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-DRG

Hon. Gershwin A. Drain

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Plaintiffs Kamal Anwiya Youkhanna, Wafa Catcho, Marey Jabbo, Debi Rrasi, Jeffrey Norgrove, and Megan McHugh (hereinafter collectively referred to as "Plaintiffs"), by and through undersigned counsel, hereby move this Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

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

For the reasons set forth more fully in Plaintiffs' brief, there is no genuine dispute as to any material fact and Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Pursuant to E.D. Mich. LR 7.1, on December 19, 2017, a meet-and-confer was held in which 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 judgment in their favor.

Respectfully submitted,

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Counsel for Plaintiffs

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

ISSUES PRESENTED

I. Whether the Court should declare the Consent Judgment invalid as a matter of law because it was entered into in violation of state and local zoning laws and there were no findings that it was necessary to rectify a violation of federal law.

II. Whether Plaintiffs are entitled to judgment as a matter of law on their free speech claim because Defendants' prior restraint on their speech at the February 21, 2017 City Council meeting was content- and viewpoint-based in violation of the Free Speech Clause of the First Amendment.

III. Whether Plaintiffs are entitled to judgment as a matter of law on their equal protection claim when Defendants granted the use of a forum (*i.e.*, City Council meeting) to people whose views they found acceptable, but denied use to those, including certain Plaintiffs, wishing to express less favored or more controversial views in violation of the Equal Protection Clause of the Fourteenth Amendment.

IV. Whether Plaintiff Rrasi is entitled to judgment as a matter of law on her unlawful seizure and free speech claims when Defendant Taylor directed her seizure without probable cause and in retaliation for her speech in violation of the First and Fourth Amendments.

V. Whether Plaintiffs are entitled to judgment as a matter of law on their due process claim because Defendants deprived them of proper notice and an opportunity to be heard when the City materially deviated from the decision of the Planning Commission, thus subverting the purpose of the duly conducted notice and comment process and thereby harming the property interests of Plaintiffs in violation of the Due Process Clause of the Fourteenth Amendment.

VI. Whether Plaintiffs are entitled to judgment as a matter of law on their Establishment Clause claim when Defendants' actions had the effect of conveying a message of approval of Islam and its adherents and disapproval of those who are not adherents of Islam, including Plaintiffs, in violation of the Establishment Clause.

VII. Whether Plaintiffs are entitled to judgment as a matter of law on their claim arising under the Michigan Open Meetings Act when Defendant Taylor, the City Council chairman, removed certain Plaintiffs from the City Council meeting on February 21, 2017, and closed the meeting to the general public during the City Council's vote on the Consent Judgment agenda item in violation of the Act.

CONTROLLING AND MOST APPROPRIATE AUTHORITY

Am. Atheists, Inc. v. Duncan, 637 F.3d 1095 (10th Cir. 2010)

Esperance v. Chesterfield Twp., 89 Mich. App. 456 (Mich. Ct. App. 1979)

Greene v. Barber, 310 F.3d 889 (6th Cir. 2002)

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

Lowery v. Jefferson Cty. Bd. of Educ., 586 F.3d 427 (6th Cir. 2009)

Lynch v. Donnelly, 465 U.S. 668 (1984)

Nasierowski Bros. Inv. Co. v. City of Sterling Heights, 949 F.2d 890 (6th Cir. 1991)

Police Dep't of the City of Chi. v. Mosley, 408 U.S. 92 (1972)

Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819 (1995)

United States v. Mendenhall, 446 U.S. 544 (1980)

United States v. Richardson, 949 F.2d 851 (6th Cir. 1991)

Whitman v. Galien Twp., 288 Mich. App. 672 (Mich. Ct. App. 2010)

Mich. Comp. Laws § 15.263

Mich. Comp. Laws § 15.270

Mich. Comp. Laws § 125.3502

STANDARD OF REVIEW

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

MATERIAL FACTS NOT IN DISPUTE

A. AICC Permit Application.

On July 8, 2015, Jaafar Chehab, on behalf of AICC, submitted an "Application for Planning Commission Approval" (hereinafter "AICC application") for a "Special Approval Land Use" in which he requested approval to build a "Religious Community Center" on Fifteen Mile Road. (Ex. A, AICC application). The location for this structure is zoned R-60, which is residential. (*Id*.). The proposed "Religious Community Center" is approximately 28,000 square feet (Ex. B, McLeod Dep. at 86:8-10), with a dome and spires that exceed 60 feet in height. (Ex. C, 9/10/15 Staff Report at 4). It will be located on 4.3 acres. (Ex. B, McLeod Dep. at 87:5-7). While the building is 28,000 square feet, only 3,024 square feet is designated as "worship space." Consequently, only approximately one-eighth of the building is designated for religious worship. (Ex. B, McLeod Dep. at 120:11-23; Ex. D, Architectural plans).

The City's zoning regulations permit the construction of "[c]hurches, synagogues, mosques and places of group worship" in areas zoned residential.

(Ex. E, ZO at § 3.02). "Such facilities may include *related* community centers."[1] (*Id*. at § 3.02A4 [emphasis added]). However, a community center, as a principal use, is not permitted in a residential area; it is permitted in the planned office district.[2] (Ex. B, McLeod Dep. at 66:24-25 to 68:1-7).

AICC is currently worshipping at a Madison Heights location that advertises a broad range of activities beyond those presented during its application process. (Ex. F, 8/13/15 Staff Report at 1 [citing daily prayer, Friday prayer service and Ramadan services]). In fact, AICC was looking for new space for the purpose of offering "educational activities, youth activities, and special events" that the existing space would not accommodate.[3] (Norgrove Decl. ¶ 24 [Doc. No. 9-4]).

