could not agree to terms which would exceed their authority and supplant state law."); *Vestevich v. W. Bloomfield Twp.*, 245 Mich. App. 759, 764-65 (Mich. Ct. App. 2001) (affirming the decision to set aside the consent judgment and stating that "the trial court properly recognized that the consent judgment brought to court ostensibly to settle plaintiff's renewal of his long-settled claim was, in effect, an attempt by the parties to circumvent the legislatively prescribed processes for raising and deciding zoning issues").

Moreover, § 25.01 of the Zoning Ordinance, which grants the City Council authority to approve special approval land use permits "[a]s a development

pursuant to a consent judgment approved by the City Council,” Zoning Ordinance § 25.01, does not resolve this issue in the City’s favor. Indeed, this section also requires that “[w]hen the City Council is the reviewing authority with respect to a special approval land use, it shall have the same reviewing authority and shall consider the same standards as the Planning Commission under the special approval land use criteria applicable to such use in the particular zoning district and Article 25.” *Id.* (emphasis added). This makes sense. Otherwise, consent judgments could be a mechanism by which the City could circumvent the Zoning Ordinance to the detriment of the public (*i.e.*, the people for which the Zoning Ordinance was enacted in order to protect their rights and interests).

Consequently, the City cannot rely on this or any other similar provision of the Zoning Ordinance as a convenient way to use a Consent Judgment to circumvent the requirements of the Zoning Ordinance or the Michigan Zoning Enabling Act, which are in place to protect the public, including Plaintiffs in this case. *See generally League of Residential Neighborhood Advocates*, 498 F.3d at 1057 (“[W]e reject any argument that the City may circumvent its zoning procedures by referencing its general authority to settle litigation under § 273(c) of the city charter.”).

Additionally, when the City approved the Consent Judgment through its City Council it did so in violation of Plaintiffs’ due process rights. “Deprivation of

procedural due process” is a basis for relief under 42 U.S.C. § 1983 from unlawful zoning. *See Pearson v. Grand Blanc*, 961 F.2d 1211, 1216 (6th Cir. 1992) (reviewing “the various kinds of constitutional violations typically asserted in federal zoning cases,” including procedural due process); *see also Nasierowski Bros. Inv. Co. v. Sterling Hts.*, 949 F.2d 890, 893-94 (6th Cir. 1991) (“Nasierowski’s injuries accrued and attached immediately when Council convened in executive session and materially deviated from the recommendations of the planning commission, thus subverting the purpose of the duly conducted notice and comment process.”).

The extent of process due to any person before they are deprived of a state-created right is measured by a three-factor balancing test: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the governmental interest in additional safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). This balancing analysis is fact-specific. *Id.* at 334; *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

Here, Plaintiffs, including Plaintiff Rrasi who resides across the street from the property where the Mosque is to be built, did not receive the required notice under the Michigan Zoning Enabling Act nor were they provided with an adequate opportunity to be heard. And this is particularly the case since Plaintiffs, specifically including Plaintiff Rrasi who is an affected landowner, were never

served with a copy of the proposed Consent Judgment so as to allow them to review, consider, and comment upon its terms and conditions. The Zoning Ordinance and the Michigan Zoning Enabling Act have in place procedures for notifying affected landowners and holding hearings to allow these landowners to express their concerns to ensure that an informed and just decision can be made regarding a zoning application that will directly affect them. No such actions were taken by the City when it approved the AICC Application *via* the Consent Judgment. Indeed, the City's decision to enter into the Consent Judgment was a *fait accompli*, and the February 21, 2017 City Council meeting was a sham. (*See* Rrasi Decl. ¶¶ 5, 6).

Consequently, the private interests (interests of Plaintiffs) affected by the official action (*i.e.*, approval of the AICC Application *via* the Consent Judgment) were significant. The risk of erroneous deprivation of those interests was great in that Plaintiffs' interests were in fact deprived by the official action. And the governmental interest in complying with the procedural safeguards of the zoning regulations are significant in that these regulations were enacted for the benefit of the public (*i.e.*, for the benefit of affected landowners such as Plaintiffs) in the first instance. Indeed, an important element of the land-use hearing process is the notice of pending action. Proper notice provides advance warning to parties so that they can intelligently prepare for and meaningfully participate in the hearing. That

was not done here, in violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment.

Finally, the Consent Judgment is invalid since its approval by the City, through the City Council, violated the Michigan Open Meetings Act. "[T]he Open Meetings Act was enacted to provide openness and accountability in government, and is to be interpreted so as to accomplish this goal." *Esperance v. Chesterfield Twp.*, 89 Mich. App. 456, 463 (Mich. Ct. App. 1979). Consequently, "[i]t should also be recognized that because the act requires all meetings to be opened to the public it implicitly requires that *all parts* of the meeting (unless specifically excluded by the act) also be open to the public." *Id.* at 463 (emphasis added).

