

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Gethsemani Baptist Church,
Plaintiff,
v.
City of San Luis, et al.,
Defendants.

No. CV-24-00534-PHX-GMS

ORDER AND CONSENT DECREE

Before the Court is the parties’ Joint Motion for Entry of Consent Decree. (Doc. 94).

IT IS ORDERED granting the parties’ Joint Motion for Entry of Consent Decree. (Doc. 94).

IT IS FURTHER ORDERED this Consent Decree is entered into by and between Gethsemani Baptist Church (the “Church”) and the City of San Luis (the “City”; and with the Church, the “Parties”).

WHEREAS, the Church is a Christian Church located at 1010 B Street, San Luis, AZ 85349 (the “Church Property”).

WHEREAS, the Church operates a food ministry as part of its religious beliefs and mission for the purposes of distributing food, clothes, and household goods for free to the public and for distributing food, clothes, and household goods to the Church’s ministry partners (the “Food Ministry”).

WHEREAS, the City initiated enforcement of its ordinances against the Church in

1 September 2023 based on alleged violations of the City’s ordinances related to the
2 Church’s operation of the Food Ministry.

3 **WHEREAS**, the Church initiated the above-captioned action (the “Action”) on
4 March 13, 2024 alleging violations of the U.S Constitution, the Religious Land Use and
5 Institutionalized Persons Act, and the Arizona Free Exercise of Religion Act by the City.

6 **WHEREAS**, the City denies the Church’s allegations and denies all liability or
7 wrongdoing.

8 **WHEREAS**, seeking to resolve the Action without the expense, delays, risks, and
9 uncertainties of litigation, the Parties have entered a Settlement Agreement without the
10 adjudication, admission, finding, holding, or determination on the merits of either Party’s
11 case, which is contingent, in part, on the Court’s entry of a consent decree (“Consent
12 Decree”).

13 Having reviewed the Parties’ submission, **it hereby is ORDERED, ADJUDGED,**
14 **and DECREED as follows:**

15 1. This Court has subject matter jurisdiction over the Action and authority to
16 enter the requested relief under 28 U.S.C. §§ 1331, 1343(a), 1367, 2201, and 2202 and 42
17 U.S.C. §§ 1983, 1988, and 2000cc-2.

18 2. This Consent Decree and the City’s consent to entry of this Consent Decree
19 is not an admission or concession of liability by the City, is not an admission or concession
20 by the City as to the merits of the Church’s case, and is not a finding by this Court as to the
21 merits of any claims or defenses in this case.

22 3. This Consent Decree is entered solely to enforce the terms of the Parties’
23 Settlement Agreement, and nothing herein creates any obligations, rights, or duties beyond
24 those expressly set forth in that Settlement Agreement.

25 4. All Parties, having been fully advised by counsel, consent to the entry of the
26 Consent Decree.

27
28 **I. Injunctive Relief**

1 5. The City is ordered to, within 120 calendar days of receiving an application
2 from the Church, issue a Conditional Use Permit (“CUP”) pursuant to San Luis City Code
3 § 18.15.040 for the use of property located at 1010 B Street, San Luis, AZ 85349 (the
4 “Church Property”) as a community assembly as a church along with the operation of the
5 Church’s Food Ministry. The conditions for the issuance of the Church’s CUP shall be
6 limited to the following:

7 A. The Food Ministry events for purposes of distributing food, clothes, and
8 household goods for free to the public may only take place at the Church
9 Property on four (4) Saturdays each calendar month (the “Saturday Food
10 Ministry Events”).

11 B. The Saturday Food Ministry Events shall be limited to five (5) hours and
12 shall take place between the hours of 7:00 a.m. and 12:00 p.m. This time
13 frame encompasses both the time needed to unload the semi-trucks, set up
14 the goods for distribution, engage in any religious worship, and to distribute
15 the goods.

16 C. The Church may use semi-trucks in connection with the Saturday Food
17 Ministry Events, provided that such use is limited to unloading goods on the
18 Church Property. The unloading of such goods from any semi-truck shall be
19 completed within two (2) hours. Unloading activities shall be limited to a
20 two-hour (2-hour) window on the same day as the Saturday Food Ministry
21 Events, between 7:00 a.m. and 9:00 a.m. The distribution of goods during
22 Saturday Food Ministry Events will begin once the semi-trucks have
23 departed from the Church Property. Semi-trucks and semi-trucks with trailers
24 may not be stored at any time on the Church Property or on the residential
25 streets near the Church. The Church agrees that it may only use semi-trucks
26 in connection with its Saturday Food Ministry Events as described in
27 Paragraph 4(C) of the Parties’ Settlement Agreement.