B. Local and State Zoning Regulations.

For the City to approve a special approval land use, the proposed construction must comply with all of the "specific" and "general" standards under the Zoning Ordinance, (Ex. B, McLeod Dep. at 72:17-23), as well as the MZEA.

Section 3.02 of the Zoning Ordinance addresses special approval land uses, such as "[c]hurches, synagogues, mosques and places of group worship," which "may be permitted by the Planning Commission subject to the *general* standards of

[1] AICC has "approximately 100 members" (AICC Compl. ¶ 7 [Doc. No. 9-2, Pg ID 87), which begs the question: why build a 28,000 square-foot structure?
[2] While factually, the building is a "community center" with a small worship space, for purposes of this brief, it will be referred to as a "mosque."
[3] Per AICC, it "offers a variety of services to the local Muslim community." (Br. of *Amicus Curiae* Am. Islamic Cmty. Ctr. at 8 [Doc. No. 27]).

section 25.02 and the *specific* standards imposed for each use." (Ex. E, ZO at § 3.02 [emphasis added]). The maximum height allowed for a building located within a residentially-zoned district is 30 feet. (*Id*. at § 3.04). However, a place of worship *may* exceed this height so long as it meets other requirements set forth in the Zoning Ordinance. (Ex. B, McLeod Dep. at 74:23-25 to 76:1-4 [noting that this is a *permissive* requirement]; Ex. E, ZO at § 3.02A1).

The "authority" for approving a special land use is set forth in § 25.01, which states, in relevant part, that the "Planning Commission shall have the power to approve or disapprove all special approval land uses, except that the City Council shall be the *approving authority*[4] with respect to special approval land uses which have been *approved* by the City Council . . . 4. As a development pursuant to a consent judgment approved by the City Council." (Ex. E, ZO at § 25.01). When considering "all applications for special approval land use except those *reviewed **and** approved by the City Council as provided in the preceding sentence*, the Planning Commission shall *review* each case individually as to its appropriateness and *consider*"[5] the applicable standards. (*Id*. at § 25.01B). And "[w]hen the City Council is the reviewing authority with respect to a special

[4] The Zoning Ordinance uses "approving" and "reviewing" authority interchangeably, and it does not distinguish between the two, particularly when it is referring to the authority of the City Council to approve "a development pursuant to a consent judgment approved by the City Council."

[5] The term "consider" as used by the Zoning Ordinance means to "apply."

approval land use, it . . . *shall consider the same standards as the Planning Commission*." (*Id*. at § 25.01C [emphasis added]). Thus, when the City Council is approving a special approval land use development pursuant to a consent judgment, as in this case, it must comply with the same regulations considered by the Planning Commission (unless federal law requires otherwise).[6]

The "general standards" applicable to *all* special approval land uses are set forth in § 25.02. And each of these standards is *mandatory*. (*Id*. at § 25.02 [stating that the "proposed special approval land use *shall*" comply with the stated standard]). Thus, while these standards are considered "general," they are *mandatory* ("shall") and they require *facts* to demonstrate compliance. (Ex. B, McLeod Dep. at 37:2-19; Ex. E, ZO § 25.03B1; Mich. Comp. Laws § 125.3502).

Section 25.03 sets forth the required "Procedures" that apply to special approval land uses. Subsection A, "*Public Hearing*,"[7] states, in relevant part, that "[i]f the City Council is the *reviewing authority*[8] for a special approval land use

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[6] The City's position revealed during discovery is that when a special approval land use is approved as part of a consent judgment, the City Council *is not required to consider nor comply with any of the standards for such use*. (*See* Ex. B, McLeod Dep. at 55:15-17, *see also id*. at 38:6-24). The City is forced to take this position because the Consent Judgment does not comply with the Zoning Ordinance. *See infra*. ***Indeed, per the City's position, the City Council could theoretically approve the construction of a nuclear power plant in a residential area via a consent judgment***. (Ex. B, McLeod Dep. at 43:14-25 to 44:1-11).

[7] Plaintiffs' due process claim is not based upon what the zoning regulations may or may not provide, but with what the Fourteenth Amendment *requires*. *See infra*.

[8] This section, once again, uses "reviewing authority" interchangeably with

under consideration that is proposed. . . [w]ithin or as part of a development proposed to be developed pursuant to a consent judgment (or amendment) *approved* by the City Council, the City Council *shall* investigate the circumstances of the case prior to approving or denying the request." (Ex. E, ZO at § 25.03A [emphasis added]). Under subsection B, the ordinance sets forth the required procedures for *approving* a special approval land use. Subsection B states, in relevant part, that "in instances where [the City Council] is the reviewing authority . . . . [if] the particular special approval land use(s) is *in compliance with the standards* [including § 25.02 and state statutes] it shall be approved. *The decision **shall** be incorporated in a statement of findings and conclusions which **specifies the basis for the decision** and any conditions imposed*." (*Id*. at § 25.03B1 [emphasis added]). The MZEA separately mandates "a statement of findings and conclusions . . . which specifies the basis for the decision" for all special land use approvals. Mich. Comp. Laws § 125.3502.

C. Actions of the Planning Commission.

The Planning Commission held a hearing on August 13, 2015, to review AICC's application. No final decision was rendered. Rather, the Planning Commission voted to continue the matter to the September 10, 2015 Planning Commission meeting so that it could consider additional information it had

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"approving authority," particularly when read in conjunction with § 25.01.

requested from AICC and so that a full commission would be present to hear and decide the matter. (Ex. G, Tr. of 8/13/15 Hr'g at 178-182). During the August 13, 2015, hearing, numerous citizens spoke in opposition to the AICC construction, citing traffic and safety as the primary concerns. (Ex. G, Tr. of 8/13/15 Hr'g).

