IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE ISLAMIC SOCIETY OF TULSA, Plaintiff, v. CITY OF BROKEN ARROW, OKLAHOMA, et al., Defendants.	Case No. 4:26-cv-00469-SEH-MTS

MOTION TO DISMISS BY THE CITY OF BROKEN ARROW AND BRIEF IN SUPPORT

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INTRODUCTION

The City of Broken Arrow, Oklahoma ("the City" or "Broken Arrow") is a rapidly growing municipality outside of Tulsa. Now the fourth largest city in Oklahoma, Broken Arrow attracts new residents because of its high quality of life, low crime, strong schools, affordable housing, award-winning downtown, employment opportunities, and ready access to indoor and outdoor recreational activities. Broken Arrow is where opportunity lives.

The opportunities offered by Broken Arrow are offered to all—regardless of their race, ethnicity, national origin, religion, or any other protected status. The City does not discriminate. Broken Arrow welcomes residents of all backgrounds and faiths.

This case involves the denial of a rezoning application and a conditional use permit application. Those applications were denied in a vote by the five-member City Council after a lengthy process that culminated in a nearly-four-hour public meeting. As in any rapidly growing municipality, questions regarding land use in Broken Arrow can generate significant public interest and strong opinions. Indeed, some members of the public who attended the meeting concerning these applications became disruptive, some were directed by the Council to stop interrupting the applicant's presentation, and some were even removed. But throughout the process, consideration of these land use applications—like any other such application—was guided by the City's comprehensive plan, zoning ordinance, related procedures and requirements, and applicable laws.

The Islamic Society of Tulsa ("IST" or "Plaintiff") alleges in its Complaint ("Compl.") that the denial of the rezoning application and conditional use permit application violated the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc to 2000cc-5 (Counts I through III); the First and Fourteenth Amendments to the United States Constitution, as made enforceable by 42 U.S.C. § 1983 (Counts IV through VI); and the Oklahoma Religious Freedom Act ("ORFA"), 51 O.S. §§ 251–258 (Count VII). The Complaint names as defendants the City of Broken Arrow, which is named as a defendant in all seven Counts, and the four members of the City Council who voted to deny the applications, each of whom is sued only in their individual capacity and only in Counts IV through VII. Underlying many of Plaintiff's claims is the contention that Plaintiff's land use applications, which propose to use the subject property at least in part for a mosque and Islamic community center, were denied out of "animosity towards Muslims and an irrational fear of Islam." Compl. ¶ 7.

The City of Broken Arrow unequivocally denies that allegation. Broken Arrow does not discriminate based on religious practice or beliefs. Indeed, the record in this case will reflect at least one individual defendant referred to Muslim residents as "our Muslim brothers and sisters." However, like any other religious institution or assembly, IST must comply with the City's land use policies, which are facially neutral between religious and non-religious uses, neutral among religious denominations, and administered in a way that does not discriminate or substantially burden anyone's free exercise of religion.

All Counts of the Complaint must be dismissed as to the City of Broken Arrow. As a threshold matter, the Complaint's sole state law claim—Count VII, which arises under the ORFA—is subject to dismissal because Plaintiff has not complied with the pre-suit notice requirements of Oklahoma's Governmental Tort Claims Act ("GTCA"), 51 O.S. §§ 151–200.

On the merits, all Counts against the City are subject to dismissal because the Complaint does not adequately allege that the City violated any of IST's statutory or constitutional rights. First, no Broken Arrow zoning ordinance or other policy on its face explicitly differentiates among religious denominations. The facial neutrality of the City's policies is fatal to Plaintiff's Establishment Clause theory in Count V. That theory rests on the assertion that the City has adopted a "denominational preference" subject to strict scrutiny. But Broken Arrow's facially neutral land-use ordinances and policies are not subject to strict scrutiny, and the Complaint identifies no other basis for finding an Establishment Clause violation, so Count V must fail.

As to Count I, the Complaint fails to state a claim that the City treated IST on less than "equal terms" with similarly situated nonreligious assemblies or institutions in violation of the RLUIPA, 42 U.S.C. § 2000cc(b)(1). Plaintiff's two nonreligious "comparators" are land-use applications involving residential development and/or commercial activity. Neither involved operation of a "nonreligious assembly or institution," as required by the RLUIPA.

The claims against the City in Count II (nondiscrimination under the RLUIPA, 42 U.S.C. § 2000cc(b)(2)), Count IV (Free Exercise Clause), and Count VI (Equal Protection) all fail for a common reason: each rests, at least in substantial part, on the assumption that the City itself—rather than any individual—acted on a discriminatory basis when IST's applications were denied. But the Complaint does not allege facts sufficient to state such a discrimination claim against the City. Plaintiff's claim against the City under the Free Exercise Clause also must be dismissed because, once the allegations of discrimination are stripped away, the Complaint fails to allege facts sufficient to support any alternative theory of liability under that constitutional provision.

Finally, as to Counts III and VII, the Complaint does not state a "substantial burden" claim against the City under either the RLUIPA, 42 U.S.C. § 2000cc(a), or the ORFA, 51 O.S. § 253, where the property at issue has no specific religious significance and the Complaint does not allege the unavailability of appropriate alternatives to Plaintiff's preferred proposal.

Accordingly, Broken Arrow respectfully requests dismissal of the Complaint as to the City.

<u>BACKGROUND</u>[1]

A. The City of Broken Arrow

The City of Broken Arrow, Oklahoma is a municipality outside of Tulsa. Compl. ¶ 19. The City operates under a council-manager form of city government. *See* 11 O.S. §§ 10-101 to 10-121; City of Broken Arrow Code of Ordinances ("B.A. Code") § 2-4. The City's governing body consists of one councilmember from each of the City's four wards and one councilmember at large. *See* 11 O.S. § 10-102; B.A. Code § 2-1. This Council serves as the City's legislative body, *see* 11 O.S. § 10-106, and is the final decisionmaker for rezoning and conditional use permit applications. *See* Compl. ¶ 19; B.A. Code app. A ("Zoning Ordinance") §§ 2-3-1(A), 6-2-1, tbl. 6-3.1-3.1.[2]

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[1] Because the Complaint's well-pleaded factual allegations must be accepted as true for purposes of this motion, the City recounts the Complaint's allegations here even where the allegations are disputed. In addition to the allegations in the Complaint, the City makes reference to certain documents referenced in the Complaint, including Plaintiff's land-use applications and amendments thereto, and "facts subject to judicial notice," which "may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment" pursuant to Rule 12(d). *Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006); *see also GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. 1997) ("[I]f a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss."). These include ordinances of the City of Broken Arrow; the agenda, minutes, and official video of the Planning Commission meeting where Plaintiff's applications were considered; and the agenda, minutes, and official video of the City Council meeting where Plaintiff's applications were considered. *See, e.g., Zimomra v. Alamo Rent-A-Car, Inc.*, 111 F.3d 1495, 1503–04 (10th Cir. 1997) ("taking notice of provisions in municipal ordinances" is permissible on a motion to dismiss); *Clayton v. Hogan*, 753 F. Supp. 3d 629, 638–39 & n.4 (M.D. Tenn. 2024) (taking judicial notice of a video of "an acrimonious public meeting" that was "available from the [government agency's] website"); *Schubert v. City of Rye*, 775 F. Supp. 2d 689, 696 n.3 (S.D.N.Y. 2011) (taking judicial notice of "recordings and/or minutes" of City Council meetings and collecting authority for doing so).