28 D. The Church agrees that the engine of any semi-truck that is being loaded or
unloaded on its Property shall be turned off during loading and unloading.
The Church further agrees that the driver of such trucks shall remain in the
truck whenever possible and that blocks will be installed under the wheels of
the truck during loading and unloading. The use of energized refrigerated
trailers on the Church Property is limited to the two (2) hours needed to load
or unload the trailer for the Saturday Food Ministry Events.

1 E. The Church agrees that outdoor storage is limited to the Ramada existing as
2 of the date of signing this Agreement on the Church Property (“Ramada”).
3 Outdoor storage is limited to no more than ten (10) pallets of nonperishable
4 goods. Any pallets stored outside shall consist of nonperishable goods and
5 shall be no higher than five feet (5’). The Church agrees to keep the outdoor
6 storage of food and other materials on Church Property to the Church’s
7 Ramada and that such storage shall be done in a neat, tidy, and orderly
8 manner that will not interfere with the public’s enjoyment of the playground
9 and open space adjoining the Church’s Property.

10 F. The Church will provide trash containers to encourage participants in its
11 Food Ministry to properly dispose of any garbage generated by the Food
12 Ministry. The Church will collect and dispose of all garbage generated by a
13 Food Ministry distribution on the same day as the distribution event in a
14 proper garbage receptacle adequate to accommodate the volume of waste
15 produced.

16 G. The Church agrees that all garbage and rubbish generated by the Food
17 Ministry shall be removed from the Church Property a total of twice per
18 week, every week, including on Monday. Moreover, the Church agrees to a
19 special pick up within twenty-four (24) hours after the conclusion of a
20 Holiday Food Ministry Event (as described in Paragraph 4(I) of the Parties’
21 Settlement Agreement) or as soon as reasonably practical based upon the
22 trash company’s holiday operational schedule. Additionally, the Church
23 agrees to exclusively use commercial garbage receptacles equipped with
24 locking lids for the disposal of waste. The Church agrees to ensure that the
25 lids of these receptacles are securely locked at all times, except when waste
26 is being deposited or removed.

27 H. The Church agrees to maintain pest-free outdoor areas and structures through
28 monthly pest control inspections. Upon the sighting of any pests, the Church
shall use approved extermination methods that will not be injurious to human
health.

I. The Parties agree that the Church may schedule Christmas, Thanksgiving,
and Día del Niño events (“Holiday Events”) on different days and for longer
durations than the Saturday Food Ministry Events. Such events shall comply
with an agreed layout for traffic circulation between the City and the Church
to minimize traffic congestion and conflicts with neighboring properties. The
Church must designate these Holiday Events to substitute for one of the
permitted Saturday Food Ministry Events within that month. The Church

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

shall provide the City with written notice of the Holiday Events at least four (4) weeks prior to the event.

J. The Church agrees that all Food Ministry distributions must be confined to the Church's Property. To allow for this, Church semi-trucks or other commercial vehicles must be promptly removed from the Church parking lot after unloading to encourage Food Ministry patrons to park in the Church's parking lot for the distributions. If there is an overflow from the Church parking lot, vehicles may park around the perimeter of the retention basin adjacent to the Church parking lot or publicly available parking directly in front of the Church. The Church further agrees to engage in reasonable efforts, e.g., social media, in-person announcements during events, and from the pulpit, to inform Food Ministry patrons that parking is limited to the Church's parking lot, publicly available parking directly in front of the Church, and around the perimeter of the adjacent retention basin. The Church agrees that all food or goods to be distributed will be confined to a single designated area consisting of four (4) contiguous parking spaces on the Church Property. No food or goods shall be distributed outside of this designated area. Additionally, the Church agrees to make its entire parking lot available for vehicles attending Food Ministry events with the exception of four (4) spaces used to facilitate the Saturday Food Ministry Events. The Church also agrees to relocate its trash enclosures to appropriate non-parking areas, ensuring that all parking spots in the Church parking lot are available for individuals attending Food Ministry events. The Church shall also designate a volunteer to provide on-site guidance to the public on proper parking locations.