Following the September 10, 2015 Planning Commission meeting, the Planning Commission *unanimously* voted to disapprove the AICC's permit application. Based on the *factual* record, the Planning Commission concluded that the proposed construction did not comply with the Zoning Ordinance. As stated in the Planning Commission Staff Report of September 10, 2015, AICC "was afforded an opportunity to consider and propose amendments to the architectural plans to address" the concerns raised by the Planning Commission. However, AICC failed to do so. (Ex. C, 9/10/15 Staff Report [noting no changes to ensure compatibility with the land uses in the vicinity in terms of the height, scale, and potential impact on the neighboring areas]). Consequently, the Planning Commission ultimately concluded, *based on the facts*, that the proposed construction does not comply with the Zoning Ordinance:

- 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 . . . ;
- 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 . . . ;

- Given the approximately 20,500 square foot size of the proposed building 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, especially on busy prayer hall days. Section 23.02 B.1 of the Ordinance requires additional parking spaces for ancillary uses, which are not addressed in the architectural plans . . . ; and
- The scale and height of the proposed building on the site are not harmonious with the character of existing buildings in the vicinity of this R-60 zoning district . . . .

(Ex. C, 9/10/15 Staff Report at 4; Ex. H, Tr. of 9/10/15 Hr'g at 7:23-25 to 13:1-2; Ex. I, Mende Dep. at 16:10-25 to 18:1-25 [reviewing hearing transcript where he explains why the mosque does not, *as a matter of fact*, comply with the zoning ordinance and testifying that his explanation was true]). During his testimony, Defendant Taylor confirmed that he "support[ed] the planning commission's decision in this case," that "the planning commission arrived at the right decision" and that this decision was "based on legitimate planning and zoning issues." (Ex. J, Taylor Dep. at 69:2-25 to 76:1-4).

> Q. So as you sit here today, was it your understanding the planning commission properly applied the zoning ordinance to deny the special approval land use application of the AICC?
> A. That is my belief, yes.

(Ex. J, Taylor Dep. at 75:25 to 76:1-4). Christopher McLeod, the City's designated Rule 30(b)(6) witness, testified that "the planning commission clearly outlined their rationale for denying the application. And their specific requirements in terms of their view, the specific requirements—general requirements of special land use were not met. So, from that standpoint, I agree

with the planning commission's determination." (Ex. B, McLeod Dep. at 111:21-25 to 112:1-2).

D. Litigation Against the City.

As a result of the Planning Commission's denial of the AICC application, AICC sued the City. (AICC Compl. [Doc. No. 9-2, Pg ID 84-138]). The City denied all wrongdoing. (Answer to AICC Compl. [Doc. No. 9-2, Pg ID 140-193]).

E. City Council Meeting of February 21, 2017.

On February 21, 2017, a City Council meeting was held, during which the City Council considered whether to enter into a consent decree that would resolve the pending litigation and approve AICC's request to build the mosque. Counsel for the City prepared only *one* Agenda Statement for the meeting, and the only "Suggested Action" provided was to *approve* the Consent Judgment. (Ex. K, Agenda Statement; Ex. B, McLeod Dep. at 135:1-24). Noticeably, no AICC supporters were present at this meeting. (Ex. L, Youkhanna Dep. at 35:20-25 to 36:1-11; 39:2-25 to 40:1-9). Counsel for the City also suggested to Plaintiff Norgrove that he not attend. (Ex. M, Norgrove Dep. at 91:22-25 to 92:1-23).

During this meeting, Defendant Taylor, the Mayor and Chairman of the City Council,[9] imposed a restriction on speakers who wanted to address the Consent

[9] As the chairperson, Defendant Taylor enforces the City Council's rules, and he is "responsible for giving people the floor, calling people out of order, ruling on points of order . . . [and he] generally [is] responsible for running the meetings."

Judgment agenda item. More specifically, the Mayor warned the speakers prior to the public comment period on the mosque issue that he would not permit "any comments about anybody's religion. . . . And any comments regarding other religions or disagreements with religions will be called out of order." (Ex. J, Taylor Dep. at 52:9-15). Defendant Taylor testified that he was enforcing a City Council rule that prohibits public comments that "make attacks on people or institutions."[10] (Ex. J, Taylor Dep. at 50:23-25 to 51:1-14; *id*. at 53:8-13 ["If somebody came up at any council meeting and started to talk about somebody else's religious beliefs or attacking them for their religious beliefs, they would be called out of order. I was just specifying it at this meeting."]). The application and enforcement of this speech restriction was demonstrated throughout the meeting, particularly when Defendant Taylor interrupted a woman speaker, calling her out of order and stating, "You're out of order. You cannot say that you don't want them to build the mosque because you want to be safe. Do you understand? I've made that ruling already." (Ex. J, Taylor Dep. at 56:23-25 to 57:1-3; *see id.* at 59:4-5 ["I believed that she was making an attack on the AICC."]; *id*. at 59:20-25 to 60:1-2 ["It related to what was going on back home, and my understanding of

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(Ex. J, Taylor Dep. at 30:15-24).