[2] The Broken Arrow Code of Ordinances, including the appendix which contains the City's Zoning Ordinance, are available online at: https://library.municode.com/ok/broken_arrow/codes/code_of_ordinances?nodeId=14015.

During the events giving rise to the Complaint, the City Council consisted of Councilors Debra Wimpee (who also serves as Mayor), Johnnie Parks (who also serves as Vice Mayor), Lisa Ford, David Pickel, and Justin Green. Mayor Wimpee and Councilors Ford, Pickel, and Green are named as defendants in this action in their individual capacities. Vice Mayor Parks is not a party. *See* Compl. ¶¶ 20–24, 88.

B. Broken Arrow's Zoning Ordinance

Broken Arrow's land use decisions are governed by the City's Zoning Ordinance, which implements the Broken Arrow Next Comprehensive Plan (the "Comprehensive Plan"). *See* Zoning Ordinance §§ 1-1-3, 1-2-2; Compl. ¶¶ 19, 25. Each property in Broken Arrow is assigned a zoning district, which determines what uses are permitted as of right, what uses require additional approval, and what uses are prohibited. *See* Zoning Ordinance § 2-1-1; Compl. ¶ 26. Certain uses require a conditional use permit ("CUP") before they may be allowed in a particular zoning district. *See* Zoning Ordinance §§ 2-2-1 to 2-2-2; Compl. ¶ 26. A property owner seeking to change a property's zoning district must submit a rezoning application, and a property owner seeking to establish a conditional use must submit a CUP application. Both applications are reviewed through a structured process in which the City evaluates the specific property, the proposed use(s), surrounding land uses, compatibility, anticipated impacts, available facilities and services, traffic concerns, mitigation measures, consistency with the Comprehensive Plan, and compliance with the Zoning Ordinance. *See* Zoning Ordinance §§ 6-3-4.2, 6-3-4.4; Compl. ¶ 27.

Under the Zoning Ordinance, rezoning and CUP applications are first reviewed by City Staff, who prepare a staff report with a recommendation. *See* Zoning Ordinance § 6-3-1; Compl. ¶ 28. The applications are then considered by the five-person Planning Commission. Compl. ¶ 28. The Planning Commission may recommend approval, approval with conditions, or denial. *See* Zoning Ordinance § 6-3-4.2; Compl. ¶ 28.

The Planning Commission's recommendations are just that—recommendations. The applications then proceed to a hearing and final decision by the City Council, which is under no obligation to adopt the Planning Commission's recommendations, and has in the past denied applications that the Planning Commission recommended approving (or vice versa). *See* Zoning Ordinance § 6-3-1; Compl. ¶ 28.

The Zoning Ordinance outlines standard review procedures applicable to most development applications as well as specific review criteria for rezoning and CUP applications. *See* Zoning Ordinance §§ 6-3-2, 6-3-4; Compl. ¶ 33. For rezoning applications, the Planning Commission "may recommend approval" if an application "meets all of the following criteria": (1) the rezoning will promote the public health, safety, and general welfare; (2) the rezoning is consistent with the Comprehensive Plan and purposes of the Zoning Ordinance; (3) the rezoning is consistent with the stated purpose of the proposed zoning district; (4) the rezoning is not likely to result in significant adverse impacts upon other properties in the vicinity of the subject property; and (5) future uses on the subject property will be compatible in scale with uses on other properties in the vicinity. *See* Zoning Ordinance § 6-3-4.2(B); Compl. ¶ 34.

Under Section 6-3-4.4(B), a "conditional use permit may be approved only if the City Council finds that all of the following criteria have been met":

1. Conditions may be imposed that are more restrictive than the Zoning Ordinance, but the requirements of the Zoning Ordinance cannot be decreased;
2. Adequate assurances of continuing maintenance have been provided;
3. Facilities and services (including sewage and waste disposal, water, gas, electricity, police and fire protection, and roads and transportation, as applicable) will be available to serve the subject property while maintaining adequate levels of service for existing development;
4. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent practicable;
5. The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);

6. The proposed use is consistent with any applicable Conditional Use Permit standards set forth in Division 2-3, Use Standards;
7. The proposed use is consistent with the purpose and intent of the zoning district in which it is located; and
8. The proposed use is consistent with the comprehensive plan and all applicable provisions of this ordinance and applicable state and federal regulations.

Zoning Ordinance § 6-3-4.4(B); Compl. ¶ 35.

C. The Subject Property and IST's Rezoning and Conditional Use Permit Applications

Plaintiff IST operates a mosque in Tulsa. Compl. ¶ 18. In 2014, IST purchased approximately fifteen acres of undeveloped property in Broken Arrow (the "Subject Property"). *Id.* ¶ 38.

The Subject Property was then and is currently zoned Agricultural ("AG") and Floodplain ("FP"). *Id.* ¶¶ 38, 41. The Subject Property is also designated Level 6 – Regional Employment/Commercial – under the City's Land Use Intensity System. *Id.* ¶ 42. Under the Comprehensive Plan, properties designated as Level 6 are seen as potential opportunities to develop regionally significant and highway-oriented commercial and employment nodes which will provide the City with crucial tax revenue dollars in the vicinity of major transportation corridors, including key interchanges along the Creek Turnpike. *Id.*

Approximately ten years after purchasing the Subject Property, in 2025, IST submitted two applications to the City: (1) a rezoning application numbered BAZ-002469-2025 seeking to rezone the Subject Property from AG and FP to Commercial General ("CG") and FP; and (2) a CUP application numbered SP-002526-2025 seeking approval to use the Subject Property as a place of assembly. *Id.* ¶¶ 39, 47.

Together, IST's applications proposed a phased, mixed-use development that included a mosque/community center in the central portion of the Subject Property at Phase 1, to be followed at an unspecified time by a commercial retail component. *See id.* ¶¶ 47–50.

D. Planning Commission Proceedings

Based on this first conceptual plan, City Staff advanced the applications to the Planning Commission for its review. *Id.* ¶ 52. A public hearing on IST's applications was held on December 18, 2025. *See id.* ¶ 54; *see also* Ex. A.1 (Planning Commission agenda); Ex. A.2 (Planning Commission minutes); Ex. A.3 (Planning Commission video).[3] Prior to that meeting, many constituents voiced their opinions on the project, including many opposing IST's applications for various reasons. Compl. ¶¶ 58–59. The public hearing included a presentation by City Staff and the architect representing IST—who confirmed that the retail portion would "not happen immediately," was "way down the line," and that the commercial retail was "projected for some time in the future." Ex. A.3 at 30:52–32:46 ; *see id.* at 42:53–43:21 (statement by IST's architect explaining that they "hadn't even discussed [the commercial retail portion of the plan] other than . . . at some point in the future, we'd like to have that"); *see also* Compl. ¶¶ 56–57.