Here, the City, through the vote of its City Council, approved the Consent Judgment in violation of the Michigan Open Meetings Act by ordering all of the citizens out of the meeting during the actual vote. Consequently, the meeting was no longer a public meeting, and the vote was taken in violation of the Act. *See* Mich. Comp. Laws § 15.263(1)-(3); *Esperance*, 89 Mich. App. at 463 ("It can hardly be contended that a vote by secret ballot at an open meeting is any more open than a vote at a closed meeting.").

And because the City failed to comply with the Act and this failure impaired the rights of the public, specifically including the rights of Plaintiffs, as set forth above, the City's action (*i.e.*, approval of the Consent Judgment) should be

invalidated. *Esperance*, 89 Mich. App. at 464 (“Those seeking to have the decision invalidated must allege not only that the public body failed to comply with the act, but also that this failure impaired the rights of the public.”).

**B. Irreparable Harm to Plaintiffs without the Preliminary Injunction.**

Plaintiffs will be irreparably harmed without the preliminary injunction. The Consent Judgment expressly permits AICC to proceed with building the Mosque without complying with the Zoning Ordinance or the Michigan Zoning Enabling Act, which are in place to protect the interests of the public, specifically including Plaintiffs’ interests, which will be directly affected by the construction. Indeed, the construction of the Mosque will harm Plaintiffs’ use and enjoyment of their property and subject them and the general public to serious safety risks. (*See* Rrasi Decl. ¶ 3 [stating that the Mosque construction “will adversely affect my property value,” “disrupt my quiet use and enjoyment of my property, which is my home,” and “worsen an already horrendous and unsafe traffic situation, particularly in light of the fact that a school (Hatherly Education Center) is located in the neighborhood, thereby increasing the chances that a child could be involved in an accident”]).

**C. Whether Granting the Preliminary Injunction Will Cause Substantial Harm to Others.**

In this case, the likelihood of harm to Plaintiffs is substantial because the construction of the Mosque will disrupt the *status quo* of this residential neighborhood in which Plaintiffs live and travel, causing harm to Plaintiffs' property interests and creating serious public safety issues. (*See* Rrasi Decl. ¶ 3). Moreover, the Zoning Ordinance and the Michigan Zoning Enabling Act were enacted to benefit the public. That is, these requirements are in place to ensure public safety and to protect the property rights and interests of persons that might be affected by a zoning decision that grants permission to construct a building, such as the large Mosque at issue. (*See* Norgrove Decl. ¶¶ 10, 30).

On the other hand, if Defendants are restrained from enforcing the Consent Judgment, the *status quo* will be maintained. In fact, it is in the best interests of the City, as a representative of its residents, to have its Zoning Ordinance enforced. And while Plaintiffs certainly acknowledge that AICC has an interest in the construction of the Mosque, AICC currently has a place to worship in Madison Heights, so its religious exercise is not impaired in any way. There is no reason to believe that its worship services will not continue in Madison Heights while this case is proceeding (or even while the Mosque is in the construction phase for that matter). Moreover, it would be in AICC's interest to have the legality of the

Consent Judgment resolved before it starts committing substantial time and resources to a project that might ultimately be halted by the courts.

In sum, granting the requested injunction is in the best interest of all parties, and it is in the public interest.

**D. The Impact of the Preliminary Injunction on the Public Interest.**

The impact of the preliminary injunction on the public interest turns in large part on whether the Consent Judgment (*i.e.*, the approval of the AICC Application) comports with the zoning requirements necessary for building a large Mosque at the proposed location on 15 Mile Road. As the facts demonstrate, there can be little doubt that the Consent Judgment grants AICC special rights and privileges, thereby allowing it to circumvent the Zoning Ordinance and the Michigan Zoning Enabling Act to the detriment of the general public, and more specifically, to the detriment of Plaintiffs, who will be directly harmed by the Mosque construction. There is clear evidence that building the Mosque at this location will create substantial harm to the general public by creating significant safety concerns with regard to traffic, particularly in light of the fact that this a residential neighborhood and there is a school located adjacent to the proposed Mosque site, and with regard to the inability of emergency vehicles (fire department in particular) to maneuver and travel as a result of the traffic congestion. (*See* Rrasi Decl. ¶ 3; Norgrove Decl. ¶ 15).

In sum, the public interest is promoted by granting this motion, upholding the requirements of the Zoning Ordinance and the Michigan Zoning Enabling Act, and maintaining the *status quo* until this case is ultimately resolved. *See generally G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”); *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating that “the public as a whole has a significant interest in ensuring equal protection of the laws”).

### CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant their motion.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

/s/ David Yerushalmi

David Yerushalmi, Esq.

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)