[10] Consequently, City Council "rules" were the moving force behind the violation of Plaintiffs' constitutional rights. Thus, the municipality is liable. *See Monell v. N.Y. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978) (holding that municipalities are liable under 42 U.S.C. § 1983 if municipal policy or custom was the "moving force" behind the alleged unconstitutional action).

what's going on back home—and back home I understood to be Iraq—is that Christians are being brutally persecuted by Islamic terrorists, and so I found that she was equating the AICC and the mosque with ISIS, and I viewed that as an attack on the AICC. That was not in order with our council rules."]). This prior restraint on the speakers at the City Council meeting restricted the speech of Plaintiffs. (Ex. L, Youkhanna Dep. at 59:10-25 to 60:1-25; *see also id.* at 63:11-25 to 65:1-18; 39:18-25 to 40:1-7; Ex. N, Rrasi Dep. at 43:5-25 to 45:1-7; Ex. O, Catcho Dep. at 33:17-25 to 34:1-11, 22-25; 35:1-25 to 36:1-20; 54:21-25; 56:1-14); Ex. P, Jabbo Dep. at 37:1-22; Ex. Q, McHugh Dep. at 34:25 to 40:1-3; *see also* Ex. 2, McHugh Decl. ¶¶ 3-4; Ex. 3, Youkhanna Decl. ¶¶ 4-8; Ex. 4, Rrasi Decl. ¶ 7; Ex. 5, Catcho Decl. ¶¶ 4-5). And while "religion" was off-limits for the citizen speakers, Defendant Taylor allowed council member Doug Skrzyniarz to talk about "religious wars," "religious liberty," and the so-called "wall of separation between church and state," among others, prompting (not surprisingly) an adverse response from some in attendance. (Ex. J, Taylor Dep. at 61:4-25 to 68:1-24; 95:15-25 to 96:1-22; Ex. L, Youkhanna Dep. at 50:17-21).

During a recess,[11] Plaintiff Rrasi approached Defendant Taylor to express her concerns to the mayor.[12] Defendant Taylor objected, so he directed two City

[11] Because it was during a recess, there is no basis to argue that Plaintiff Rrasi disrupted any business being conducted during the meeting.

[12] Defendant Taylor testified that he "[didn't] have a specific recollection of what

police officers to seize Plaintiff Rrasi and remove her from the council chambers. (Ex. J, Taylor Dep. at 100:24-25 to 104:1-6; Ex. N, Rrasi Dep. at 45:21-25 to 46:1-7; 47:6-25 to 58:13-19). While in police custody, Plaintiff Rrasi was not free to leave. (Ex. N, Rrasi Dep. at 46:3-4; 50:11-17; 58:13-19; Rrasi Decl. ¶ 4, Ex. B [Doc. No. 50-2]).

Prior to voting on the Consent Judgment, Defendant Taylor ordered all of the private citizens (except the media), including Plaintiffs Youkhanna, Catcho, Jabbo, and McHugh (Plaintiff Rrasi had already been removed by the police) out of the City Council chambers. (Ex. 2, McHugh Decl. ¶ 5). However, none of the Plaintiffs engaged in any disruption or breach of the peace during the meeting. (Ex. N, Rrasi Dep. at 61:14-22; Ex. P, Jabbo Dep. 37:23-25 to 38:1; Ex. L, Youkhanna Dep. 59:1-9; Ex. 2, McHugh Decl. ¶ 5; Ex. 5, Catcho Decl. ¶ 5).

F. Consent Judgment.

To resolve the AICC litigation "without any admission of liability," AICC and the City entered into the Consent Judgment. (Ex. R, Consent J. at 3). On March 10, 2017, the Court approved the Consent Judgment without making any findings that there has been or will be an actual violation of federal law. (*See id.*).

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she was saying" (Ex. J, Taylor Dep. at 101:5-6) and that he "[didn't] think she was threatening harm to me" (*id.* at 102:1-2). Plaintiff Rrasi does have a specific recollection of what she was saying to the mayor: "When the mayor called recess, I approached the desk, the bench, whatever you want to call it, and I told them my concerns, why was he [council member Skrzyniarz] allowed to talk about religion when we wasn't." (Ex. N, Rrasi Dep. at 47:16-19).

Plaintiffs did not receive proper notice of the City's pending decision to reverse the Planning Commission nor were they provided with a copy of the proposed Consent Judgment prior to the City Council meeting. (Rrasi Decl. ¶ 4 [Doc. No. 9-3]). The terms were not fully disclosed until it was filed by AICC on February 28, 2017. (Rrasi Decl. ¶ 4 [Doc. No. 9-3]).

The Consent Judgment approved AICC's request to build a mosque:

> *AICC is hereby granted special land use approval* to develop a 20,500 square foot mosque on the Property. The dome at the center of the mosque and the spires on each end of the building shall be no higher than fifty-three and one-half (53 ½) feet from the base of the building. The dome will have a totally decorative crescent[13] on top that will be no taller than five (5) feet, and the spires will include a pole and crescent that is eight (8) feet higher than the top of the spire, as shown on the approved site plan. Details of the dome and crest are attached as Exhibit B. . . .

(Ex. R, Consent J. ¶ 1.1 [emphasis added]). The Consent Judgment does not include the required "statement of findings and conclusions," which would set forth facts demonstrating that the construction complies with *all* of the zoning requirements.[14] (Ex. R, Consent J.). Per the Consent Judgment, the number of parking spaces "was determined based upon *only* the worship area in the building containing 3,205 square feet"—no ancillary uses were considered. (*Id*. at ¶ 2.2 [emphasis added]). The Consent Judgment only requires AICC to make "reasonable efforts" to provide off-site parking and to "monitor parking so that

[13] A "crescent" is a well-known and recognized symbol associated with Islam. (Ex. 3, Youkhanna Decl. ¶ 8).