More than 40 individuals spoke during the public comment period. *See* Ex. A.2; Compl. ¶¶ 54–58. Public comment covered a wide variety of topics, including concerns about traffic, sewage, flooding, and other land use matters, though some individual constituents also expressed concern about the fact that the applications contemplated a Muslim house of worship. *See* Ex. A.2; Ex. A.3. When such objections were raised, members of the Planning Commission redirected the conversation and emphasized that the decision would encompass only appropriate land use considerations. *See* Ex. A.3 at 1:04:57–1:05:34; *id.* at 1:08:46–1:09:55.

[3] Exhibit A to this Motion to Dismiss and Brief in Support is the Declaration of James E. Walters, which authenticates seven government records, of which the City requests the Court to take judicial notice. The seven government records accompanying the Declaration are numbered as Exhibits A.1 through A.7 and cited accordingly.

After nearly four hours of public commentary, the Planning Commission voted on the applications. *See id.* at 4:52:19–4:54:17. The Planning Commission recommended approval of the rezoning application by a vote of 4-1 and approval of the CUP application by a vote of 3-2, subject to a condition prohibiting outdoor speakers and broadcasts. *See id.* at 4:52:38–4:54:17; Ex. A.2 at 11–12; *see also* Compl. ¶ 62.

E. City Council Proceedings

Prior to the City Council's consideration of the applications as the next step of the process, members of the public directed a large volume of communications to City Councilors regarding Plaintiff's applications. *See* Compl. ¶¶ 64–72. In some instances, Councilors responded briefly but politely to inflammatory messages. *See id.* ¶¶ 74–76.

On January 12, 2026, the City Council convened a special meeting, including a public hearing, to consider IST's applications. *Id.* ¶ 77; *see also* Ex. A.4 (City Council agenda); Ex. A.5 (City Council minutes); Ex. A.6 (City Council video). Notably, just before this meeting, IST sent an updated conceptual plan that differed from the conceptual plan that had been reviewed by the Planning Commission and that reduced the proposed parking spaces from approximately 750 spaces to approximately 150 spaces. Compl. ¶ 81; *see* Ex. A.7 (e-mail correspondence attaching revised plan). Many members of the public attended, as the applications had gained significant public attention. Compl. ¶¶ 64–70. To facilitate public participation and ensure the safety of all participants, the City held the meeting at a larger venue, deployed extensive security measures, and organized a fair and orderly process for public comment. *Id.* ¶ 77.

The City Council took public comments for approximately four hours, listening to a mixture of support for and opposition to IST's applications; the City Council alternated between hearing from supportive constituents and opposing constituents so that as many people as possible could be heard fairly. *See* Ex. A.5; A.6 at 19:47–19:58. Mayor Wimpee ran the meeting, cautioned constituents to remain respectful, and reprimanded the crowd when occasional unruly behavior erupted. *See* Ex. A.6 at 21:19–21:56, 1:00:32–1:00:46, 1:30:49–1:30:54, 2:47:46–2:47:57, 3:04:43–3:04:51.

After hours of public comment, the City Council gave IST the floor to further explain its application and respond to concerns that had been raised. *See id.* at 3:48:42–3:56:20. When a few individual constituents became disrespectful, Mayor Wimpee and Councilman Green directed law enforcement to escort them out. *See id.* at 3:47:53–3:48:35, 3:53:01–3:53:15.

At the conclusion of the hours-long hearing, Councilors identified concerns relating to (1) land use hurdles, (2) infrastructure issues, and (3) the lack of a definitive or concrete plan for the retail component, which did not meet City requirements or align with the Comprehensive Plan. *See id.* at 3:56:23–3:56:47. Councilman Green reiterated that the Council's concerns were not religious in nature and moved to deny the applications. Compl. ¶¶ 87–88; Ex. A.5 at 11; *see also* Ex. A.6 at 3:56:50–3:58:39. The City Council voted 4-1 to deny both of IST's applications, with Vice Mayor Johnnie Parks voting in favor, and the meeting concluded shortly thereafter. *See* Ex. A.5 at 11; Ex. A.6 at 3:58:46–3:58:59.

The Complaint does not allege any effort by Plaintiff to modify and/or resubmit its applications in the months that followed. Although supporters of the applications immediately threatened litigation, *see* NewsOn6.com, *Broken Arrow Mosque Vote Faces Legal Challenge From Islamic Society of Tulsa* (Jan 15, 2026), https://www.newson6.com/politics/broken-arrow-mosque-vote-legal-challenge, the Complaint does not allege that Plaintiff provided the pre-suit notice required by Oklahoma's Governmental Tort Claims Act. Plaintiff filed its Complaint on August 3, 2026.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits motions to dismiss a complaint for failure to state a claim upon which relief can be granted. To survive such a motion, "a plaintiff must plead sufficient factual allegations 'to state a claim to relief that is plausible on its face.'" *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1104 (10th Cir. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts accept well-pleaded factual allegations as true and draw reasonable inferences in the plaintiff's favor but are "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* (quoting *Twombly*, 550 U.S. at 555). Likewise, "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly,* 550 U.S. at 556).

This "analysis requires a two-pronged approach." *Bethea v. City of Tulsa, Okla.*, No. 4:24-cv-00214-SEH-CDL, 2026 WL 615466, at *1 (N.D. Okla. Mar. 4, 2026). "First, the court identifies 'the allegations in the complaint that are not entitled to the assumption of truth,' i.e., those allegations which are merely conclusory." *Id.* (quoting *Iqbal*, 556 U.S. at 680–81). "Although 'legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.'" *Id.* (quoting *Iqbal*, 556 U.S. at 679). "[C]onclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citations omitted). "Second, the court assumes the veracity of 'well-pleaded factual allegations' and determines 'whether they plausibly give rise to an entitlement to relief.'" *Bethea*, 2026 WL 615466, at *1 (quoting *Iqbal*, 556 U.S. at 679). "If the allegations state a plausible claim for relief, the claim survives the motion to dismiss." *Id.*

ARGUMENT

I. The Oklahoma Religious Freedom Act Claim in Count VII Fails Because Plaintiff Did Not Comply with the Notice Requirements of the Governmental Tort Claims Act.

As a threshold matter, Count VII of the Complaint, which asserts a violation of the ORFA, 51 O.S. §§ 251–258, must be dismissed due to Plaintiff's failure to comply with the notice requirements of Oklahoma's GTCA, 51 O.S. §§ 151-200.

Section 152.1 of the GTCA codifies the doctrine of sovereign immunity for the State and its political subdivisions, such as Broken Arrow. *See* 51 O.S. § 152.1(A); *see id.* § 152(12) (defining "political subdivision" to include a municipality); *id.* § 152.1(B) (stating that immunity of political subdivisions is waived "only to the extent and in the manner provided in this act.").