K. The Church agrees to operate its distribution events in an organized and orderly manner that allows for reasonable ingress and egress, including the management of vehicular and pedestrian foot traffic. The City agrees that the Church's proposed operational plan, which is attached as Exhibit A to the Parties' Settlement Agreement, allows for such reasonable ingress and egress of pedestrians. However, the Church shall have the option to alter its plan as long as doing so is consistent with the terms and spirit of this Agreement. The Church will notify the City of any significant changes to its operational plan in writing. Should the City have any objections, it will timely notify the Church, and the Parties shall work together in good faith to resolve their differences.

L. In addition to the Saturday Food Ministry Events and Holiday Events, the Church may also engage in the small-scale distribution of goods to its ministry partners on Fridays between 7:00 a.m. and 11:00 a.m. This time

1 frame encompasses both the time needed to unload the goods, set them up
2 for distribution, and to distribute the goods. These events will be operated in
3 an organized and orderly manner, and the Church will collect and dispose of
4 all garbage generated by the distribution on the same day in a proper garbage
5 receptacle. The Parties agree that the Church, or its ministry partners, may
6 not use semi-trucks in connection with the Friday ministry partner
7 distributions.

8 M. Additionally, the Church may provide goods to individuals or families on a
9 small-scale and as-needed basis. It is understood that individuals or families
10 can always approach the Church for assistance, and the Church will
11 accommodate them as needed, regardless of the timing of the distribution.
12 As to small-scale distribution of goods, the Church agrees that the
13 distributions will be limited to perishable items that must be distributed to
14 maintain their usable condition, or goods that the Church does not have the
15 capacity to store until the next Saturday Food Ministry event. If the small-
16 scale distribution of goods must be conducted outside of a Saturday Food
17 Ministry distribution, the Church agrees that the parking for such small-scale
18 distributions shall be limited to what its parking lot can accommodate for
19 parking of vehicles. In the event that the Church reasonably expects an event
20 to exceed what its parking lot can accommodate on a day other than Saturday,
21 the Church shall conduct such distributions at an off-site location upon
22 securing permission from the appropriate landowner.

23 N. The Church is allowed to collect voluntary donations at any of the Food
24 Ministry's distribution events.

25 6. The City shall waive all fees that would otherwise be payable to the City for
26 the application and processing of the CUP.

27 7. As part of the CUP process, the City may hold one or more public hearings
28 conducted by the San Luis Planning and Zoning Commission and the City Council
regarding the terms of the CUP. The Church shall appear at such public hearings in support
of the terms of the CUP.

8. The City shall repaint the parking spaces in the Church's parking lot in the
manner described in Exhibit C to the Parties' Settlement Agreement. A total of thirty-eight
(38) parking spaces shall be accommodated, including two (2) designated handicapped

1 spaces.

2 9. Upon receiving building permit applications for any structure on the Church
3 Property for which the City does not have a record of an approved building permit within
4 the agreed-upon 60-day period set forth in the Settlement Agreement, the City shall process
5 such building permits in a timely manner and will not unreasonably withhold the approval
6 of such permits. An itemized list of existing structures on the Church's Property for which
7 the City does not have a record of an approved building permit is attached as Exhibit B to
8 the Parties' Settlement Agreement. All Church applications are subject to review and
9 approval based on applicable laws, codes, and regulations. The City shall waive all fees
10 associated with such building permit applications. In the event that any existing structure
11 fails to meet the requirements of applicable laws, codes or regulations for obtaining a
12 building permit, the Church shall promptly make reasonable efforts to address the
13 noncompliance in a timely manner.

14 10. Consistent with the term of the Church's CUP, the City shall permit the
15 Church to operate its Food Ministry, and to do so for as long as the Church uses the Church
16 Property. This provision, however, shall not prevent the City from enforcing its laws in a
17 manner consistent with federal, state, and local law.

18
19 **II. Financial Terms**

20 11. The City shall pay the Church \$200,000 ("Settlement Amount") according
21 to the following payment schedule:

22 A. \$100,000 will be paid within twenty-one (21) days of the entry of this Decree;

23 and

24 B. \$100,000 will be paid on the first anniversary of the Decree.

25 12. If the City fails to make any payment set forth in ¶ 11 on or before the due
26 date, all remaining payments shall become immediately due.

27
28