[14] The Consent Judgment doesn't even mention the special land use standards.

members and guests do not part on adjacent residential streets." "[T]he City may institute residential permit parking on the neighboring residential streets to ensure compliance with this provision," but only so long as the City "appl[ies] a residential parking permit system in an area in the City found to be similarly-situated to the [mosque property]." (*Id*. at ¶ 2.2). The Consent Judgment does not prohibit noisy outdoor activities, such as sports. (*See id*.). The Consent Judgment does not set forth facts explaining how this enormous structure satisfies the mandatory standards set forth in § 25.02. (*See id*.). By its own terms, the Consent Judgment trumps local zoning regulations. (*Id*. at § 2.6 ["Except as modified by this Consent Judgment, AICC shall comply with all City codes . . . ."]; § 3.4 ["To the extent that this Consent Judgment *conflicts* with any City Ordinance . . . , the terms of this Consent Judgment shall control."]).

G. Plaintiffs' "Good Faith Concerns" about the Mosque.

As Defendant Taylor testified:

> A. I heard from a number of Chaldean people that they were upset with the mosque being built on 15 Mile Road, yes.
> Q. And what was your understanding of their objections to the mosque being built on 15 Mile Road?
> A. Well, I can't speak for every Chaldean person, but the general theme I heard was that when they lived in Iraq, and they would have a Christian community in Iraq, that Muslims would build a mosque or try to get a foothold near their community as a way to antagonize them and as a way to let them know that Christians could not escape Muslims, and that Muslims would follow them wherever they went. And so when the Chaldean community that lives in Sterling Heights—I think lives throughout the city but it's concentrated in the 15 mile and Ryan area, and this mosque was

> proposed in fairly close proximity to 15 Mile and Ryan, and so the Chaldeans that I talked to, a number of them expressed to me that this seemed to be similar to what would happen to them back at home; and as we talked about earlier, a number of Chaldeans—probably most of them were trying to escape religious persecution in Iraq and saw this as antagonistic, the AICC deciding to put their mosque on 15 Mile Road, and so that's generally what I got from talking with Chaldeans in Sterling Heights.
> Q. Are you dismissive of those concerns or do you think they're real concerns that they have expressed to you?
> A. I'm not dismissive of those concerns and I believe they're good faith concerns from the Chaldean people who expressed them to me.

(Ex. J, Taylor Dep. at 22:17-25 to 24:1-6). It was similar "good faith concerns" that Plaintiffs wanted to express at the February 21, 2017, City Council meeting, but were prevented from doing so by Defendant Taylor's enforcement of the challenged speech restriction. (*See supra* Sec. E).

ARGUMENT

I. THE CONSENT JUDGMENT IS INVALID.

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

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. Per the court:

> 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 situation presented by this case. The Consent Judgment was approved by this Court without any findings that it was necessary to rectify a violation of federal law. *Perkins v. City of Chi. Heights*, 47 F.3d 212, 216 (7th Cir. 1995) (stating that without "properly supported findings that such a remedy is necessary to rectify a violation of federal law," the "parties can only agree to that which they have the power to do outside of litigation"); *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264, 270 (8th Cir. 2011) (invalidating a consent decree and 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"); *Kasper v. Bd. of Election Comm'rs*, 814 F.2d 332, 341-42 (7th Cir. 1987) (same);

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) (same); *Keith v. Volpe*, 118 F.3d 1386, 1393 (9th Cir. 1997) (same); *Vestevich v. W. Bloomfield Twp.*, 245 Mich. App. 759, 764-65 (Mich. Ct. App. 2001) (same).

League of Residential Neighborhood Advocates (and the other cases cited here) are not distinguishable from the instant matter. While the City Council has authority under the Zoning Ordinance to approve a special approval land use via a Consent Judgment, it must still do so pursuant to the requirements of the Zoning Ordinance and the MZEA because there was no finding that the Consent Judgment was necessary to rectify a federal law violation. Section § 25.01 expressly requires the City Council to "consider the same standards as the Planning Commission under the special approval land use criteria." And this makes sense. The Zoning Ordinance is not a mere inconvenience that the council members can dispense with by simply raising their hands in a vote so as to end a politically-charged lawsuit, particularly when federal law does not necessitate such action. *See 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."). As the approval authority, the City Council is required to consider and comply with *all* of the zoning regulations. And because a standard is "general" does not mean it can

be ignored. It means that there must be some *factual* findings to demonstrate that the applicant meets the standard. There is *nothing* in the Consent Judgment to show that the proposed mosque meets the standards that served as the basis for the Planning Commission's unanimous denial of the AICC application (because it can't), as required by the Zoning Ordinance[15] *and* the MZEA.[16] *See Whitman v. Galien Twp.*, 288 Mich. App. 672, 687 (Mich. Ct. App. 2010) ("Because the zoning ordinance does not comply with the MZEA, the zoning board's decision to grant a special-use permit did not comport with the law, and the circuit court erred by affirming the board's decision. . . . We vacate the special-use permit."). The Consent Judgment is invalid.

II. DEFENDANTS' CONTENT- AND VIEWPOINT-BASED SPEECH RESTRICTION VIOLATES THE FIRST AMENDMENT.

The City Council meeting is a public forum for Plaintiffs' speech.[17] *See Madison Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 176

[15] (Ex. E, ZO at § 25.03B1 [requiring ("shall") the approval decision to "be incorporated in a statement of findings and conclusions which specifies the basis for the decision and any conditions imposed"]).