Section 153 of the GTCA waives that sovereign immunity, but only "to a limited extent." *Conner v. State*, 577 P.3d 249, 253 (Okla. 2025). Under Section 153, a political subdivision "shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment *subject to the limitations and exceptions specified in [the GTCA]*." 51 O.S. § 153(A) (emphasis added). Liability of a municipality under the GTCA "*shall be exclusive* and *shall constitute the extent of tort liability* of . . . a political subdivision or employee *arising from* common law, *statute*, the Oklahoma Constitution, or otherwise." *Id.* § 153(B) (emphases added). Thus, "[i]f a court of competent jurisdiction finds tort liability on the part of . . . a political subdivision . . . based on a provision of the Oklahoma Constitution or state law other than [the GTCA], the limits of liability provided for in [the GTCA] shall apply." *Id.*

Among the conditions that the GTCA places on municipal liability is a requirement that "[a]ny person having a claim against . . . a political subdivision within the scope of [the GTCA] shall present a claim to the . . . political subdivision for any appropriate relief including the award of money damages." 51 O.S. § 156(A); *see also id.* § 152(4) (defining "claim"). The claim must be made in writing; include the details prescribed by statute, including the amount of compensation or other relief demanded; and be filed with the office of the clerk of the governing body. *See id.* § 156(D)–(I). Any claim for which notice is not timely presented is forever barred. *Id.* § 156(B).

"[T]he notice specified by the GTCA is a 'mandatory prerequisite jurisdictional requirement to filing a tort claim for damages.'" *Grisham v. City of Okla. City*, 404 P.3d 843, 847 (Okla. 2017) (quoting *Hall v. GEO Grp., Inc.*, 324 P.3d 399, 400 (Okla. 2014)) (additional citations omitted). "A person may not initiate a suit against . . . a political subdivision unless the claim has been denied in whole or in part." 51 O.S. § 157(A). Municipalities have 90 days to approve, deny, or settle the claim, *id.*, and if the claim is denied, the claimant has 180 days to commence litigation, *id.* § 157(A)–(B). The notice provision serves several important purposes, including allowing for the "(1) prompt investigation with fresh evidence; (2) opportunity to correct dangerous conditions; (3) quick and amicable resolution of claims; and (4) fiscal planning to meet possible liability." *Grisham*, 404 P.3d at 849.

The notice requirement applies to claims under the ORFA, which involve "torts" within the meaning of the GTCA. *See* 51 O.S. § 152(18) (defining "tort" to mean "a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Oklahoma Constitution, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment"). While the ORFA authorizes claims against governmental entities, *id.* § 256, those claims are subject to the limits set forth in the GTCA. *See id.* § 153.

The Complaint does not—and could not—allege that Plaintiff fulfilled its notice obligations under the GTCA. Accordingly, Plaintiff's ORFA claim is subject to dismissal for failure to provide the notice that Oklahoma law makes mandatory. *See Schauf v. GEO Grp.*, 439 P.3d 442, 446 (Okla. 2018) ("A petition which fails to allege compliance with the notice provisions of § 157 is subject to dismissal . . . .").

II. The Establishment Clause Claim in Count V Fails Because the City's Facially Neutral Land-Use Ordinances Do Not Reflect an Impermissible Denominational Preference.

Turning to the merits, Plaintiff's Establishment Clause theory in Count V necessarily fails. Plaintiff's theory hinges on its assertion that the City has "created an official, as-applied denominational preference favoring Christian religious institutions over Islam," Compl. ¶ 174; that this "denominational preference" is subject to "strict scrutiny" under the Establishment Clause; and that the City cannot satisfy strict scrutiny's compelling-interest and narrow-tailoring requirements. *Id.* ¶¶ 173, 175; *see also id.* ¶ 174 (alleging the City's Zoning Ordinance was "imposed and implemented . . . in a manner that preferred Christian religious institutions over IST, an Islamic religious institution"). Plaintiff's theory fails because strict scrutiny cannot be triggered under the "denominational preference" doctrine based solely on a municipality's denial of a land use application pursuant to a facially neutral zoning ordinance.

The Supreme Court's "denominational preference" cases have applied strict scrutiny under the Establishment Clause only when a challenged law "*on its face*" reflects an "*explicit*" "differentiat[ion] between religions based on theological practices." *Cath. Charities Bureau, Inc. v. Wisc. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250–51 (2025) (emphases added). Strict scrutiny is limited to instances where a law "focuses precisely and solely upon religious organizations" and makes "explicit and deliberate distinctions between" them. *Larson v. Valente*, 456 U.S. 228, 246 n.23 (1982). In contrast, strict scrutiny does not apply where the law is "facially neutral" and does not discriminate among religions "on its face." *Id.*; *see also Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1259 (10th Cir. 2008) (McConnell, J.) (describing *Larson* as "the leading case on denominational discrimination").[4]

To illustrate, the Supreme Court has applied strict scrutiny to a state law that on its face imposed registration and reporting requirements on religious organizations that solicited more than 50 percent of their funds from nonmembers, *see Larson*, 456 U.S. at 230, and to another state law that explicitly differentiated between religions based on theological practices by limiting a tax exemption for religious organizations to those that proselytize or serve only co-religionists, *see Cath. Charities*, 605 U.S. at 250. Other examples of denominational preferences offered by the Supreme Court include laws that would apply "only to religious organizations that perform baptisms, engage in monotheistic worship, or hold services on Sunday." *Id.* at 248.

Controlling circuit precedent applying *Larson* is in a similar vein. The Tenth Circuit has applied strict scrutiny to a state scholarship program that excluded students attending "pervasively sectarian" colleges because the program "*expressly* discriminate[d] *among* religions." *Colo. Christian*, 534 F.3d at 1256 (first emphasis added); *see also id.* at 1258 (explaining the challenged law "necessarily and explicitly discriminates among religious institutions"). The Tenth Circuit also

[4] Nothing remains of Plaintiff's Establishment Clause claim once the application of strict scrutiny is rejected. To be sure, in *Hernandez v. of Internal Revenue*, 490 U.S. 680 (1989), the Supreme Court stated that "the initial inquiry" in a denominational preference challenge "is whether the law facially differentiates among religions," and that "[i]f no such facial preference exists, we proceed to apply the customary three-pronged Establishment Clause inquiry derived from *Lemon v. Kurtzman*, [403 U.S. 602 (1971)]." *Id.* at 695. However, the Supreme Court has since "abandoned *Lemon*." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022); *see id.* at 546 (Sotomayor, J., dissenting) ("The Court overrules [*Lemon*] and calls into question decades of subsequent precedents that it deems 'offshoot[s]' of that decision" (quoting *id.*)). *But cf. Does 1-11 v. Bd of Regents of the Univ. of Colo.*, 100 F.4th 1251, 1270–72 (10th Cir. 2024) (applying *Lemon*'s "excessive entanglement" standard after *Kennedy*). In any event, the Complaint does not assert any alternative Establishment Clause theory beyond application of strict scrutiny.

has applied *Larson*'s strict scrutiny test to invalidate an Oklahoma constitutional amendment that "would prevent Oklahoma state courts from considering or using Sharia law," *Awad v. Ziriax*, 670 F.3d 1111, 1116 (10th Cir. 2012), explaining that the challenged amendment "specifically names the target of its discrimination" and therefore "presents even stronger 'explicit and deliberate distinctions' among religions than the provision that warranted strict scrutiny in *Larson*." *Id.* at 1128.[5]

Because the Complaint does not identify any City ordinance that discriminates on its face among religions, strict scrutiny does not apply, and Count V fails.

III. The RLUIPA "Equal Terms" Claim in Count I Must Be Dismissed Because the Complaint Does Not Allege Plaintiff Was Treated on Less Than Equal Terms with a Nonreligious Assembly or Institution.

Turning next to Plaintiff's RLUIPA claims, the Complaint asserts that the City violated the "equal terms" provision of RLUIPA because the City "treated IST less favorably" than Aspen Creek Villas and the Aequitas Tucson Development. *See* Compl. ¶¶ 125–36. This claim fails. To state a claim under the "equal terms" provision, a plaintiff must allege that the government has "impose[d] or implement[ed] a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). Because Plaintiff does not adequately allege that either of its proposed secular comparators is "a nonreligious assembly or institution," Count I must be dismissed.

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[5] Other circuits agree. *See, e..g.*, *Harkness v. Sec'y of the Navy*, 858 F.3d 437, 447 (6th Cir. 2017) (holding "we require a facial preference among religions to trigger strict scrutiny," not "only a 'suggestion of preference'"); *In re Navy Chaplaincy*, 738 F.3d 425, 430 (D.C. Cir. 2013) ("As the challenged policies are facially neutral, *Larson* doesn't trigger strict scrutiny . . . ."); *Koenick v. Felton*, 190 F.3d 259, 264 (4th Cir. 1999) ("Strict scrutiny in the Establishment Clause context is to be used to evaluate only those statutes that facially discriminate between religious denominations or between religion and non-religion.").

The plain language of 42 U.S.C. § 2000cc(b)(1) requires plaintiffs asserting an "equal terms" violation to identify a secular comparator that is an "assembly or institution." *Cf. Seale v. Peacock*, 32 F.4th 1011, 1024 (10th Cir. 2022) ("When interpreting a statute, we begin by examining the statute's plain language . . . ." (internal quotation marks and citation omitted)). The complaint must allege that the defendant treated the plaintiff less favorably than the defendant treated "a similarly situated nonreligious assembly or institution." *Rocky Mtn. Christian Church v. Bd. of Cnty. Comm'rs of Boulder Cnty., Colo.*, 613 F.3d 1229, 1236 (10th Cir. 2010).

RLUIPA does not define "assembly" or "institution." As a result, courts applying the statute have given those terms their ordinary meanings. *Cf. Rocky Mtn. Wild v. Dallas*, 98 F.4th 1263, 1291 (10th Cir. 2024) ("When a term is undefined in a statute, we must look to its ordinary meaning." (citing *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012))). Thus, in *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004), the court relied on dictionaries to define an "assembly" as "a company of persons collected together in one place [usually] and usually for some common purpose (as deliberation and legislation, worship, or social entertainment)," *id.* at 1230 (quoting WEBSTER'S 3D NEW INT'L UNABRIDGED DICTIONARY 131 (1993)) (alterations in original), or "[a] group of persons organized and united for some common purpose," *id.* (quoting BLACK'S LAW DICTIONARY 111 (7th ed.1999)) (alterations in original). An "institution," meanwhile, is "an established society or corporation: an establishment or foundation esp. of a public character," *id.* (quoting WEBSTER'S 3D NEW INT'L UNABRIDGED DICTIONARY 1171 (1993)), or "[a]n established organization, esp. one of a public character," *id.* at 1231 (quoting BLACK'S LAW DICTIONARY 801 (7th ed.1999)) (alterations in original).

Based on the allegations in the Complaint, neither Aspen Creek Villas nor the Aequitas Tucson Development is an "assembly" or an "institution." Plaintiff describes Aspen Creek Villas variously as a "350-resident development," Compl. ¶ 6, "a proposed 350-residence development," *id.* ¶ 94, and "a planned 350-unit residential development," *id.* ¶ 130. Meanwhile, Aequitas Tucson Development is described by Plaintiff as a 37-acre development, *id.* ¶ 6, that the City rezoned from Agricultural to Commercial Heavy, "while the related development contemplated future residential development," *id.* ¶ 99. The Complaint does not allege that either is a "place of assembly" within the meaning of the City's Zoning Ordinance. Although the Complaint characterizes both Aspen Creek Villas and Aequitas Tucson Development as "similarly situated" to Plaintiff, the Complaint overlooks the threshold requirement that any comparator for an "equal terms" claim must be an "assembly or institution." *See* Compl. ¶¶ 130, 132. In no sense do Plaintiff's proposed comparators qualify. *Cf. Williams Island Synagogue, Inc. v. City of Aventura*, 358 F. Supp. 2d 1207, 1218 (S.D. Fla. 2005) (finding no legal basis or authority to hold that RLUIPA "compels municipal governments to treat religious institutions in the same manner as *residential* uses." (emphasis in original)).

None of the cases cited by Plaintiff in Count I supports treating either proposed development as an "assembly or institution." *See Rocky Mtn.*, 613 F.3d at 1236–37 (church's proposed secular comparator was a school); *Roman Cath. Archdiocese of Kansas City in Kansas v. City of Mission Woods*, 337 F. Supp. 3d 1122, 1143–46 (D. Kan. 2018) (church's proposed secular comparators were a private school and a clinic operated by the University of Kansas Hospital Authority); *Konikov v. Orange County, Fla.*, 410 F.3d 1317, 1324–29 (11th Cir. 2005) (concluding that "model homes" and "home occupations" are not assemblies or institutions; finding it unnecessary to "decide whether children gathered for the purpose of receiving care constitutes an assembly"; and concluding that "social organizations" may be assemblies).

Because the Complaint fails to identify a similarly situated nonreligious "assembly or institution" that was treated more favorably than Plaintiff, Count I must be dismissed.

IV. Counts II, IV, and VI Must Be Dismissed as to the City Because the Complaint Does Not Adequately Allege that the City Acted with a Discriminatory Purpose.