[16] Irrespective of the Zoning Ordinance requirements, the MZEA requires a statement of factual findings and conclusions to support *every* approval of a special land use. *See* Mich. Comp. Laws § 125.3502.

[17] (*See* Answer ¶ 38 [admitting that the City Council meeting is a public forum and that the City "may apply restrictions to the time, place, and manner of speech *so long as those restrictions are content-neutral*, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communications"] [Doc. No. 29]) (emphasis added); *see also* City's Answer to AICC Compl. ¶ 77 [Doc. No. 9-2, Pg ID 160] [admitting that "[a] public hearing is

(1976) ("[W]hen the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of . . . the content of their speech.") (citing *Police Dep't of the City of Chi. v. Mosley*, 408 U.S. 92, 96 (1972)). And when the government designates a particular forum for speech, such as a City Council meeting, it may impose reasonable restrictions on the time, place, or manner of speech, so long as those restrictions are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communications. *Lowery v. Jefferson Cty. Bd. of Educ.*, 586 F.3d 427, 432 (6th Cir. 2009) (citing standard). Consequently, the City may *not* restrict speech at its City Council meetings *based on its content*. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (stating that in a public forum the government may impose "reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified *without reference to the content of the regulated speech*") (citation and quotations omitted) (emphasis added). And to determine whether a restriction is content based, the Court looks at whether it "restrict(s) expression because of its message, its ideas, its subject matter, or its content." *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 537 (1980). "A rule is defined as a content-based restriction on speech when the regulating party must examine the

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exactly that – a right for residents to exercise their First Amendment rights"]).

speech to determine if it is acceptable." *Glendale Assocs., Ltd. v. N.L.R.B.*, 347 F.3d 1145, 1155 (9th Cir. 2003).

Here, there is no dispute that Defendants imposed a content-based restriction on speech.[18] The speech restriction is not based on the time, place, or manner of expression; it is based on the content of the speaker's message. In order for Defendant Taylor to impose the restriction, he "must examine the speech to determine if it is acceptable," in violation of the First Amendment.

The challenged speech restriction is also viewpoint based. Viewpoint discrimination is an egregious form of content discrimination that is prohibited in all forums. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (noting that "the First Amendment forbids" viewpoint discrimination). Indeed, "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger*, 515 U.S. at 829. Thus, viewpoint discrimination occurs when the government "denies access to a speaker solely to suppress the

[18] And this restriction operated as a prior restraint on speech. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.") (collecting cases); *Alexander v. United States*, 509 U.S. 544, 550 (1993) ("The term 'prior restraint' is used to describe administrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur.") (internal quotations and citation omitted).

point of view he espouses on an otherwise includible subject," *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985), as in this case.

In *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819 (1995), for example, the Court concluded that the challenged restriction was viewpoint based. In doing so, the Court stated that "[t]he *prohibited perspective*, not the general subject matter, resulted in the refusal to make third-party payments, for the subjects discussed were otherwise within the approved category of publications." *Id*. at 831 (emphasis added).

As the Court further explained:

> The dissent's assertion that no viewpoint discrimination occurs because the Guidelines discriminate against an entire class of viewpoints *reflects an insupportable assumption that all debate is bipolar* and that antireligious speech is the only response to religious speech. Our understanding of the complex and multifaceted nature of public discourse has not embraced such a contrived description of the marketplace of ideas. If the topic of debate is, for example, racism, then exclusion of several views on that problem is just as offensive to the First Amendment as exclusion of only one. It is as objectionable to exclude both a theistic and an atheistic perspective on the debate as it is to exclude one, the other, or yet another political, economic, or social viewpoint. *The dissent's declaration that debate is not skewed so long as multiple voices are silenced is simply wrong; the debate is skewed in multiple ways*.

Id. at 831-32 (emphasis added). Consequently, any argument that the challenged speech restriction was viewpoint neutral because *all* religious viewpoints were excluded is wrong as a matter of law. Moreover, as the Supreme Court recently affirmed, "[g]iving offense is a viewpoint." *Matal v. Tam*, 137 S. Ct. 1744, 1763

(2017) (plurality opinion). To summarize Justice Kennedy's concurring opinion (joined by Justices Ginsburg, Sotomayor, and Kagan):

> The [challenged] law [prohibiting disparaging trademarks] thus reflects the Government's disapproval of a subset of messages it finds offensive. This is the essence of viewpoint discrimination. . . . *To prohibit all sides from criticizing their opponents makes a law more viewpoint based, not less so*. . . . By mandating positivity, the law here might silence dissent and distort the marketplace of ideas. . . . [T]he Court's cases have long prohibited the government from justifying a First Amendment burden by pointing to the offensiveness of the speech to be suppressed. . . .

Id. at 1766-67 (Kennedy, J., concurring) (emphasis added).

The agenda item at issue involved whether the City should enter into the Consent Judgment, which would then permit AICC to build a mosque in the middle of a Chaldean Christian neighborhood. Despite the obvious religious implications, Defendants would not permit any speaker to address the matter from a religious viewpoint (except council member Skrzyniarz). Per Defendant Taylor:

> Q. And you were specifying it [*i.e.*, the speech restriction] at this meeting because the subject of the consent judgment was the construction of a mosque; correct?
> A. I was specifying it at this meeting because I anticipated that some speakers would want to talk about religion.
> Q. In the context of the construction of this mosque on 15 Mile Road; correct?
> A. Yes, and the context of that agenda typically was to approve the consent judgment.
> Q. And the consent judgment was effectively the approval of the construction of the mosque on 15 Mile Road?
> * * *
> THE WITNESS: The consent judgment speaks for itself, obviously, but, yes, the subject matter was a mosque.
> BY MR. MUISE:

> Q. And so a mosque is a religious place of worship?
> A. Yes, of course.