Most of Plaintiff's remaining claims share a common, fatal defect. Count II (RLUIPA's non-discrimination provision, 42 U.S.C. § 2000cc(b)(2)), Count IV (Free Exercise Clause), and Count VI (Equal Protection Clause) all hinge entirely or substantially on Plaintiff's assertion that the denial of its zoning applications was purposefully discriminatory. Yet the primary allegation supporting Plaintiff's discrimination theories—that "two Council members, Wimpee and Ford, expressed hostility towards Islam and Muslims," Compl. ¶ 144; *see also id.* ¶¶ 71–76, 165(a), 183(a)—is insufficient to sustain Plaintiff's claims (not to mention a mischaracterization of the record) because two Councilors do not constitute a majority of the Council. And Plaintiff's remaining allegations also fail to sustain Plaintiff's discrimination-based claims against the City.[6]

At the outset, Tenth Circuit precedent squarely forecloses Plaintiff's attempt to attach liability to the City based on allegations that two of five Council members harbored anti-Muslim animus. *See, e.g.*, *Couch v. Bd. of Trs. of Mem'l Hosp. of Carbon Cnty.*, 587 F.3d 1223, 1244 (10th Cir. 2009); *Burns v. Comm'rs of Jackson Cnty.*, 330 F.3d 1275 (10th Cir. 2003). In *Couch*, the Tenth Circuit explained that, where "the decision-maker was a committee," a § 1983 plaintiff asserting unconstitutional bias "would need to establish that a majority of the members who voted on [the] action were biased" and could not prove causation without "establish[ing] that a majority

[6] Insofar as the Complaint's substantial burden claims under the RLUIPA (Count III) and ORFA (Count VII) also turn on allegations of discrimination, *see* Compl. ¶¶ 156, 198, those Counts fail for the same reasons as Counts II, IV, and VI.

of the members of the . . . committee had a retaliatory motive." 587 F.3d at 1241, 1244.[7] Likewise, in *Burns*, a § 1983 plaintiff asserting that a three-member board of county commissioners violated his equal protection rights when the board terminated his employment in a 2-1 vote could not establish the board's liability even though one commissioner made a "comment clearly reflect[ing] racial animus" because the plaintiff had not "shown that the outcome of the hearing would have been different had [that one commissioner] recused from voting." 330 F.3d at 1284–85.[8] Similarly here, even if the Councilors who allegedly made discriminatory statements had been recused, the Council still would have denied Plaintiff's application by a 2-1 vote. *See* Ex. A.5 at 11 (reflecting the votes of each Councilor).

The other allegations by which Plaintiff seeks to establish discrimination by the City do not remedy this shortcoming. First, Plaintiff makes much of supposed departures or deviations from procedures or practices that the Complaint labels "ordinary" or "normal." *See, e.g.*, Compl. ¶¶ 113–18, 141, 143, 148, 149, 174, 182. But these conclusory assertions are not supported by well-pleaded facts and are in some instances contradicted by Plaintiff's other allegations. Such allegations therefore do not reflect the type of circumstantial evidence that can, in other circumstances, support an inference of intentional discrimination. *Cf. Village of Arlington Heights*

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[7] In one of *Couch*'s two discussions of this point, the court suggested that the plaintiff could alternatively establish causation by showing "that a biased member was a substantial influence over the committee's ultimate action." 587 F.3d at 1241. But *Couch* was an employment case, and the Supreme Court has rejected application of this kind of reasoning in cases involving legislative bodies. *See Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689–90 (2021).

[8] The plaintiffs' claims in *Couch* and *Burns*, like Counts IV, V, and VI of Plaintiff's Complaint, arose under 42 U.S.C. § 1983. Section 1983 imposes liability on "any person" who violates its provisions, which the Supreme Court has construed to allow liability for municipalities when the plaintiff's injury is attributable to the municipality's "policy or custom," not merely to the conduct of a municipal employee. *Monell v. Dep't of Soc. Servs. of the City of N.Y.*, 436 U.S. 658, 694 (1978). The same logic governs under RLUIPA, which, by its plain terms, applies only to actions by a "government," including a municipality. *See* 42 U.S.C. §§ 2000cc, 2000cc-5(4).

v. Metro. Housing Dev. Corp., 429 U.S. 252, 265–66 (1977). For instance, Plaintiff asserts that discrimination should be inferred from Plaintiff's allegation that the Council "deliberated" for only "two minutes," Compl. ¶¶ 86–87, 165(f), 183(f), but the Complaint elsewhere alleges that the Council's vote came at the end of a deliberative hearing that was exclusively dedicated to Plaintiff's applications and that lasted over four hours. *See* Compl. ¶¶ 55, 79, 84; *see also* Ex. A.5 at 1, 11; Ex. A.6.

Plaintiff also would infer discrimination from the fact that the vote by the City Council did not align with the recommendations by the City's Planning Commission and professional staff. *See* Compl. ¶¶ 5, 52–53, 54–62, 87, 143, 148, 152, 165(c), 165(d), 165(h), 170, 179, 183(c), 183(d), 183(h), 189. At the same time, the Complaint acknowledges that the votes before the Planning Commission were mixed (4-1 in favor of the rezoning application and 3-2 in favor of the conditional use permit, subject to a condition prohibiting outdoor speakers), *id.* ¶ 62; *see* Ex. A.2 at 11–12, and that the staff recommended approval of the applications notwithstanding various acknowledged and unresolved "issues" and "concerns." *See* Compl. ¶¶ 52–53, 58, 78, 146, 158, 165(g), 167, 175, 183(g), 186, 197. And while legitimate land use issues and concerns were raised during all stages of the review, the content of Plaintiff's plans changed. As to parking in particular, the parking plan presented in IST's conceptual site plan (*id.* ¶ 50) was revised by Plaintiff prior to the Council's consideration of the applications (*id.* ¶ 81)—indeed, it was substantially revised by Plaintiff shortly before the Council hearing. *See* Ex. A.7. Thus, it simply is not the case that the Council, Planning Commission, and City Staff reached different conclusions based on the same facts, nor is there any basis for inferring discrimination from how each grappled with the land-use issues and concerns that were raised.

Equally beside the point is Plaintiff's objection to the Council issuing its decisions on the two applications through a single, combined vote. *See* Compl. ¶¶ 88, 116, 145, 149, 165(e), 174, 183(e). The Complaint asserts in conclusory fashion that "the Zoning Ordinance directs them to do the opposite," *id.* ¶ 145; *see also id.* ¶ 31 (citing Zoning Ordinance § 6-3-2.10). But that the Council's decisions on the two applications were recorded in a single vote does not mean that each application was not separately considered and decided.[9] And, as to Plaintiff's assertion that "[t]he City Council never provided a clear statement to IST outlining the basis of the decision and specific, written factual findings, as required by Zoning Ordinance § 6-3-2.9(B)," Compl. ¶ 90; *see also id.* ¶ 32, a written statement is included in the official minutes of the Council's meeting. *See* Ex. A.5 at 11. The City does not construe the Zoning Ordinance to require a different procedure, and Plaintiff does not contend that the City's approach in this instance departed from prior practice. Moreover, "questions of hearing management . . . don't necessarily, or even naturally, show discrimination, animus, or unequal terms," even when there are "minor irregularities." *Chabad of Prospect, Inc. v. Louisville Metro Bd. of Zoning Adjustment*, 623 F. Supp. 3d 791, 806–07 (W.D. Ky. 2022).

Finally, the Complaint points to what Plaintiff describes as "overwhelming public pressure directed specifically against Islam, Muslims, Sharia, mosques, and the presence of a Muslim religious institution in Broken Arrow." Compl. ¶ 149. The Complaint describes how residents of Broken Arrow (and political figures who are not City Councilors) demonstrated "animosity

[9] The Complaint also asserts that the Council adopted a different approach to its consideration of Plaintiff's applications than it did when considering zoning applications in connection with two churches, Harvest Church and Church on the Move. *See* Compl. ¶¶ 6, 102–112, 116, 147, 165(j), 165(k), 174, 183(j), 183(k). Even if these *were* similarly situated comparators—and they are not—Plaintiff's assertions regarding differential (let alone discriminatory) treatment in the processes used to consider them are at best overstated, as discussed above.

towards Muslims and an irrational fear of Islam," *id.* ¶ 7, while Plaintiff's applications were under consideration, including during the Planning Commission meeting; immediately after that meeting; in phone calls, emails, and social media comments; and during the City Council hearing on Plaintiff's applications. *See id.* ¶¶ 4, 7, 59, 63, 64–70, 72–76, 83–84, 142–143, 165(b), 183(b).

The Council heard from constituents with a variety of views on Plaintiff's applications and structured the hearing so that supporters and opponents took turns speaking. *See* Ex. A.5; Ex. A.6 at 19:47–19:58. It is undisputed that some members of the public voiced opposition to Plaintiff's applications on religious grounds that the Council could not permissibly—and did not—consider. Indeed, the record reflects that members of the City Council sought to emphasize that any decision on Plaintiff's applications would be based on permissible land-use considerations, not on religious grounds. *See* Ex. A.5 at 11; Ex. A.6 at 3:56:50–3:58:39. Furthermore, the Complaint and the public records also are replete with efforts by the City Council to maintain calm in a hearing where some residents became disruptive, including by having them removed to ensure that Plaintiff's applications received respectful and appropriate consideration. *See, e.g.*, Compl. ¶ 84; Ex. A.6 at 21:19–21:56, 1:00:32–1:00:46, 1:30:49–1:30:54, 2:47:46–2:47:57, 3:04:43–3:04:51; *see also id.* at 3:47:53–3:48:35, 3:53:01–3:53:15 (requesting removal of disruptive attendees).

Although "widespread religious animus in the community can, in certain circumstances, support an inference that a government official acted with discriminatory intent by essentially adopting the community's view," *Calvary Chapel Belfast v. Univ. of Maine Sys.*, 180 F.4th 13, 28–29 (1st Cir. 2026) (emphasis omitted), "the presence of community opposition does not, without more, imply a conclusion of intentional discrimination by the decisionmaker," *id.* at 29 (citing *Jesus Christ is the Answer Ministries, Inc. v. Baltimore Cnty. Md.*, 915 F.3d 256, 263 (4th Cir. 2019)); *see also Thai Meditation Ass'n of Ala., Inc. v. City of Mobile, Ala.*, 980 F.3d 821, 834–

36 (11th Cir. 2020) (stating "we cannot attribute the residents' purported bias to city officials absent at least some proof that the officials 'ratified' it" and leaving intact a district court's "finding that the plaintiffs failed to prove that a majority of the members of either the Planning Commission or the City Council acted with an intent to discriminate against them on the basis of religion"); *Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 824 (4th Cir. 1995) (asking whether "board members were clearly swayed by that public opposition, fully aware of its basis in discrimination and prejudice."). And that inference becomes even harder to draw when a governing body's own conduct in the proceedings, as here, reflects a focus on permissible concerns also raised by other members of the public. *See, e.g., Avanru Dev. Grp., Ltd. v. Town of Swanzey, NH Zoning Bd.*, 777 F. Supp. 3d 63, 82 (D.N.H. 2025).

In sum, Plaintiff's out-of-context quotations plucked from broader correspondence by two City Councilors and Plaintiff's other circumstantial allegations are insufficient to support an inference that a majority of the Council acted with discriminatory intent. As a result, all Counts that rest on allegations of discriminatory intent should be dismissed.

V. Count IV Must Be Dismissed as to the City Insofar as It Asserts Any Free Exercise Theory Not Based on Allegations of Discrimination.

Allegations of discrimination form much (if not all) of the basis for Count IV of the Complaint, which rests on the Free Exercise Clause. Insofar as Plaintiff seeks to advance a claim under the Free Exercise Clause based on discriminatory application of the City's facially neutral zoning requirements, that theory fails as to the City for the reasons discussed in Part IV above. Insofar as Plaintiff seeks to advance any claim under the Free Exercise Clause that does *not* rest on allegations of discrimination—*i.e.*, that challenges a non-discriminatory application of facially neutral zoning requirements—Plaintiff's theory also must be rejected under controlling precedent.

The Supreme Court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 878–79 (1990). "[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Id.* at 879 (quoting *U.S. v. Lee*, 455 U.S. 252, 263, n.3 (1982) (Stevens, J., concurring in judgment)). Thus, while courts "strictly scrutinize governmental classifications based on religion," *id.* at 886 n.3 (citing *McDaniel v. Paty*, 435 U.S. 618 (1978), and *Torcaso v. Watkins*, 367 U.S. 488 (1961)), "generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest," *id.*

The Tenth Circuit has applied this principle in the land-use context. In *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006), for example, the court considered a city zoning ordinance that prohibited any entity from operating a daycare with more than twelve children in a residential zone and the city's denial of a variance requested by a church seeking to do so. *See id.* at 648. Where there was no evidence that the ordinance was passed due to religious animus or enforced in a discriminatory manner, the Tenth Circuit declined to apply strict scrutiny to the city's actions, even though the city retained discretion to grant variances from the general prohibition. *See id.* at 649–55; *see also id.* at 651 (noting "several federal courts have held that land use regulations, i.e., zoning ordinances, are neutral and generally applicable notwithstanding that they may have individualized procedures for obtaining special use permits or variances." (internal quotation marks and citation omitted)).

Messiah Baptist Church v. County of Jefferson, 859 F.2d 820 (10th Cir. 1988), is also instructive. There, the court rejected a Free Exercise Clause challenge to the denial of a special-use permit to construct a church in an agricultural zone. *See id.* at 821–22. In concluding that the permit denial did not infringe the free exercise of religion, the Tenth Circuit concluded that "[a] church has no constitutional right to be free from reasonable zoning regulations nor does a church have a constitutional right to build its house of worship where it pleases." *Id.* at 826. A religious institution may have a "preference . . . to construct its house of worship upon its land," *id.* at 825, but that preference is insufficient to support a Free Exercise challenge to a permit denial based on the non-discriminatory application of a neutral zoning ordinance.

Because the Complaint does not adequately plead discrimination by the City and presents no other viable theory under the Free Exercise Clause, Count IV must be dismissed.

VI. Counts III and VII Must Be Dismissed Because the Complaint Does Not Adequately Allege a Substantial Burden on Plaintiff's Religious Exercise.