(Ex. J, Taylor Dep. at 53:14-25 to 54:1-9). Moreover, Defendant Taylor would not permit any speaker to make a comment that he deemed critical of (*i.e.*, an "attack" on) Islam.[19] Defendant Taylor's testimony confirms that the restriction was viewpoint-based:

> Q. With regard to the public comment period at the February 21, 2017, city council meeting, you previously testified that private citizens who were going to comment were not permitted to attack another person or institution in their comments; is that right?
> A. That's correct.
> Q. So, for example, the private citizen would not be permitted to oppose the construction of the mosque *based on the view* that Islam is a religion of violence. That would be considered an attack on Islam?
> A. Yeah, I would view that as an attack on an institution, the institution of Islam, and also on the AICC.
> Q. Similarly, then, not to permit—wouldn't permit a private citizen to express opposition to the mosque *based on the speaker's view* that AICC was associated with terrorism in some way; correct?
> A. I would not have tolerated that.

(Ex. J, Taylor Dep. at 118:1-20) (emphasis added). Defendants' prior restraint on Plaintiffs' speech cannot withstand constitutional scrutiny.

III. DEFENDANTS DEPRIVED PLAINTIFFS OF THE EQUAL PROTECTION OF THE LAW.

In *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972), the Court stated, "[U]nder the Equal Protection Clause, not to mention the

[19] (*See* Answer ¶ 52 [admitting that the speaker was called out of order because her comment "was disparaging to Muslims"] [Doc. No. 29]).

First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." This principle of law is applicable here. *See, e.g.*, *Madison Joint Sch. Dist.*, 429 U.S. at 176 (citing *Mosley*, 408 U.S. at 96).

Defendants denied Plaintiffs Youkhanna, Rrasi, Catcho, Jabbo, and McHugh the right to express their views during the City Council meeting, thus denying them use of this forum, because Defendants found their views unacceptable in violation of the equal protection guarantee of the Fourteenth Amendment. *See supra*. And this violation is further evidenced by the fact that Defendant Taylor permitted council member Skrzyniarz to express a view on religion in this forum while denying Plaintiffs this same right. *See also Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 256 (6th Cir. 2015) (finding speech restriction violated equal protection).

IV. DEFENDANTS VIOLATED PLAINTIFF RRASI'S RIGHTS BY UNLAWFULLY SEIZING HER FOR HER SPEECH.

The Fourth Amendment protects private citizens against unlawful police seizures. *See Mapp v. Ohio*, 367 U.S. 643 (1961). "[W]hen the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen [we may] conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (stating that a "seizure" occurs when "a reasonable person would have believed that he was not free to leave"); *United States v. Richardson*, 949 F.2d 851, 856-57 (6th Cir.

1991) ("It does not take formal words of arrest or booking at a police station to complete an arrest. It takes simply the deprivation of liberty under the authority of law.") (internal quotations and citations omitted); *Centanni v. Eight Unknown Officers*, 15 F.3d 587, 590 (6th Cir. 1994) (same).

City police officers "seized" Plaintiff Rrasi at the direction of Defendant Taylor. To justify this seizure, there must be probable cause to believe that Plaintiff Rrasi committed a criminal offense. *Dugan v. Brooks*, 818 F.2d 513, 516 (6th Cir. 1987) (stating that "a 'seizure' under the Fourth Amendment . . . is a violation of a right secured by the amendment if there is not probable cause"). Here, there is no such legal basis for the seizure. As a result, Defendants violated Plaintiff Rrasi's rights protected by the Fourth Amendment. Indeed, this is particularly the case in that Defendant Taylor directed the actions of the police in retaliation for Plaintiff Rrasi's speech, in violation of the First Amendment. *See Greene v. Barber*, 310 F.3d 889, 893 (6th Cir. 2002); *id*. at 895 (establishing that "'an act taken in retaliation for the exercise of a constitutionally protected right is actionable under § 1983 even if the act, when taken for a different reason, would have been proper'") (quoting *Bloch v. Ribar*, 156 F.3d 673, 681-82 (6th Cir. 1998)). Indeed, "government officials . . . may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity. *Surely, anyone who takes an oath of office knows—or should know—that*

much." *Bloch*, 156 F.3d at 682 (quoting *Duran v. City of Douglas*, 904 F.2d 1372, 1378 (9th Cir. 1990)) (emphasis added).

V. DEFENDANTS DEPRIVED PLAINTIFFS OF DUE PROCESS.

Plaintiffs' due process claim arises under the Fourteenth Amendment and not any particular procedure set forth in the zoning regulations. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 757 (2005) ("Although the underlying substantive interest is created by an independent source such as state law, *federal constitutional law* determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause.") (internal quotation marks omitted). A procedural rule set forth in a local zoning regulation which deprives a private citizen proper notice and an opportunity to be heard could, as in this case, technically comply with the zoning regulation but nonetheless violate the Fourteenth Amendment. *Macene v. MJW, Inc.*, 951 F.2d 700, 706 (6th Cir. 1991) ("In this Circuit, . . . a § 1983 plaintiff may prevail on a procedural due process claim by . . . demonstrating that he is deprived of property as a result of established state procedure that itself violates due process rights.").