Finally, the Complaint also fails to state a claim that the denial of Plaintiff's applications imposes a "substantial burden" on Plaintiff's religious exercise in violation of the RLUIPA, 42 U.S.C. § 2000cc(a)(1) (Count III), and the Oklahoma Religious Freedom Act, 51 O.S. § 253 (Count VII). The substantial burden inquiry focuses on whether the challenged government action prohibits, coerces, or penalizes religious exercise. The denial of a specific land-use application under the circumstances here—where the subject property lacks any particular religious significance of its own, and where there is no allegation regarding the unavailability of other sites or the prospects of a subsequent and different application regarding the subject property—cannot clear the bar for substantial burden claims.

Although RLUIPA "fails to define 'substantial burden,'" the Tenth Circuit has made clear that the term must be "interpreted by reference to the Religious Freedom Restoration Act of 1993

(RFRA), 42 U.S.C. § 2000bb *et seq.*, and First Amendment jurisprudence." *Grace United Methodist Church*, 451 F.3d at 661; *see also* 146 Cong. Rec. 7774-01, 7776 ("The term 'substantial burden' as used in this Act is not intended to be given any broader interpretation than the Supreme Court's articulation of the concept of substantial burden or religious exercise."). To that end, when considering alleged religious burdens in the land use context, the Tenth Circuit has read *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), to establish "that the incidental effects of otherwise lawful government programs 'which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs' do not constitute substantial burdens on the exercise of religion." *Thiry v. Carlson*, 78 F.3d 1491, 1495 (10th Cir. 1996) (quoting *Lyng*, 485 U.S. at 450–51); *see also Grace United Methodist Church*, 451 F.3d at 652, 662; *Messiah Baptist Church*, 859 F.2d at 821–26.

In *Lyng* itself, the Supreme Court rejected a Free Exercise challenge to a federal agency's plans to permit timber harvesting and road construction in an area known as Chimney Rock, which several Indian tribes used for religious purposes. *See* 485 U.S. at 441–42. It was undisputed that "the logging and road-building projects at issue . . . could have devastating effects on traditional Indian religious practices," which were "intimately and inextricably bound up with the unique features of the Chimney Rock area." *Id.* at 451; *see id.* at 447 ("It is undisputed that the Indian respondents' beliefs are sincere and that the Government's proposed actions will have severe adverse effects on the practice of their religion."). Nevertheless, the Court rejected the plaintiffs' claim "that the burden on their religious practices" was "heavy enough to violate the Free Exercise Clause" unless the government could satisfy strict scrutiny. *Id.* at 447. Rather, the Court emphasized that, absent a showing of discrimination, analysis of whether governmental action impermissibly burdens religion should focus on whether the government's action prohibits the exercise of religion, coerces individuals into violating their religious beliefs, or penalizes religious activity. *See id.* at 449–51.[10]

The analysis of an alleged "substantial burden" on religion under the ORFA is no more stringent than the analysis under the RLUIPA. The ORFA defines "[s]ubstantially burden" to mean "inhibit or curtail religiously motivated practice." 51 O.S. § 252(7). Oklahoma courts have recognized that the ORFA's language is "almost identical" to the RFRA and RLUIPA, *Beach v. Okla. Dep't of Pub. Safety*, 398 P.3d 1, 6 n. 20, and in some contexts have applied the statutes in parallel, *see Steele v. Guilfoyle*, 76 P.3d 99, 101–02. Moreover, the ORFA includes a provision not found in RLUIPA that is specifically intended to preserve preexisting governmental authority in the land use context. *See* 51 O.S. § 258 ("Notwithstanding any provision of this act, a governmental entity has no less authority to adopt or apply laws and regulations in a nondiscriminatory manner concerning zoning, land use planning, traffic management, urban nuisance, or historic preservation, than the authority of the governmental entity that existed under the law prior to the passage of this act.").

A comparison of Plaintiff's allegations with the facts of other land-use cases where courts declined to find a "substantial burden" on religion, under either RLUIPA or the Free Exercise Clause, makes clear that the Complaint fails to state a "substantial burden" claim. For one thing, despite Plaintiff's desire to use a specific parcel in the specific manner proposed in its applications, which include religious uses, there is no contention that the site itself has any religious

[10] As the Tenth Circuit explained in *Grace United Methodist Church*, RLUIPA "substantially modified and relaxed the definition of 'religious exercise,'" 451 F.3d at 663, by specifying that "[t]he term 'religious exercise' includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id.* at 661 (quoting 42 U.S.C. § 2000cc-5(7)(A)). The statutory definition does not, however, upset *Lyng*'s guidance that the analysis of non-discriminatory land use policies should focus on whether they prohibit, coerce, or penalize religious exercise. *See, e.g.*, *Midrash Sephardi*, 366 F.3d at 1227.

significance. *Cf. Midrash Sephardi*, 366 F.3d at 1228 (noting plaintiffs "do not claim that their current location has some religious significance such that their faith requires a synagogue at this particular site"). If plaintiffs cannot demonstrate an impermissible burden on their religion, even where (as in *Lyng*) a site that *does* have religious significance is made entirely unavailable for religious practice, surely the denial of a specific land-use application regarding a religiously insignificant site to which Plaintiff merely happens to have access—and acquired subject to pre-existing zoning that Plaintiff now seeks to modify—does not pose a substantial burden. *Cf. Alive Church of the Nazarene, Inc. v. Prince William Cnty., Va.*, 59 F.4th 92, 106 (4th Cir. 2023) ("[I]f a religious institution acquires land knowing that it is subject to certain restrictions, any burden resulting from those restrictions has not been imposed by the government; but rather, the burden is self-imposed."); *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Hist. Dist. Comm'n*, 768 F.3d 183, 196 (2d Cir. 2014) (requiring consideration of "whether the Chabad reasonably believed it would be permitted to undertake its proposed modifications when it purchased the property").

Furthermore, while the Complaint alleges that the local Muslim community has outgrown the mosque in Tulsa, the Complaint does not allege that other suitable locations in or around Broken Arrow are unavailable, or that a different application concerning construction of a mosque at the subject property might not be granted. *Cf. Edgewood High Sch. of the Sacred Heart, Inc. v. City of Madison, Wisc.*, 95 F.4th 1080, 1088 (7th Cir. 2024) ("Congress did not define 'substantial burden' in RLUIPA, but we have examined the term in the land-use context and concluded that the availability of other adequate properties to host religious activities may defeat a substantial burden claim."); *Midrash Sephardi*, 366 F.3d at 1228 (citing congregations' ability to apply for a permit to operate at another nearby location); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004) (affirming summary judgment against plaintiff who could identify "no evidence in the record demonstrating that [it] was precluded from using other sites within the city").

As a result, both of Plaintiff's "substantial burden" claims must be dismissed.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss filed by the City of Broken Arrow should be granted, and the Complaint should be dismissed as to the City.

Dated: September 18, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2026, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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