What state law does affirm is Plaintiffs' claim that they, as occupiers of adjacent land, have a "property" interest in zoning decisions that affect *their* property, including their quiet use and enjoyment of it, even when the zoning

decision is directed at adjacent property.[20] *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) ("The hallmark of property . . . is an individual entitlement grounded in state law."); *Arill v. Maiz*, 992 F. Supp. 112, 117 (D.P.R. 1998) (holding that the complaint fully alleged a due process claim under § 1983 based on the deprivation of a cognizable property interest in the plaintiffs' quiet use and enjoyment of their property). Here, the Planning Commission unanimously denied AICC's permit application. However, the City Council *completely reversed* this decision without notifying persons whose property is affected by this decision (Plaintiffs) that it was going to do so, and the City Council, in a Caligula-like fashion, failed to provide notice of the terms and conditions of the Consent Judgment, which was not publicly disclosed until after it was approved, in violation of the Fourteenth Amendment.

In *Nasierowski Brothers Investment Company v. City of Sterling Heights*, 949 F.2d 890, 893-94 (6th Cir. 1991), the Sixth Circuit found a due process violation under *substantively* similar circumstances, stating, in relevant part, "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*

[20] *See, e.g.*, Mich. Comp. Laws § 125.3502 (requiring notice to "any property owner *or the occupant* of any structure located within 300 feet of the property being considered for a special land use") (emphasis added).

comment process." (emphasis added). Here, the purpose of the notice and comment process that the Planning Commission engaged in was completely subverted when, without proper notice, the City Council materially deviated from the Planning Commission's decision and approved the mosque. And the fact that Nasierowski owned the property that was subject to the adverse zoning decision does not distinguish it from this case where Plaintiffs are adversely affected by the zoning decision. *See, e.g., Bd. of Regents of State Colls.*, 408 U.S. at 571-72 ("The Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money.").

VI. DEFENDANTS VIOLATED THE ESTABLISHMENT CLAUSE.

"[G]overnments may not make adherence to a religion relevant in any way to a person's standing in the political community. And actions which have the effect of communicating governmental endorsement or disapproval, *whether intentionally or unintentionally*, make religion relevant, in reality *or public perception*, to status in the political community" in violation of the Establishment Clause. *Am. Atheists, Inc. v. Duncan*, 637 F.3d 1095, 1119 (10th Cir. 2010) (internal quotations and citations omitted) (emphasis added). As confirmed by the Supreme Court, "[T]he Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 307, n.21

(2000). Indeed, "[e]ndorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval sends the opposite message." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring).

Accordingly, "[*e*]*very* government practice must be judged in its unique circumstances to determine whether it constitutes an endorsement or disapproval of religion. In making that determination, courts must keep in mind both the fundamental place held by the Establishment Clause in our constitutional scheme and the *myriad, subtle ways in which Establishment Clause values can be eroded*." *Lynch*, 465 U.S. at 694 (O'Connor J., concurring) (emphasis added).

Defendants conveyed an unmistakable message of approval of adherents of Islam and disapproval of those who were not (in particular, the Chaldean Christians, such as Plaintiffs) by (1) approving the Consent Judgment, which was not required by RLUIPA (as Defendants admit) and which grants AICC special rights and privileges by allowing it to construct a mega-mosque—a religious symbol of Islam—in the middle of a Chaldean Christian neighborhood in violation of the zoning regulations; (2) suppressing speech deemed critical of Islam during the City Council meeting and preventing the Chaldeans from expressing their "good faith" concerns; and (3) displaying hostility to those who opposed the

building of the mosque at this meeting.[21] And regardless of Defendants' purpose, the effect of such actions violates the Establishment Clause.

VII. THE CITY VIOLATED THE MICHIGAN OPEN MEETINGS ACT.

Ordering *all* private citizens, including certain Plaintiffs but excluding the media, to leave the public meeting when it came time for the City Council to actually vote on the highly contentious Consent Judgment is contrary to the express language and the very purpose of 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, "it implicitly requires that *all parts* of the meeting . . . be open to the public." *Id*. at 463 (emphasis added). The express language of the Act requires the *entire* meeting to be open to the *public*, not just the media. And a *person* can be excluded from the meeting only if *that person* "*actually committed*" a breach of the peace[22]—the City has no authority to remove peaceful citizens from the meeting based on the actions of others, which it did here to Plaintiffs Youkhanna, Catcho, Jabbo, McHugh, and Rrasi. *See* Mich. Comp. Laws § 15.263 (requiring *all*

[21] (*See* Ex. Q, McHugh Dep. at 12:14-17, 24-25; 13:1-4; Ex. 2, McHugh Decl. ¶¶ 3-6; Ex. 3, Youkhanna Decl. ¶¶ 2-8; Ex. 4, Rrasi Decl. ¶¶ 8-9; Ex. 5, Catcho Decl. ¶¶ 4-6).

[22] *See, e.g., City of Dearborn Heights v. Bellock*, 17 Mich. App. 163, 168 (Mich. Ct. App. 1969) (observing that "a usual noise or one not calculated to create a nuisance or disturbance" is not a "breach of the peace").

"meetings," "decisions," and "deliberations of a public body" to be "open to the public" and that "[a] *person shall not be excluded* from a meeting otherwise open to the public except for a *breach of the peace actually committed* at the meeting") (emphasis added). Consequently, the City Council violated the rights of the public, including the rights of Plaintiffs, thereby rendering the City Council's decision invalid. *See* Mich. Comp. Laws § 15.270 (authorizing a court to invalidate a decision that fails to comply with the Act).

CONCLUSION

Plaintiffs request that the Court grant judgment in their favor.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2018, 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. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/*Robert J. Muise*
Robert J. Muise, Esq.