TULANE ENVIRONMENTAL LAW JOURNAL

VOLUME 21 SUMMER 2008 ISSUE 2

Six Flags over Jesus: RLUIPA, Megachurches, and Zoning

Jennifer S. Evans-Cowley*
Kenneth Pearlman†

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act. This law limits the ability of local governments to regulate churches. Since RLUIPA, which restricts legislative regulatory ability, was enacted, there has been an increase in the number of megachurches throughout the country that are providing significant accessory uses as part of their sites. This study explores planners' knowledge of RLUIPA and the use of tools to regulate megachurches in the United States. We surveyed 260 U.S. cities about the presence and extent of megachurch development and on their approaches to regulation. With a response rate of 46%, a small number of cities with megachurches have amended their zoning regulations for religious facilities since RLUIPA. Those that have adopted regulations have taken a variety of approaches, some aimed specifically at addressing the impacts of megachurches. Respondents reported that the regulations had been only moderately successful, but that in some cases they were effective in controlling the placement of megachurches. As megachurches continue to spread, communities will need to develop more effective mechanisms to control for their negative impacts.

 Jennifer S. Evans-Cowley, M.U.P. & Ph.D. (Urban and Regional Science) Texas A & M University, M.P.A. University of North Texas, is Associate Professor of City and Regional Planning at the Ohio State University.

† Kenneth Pearlman, J.D. Columbia University and M.C.P. University of Pennsylvania, is Professor and Head of City and Regional Planning at the Ohio State University.

I. INTRODUCTION

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).[1] This law limits the ability of local governments to regulate churches. Since RLUIPA, which restricts legislative regulatory ability, was enacted, there has been an increase in the number of megachurches throughout the country that provide significant accessory uses as part of their sites. This study explores planners' knowledge of RLUIPA and the use of tools to regulate megachurches in the United States. Two hundred and sixty U.S. cities were surveyed about the presence and extent of megachurch development and on their approaches to regulation. With a response rate of forty-six percent, a small number of cities with megachurches have amended their zoning regulations for religious facilities since RLUIPA. Those that have adopted regulations have taken a variety of approaches, some aimed specifically at addressing the impacts of megachurches. Respondents reported that the regulations have been only moderately successful, but that in some cases they were effective in controlling the placement of megachurches. As megachurches continue to spread, communities will need to develop more effective mechanisms to control negative impacts.

In the United States everything is super sized, from our french fries, to our homes, and now, our churches. Churches are building extra large facilities to meet the needs and demands of church members. These demands include the creation of communities with suites of accessory services, such as restaurants, housing, schools, movie theaters, and recreational facilities. A megachurch is defined by Hiram as a church with a weekly attendance of more than 2,000.[2] Size of attendance is the primary characteristic.[3] Megachurches usually have strong charismatic ministers, large staff, a large volunteer base, and draw their congregation from the region.[4] These churches may have activities seven days a week and include accessory uses such as bookstores and cafes sited on large campuses.[5] The majority of megachurches also integrate the use of

---

1. 42 U.S.C. §§ 2000cc-2000cc-5 (2000).

2. At the extreme a whole town can in effect be a megachurch. *See* Mary B. Barklein, *Birth of Cleantown: Ave Maria*, USA TODAY, July 18, 2007, *available at* http://www.usatoday.com/news/nation/2007-07-18-ave-maria_N.htm.

3. Hartford Inst. for Religion Research, http://hirr.hartsem.edu/megachurch/definition.html (last visited Mar. 11, 2008).

4. Hartford Inst. for Religion Research, Megachurches, http://hirr.hartsem.edu/megachurch/megachurches.html (last visited Mar. 11, 2008).

5. *Id.*

visual projection equipment and electric guitar and drums into their services.[6] The entertainment aspects of megachurches are important.

In 1970, there were only ten megachurches nationwide, according to Church Growth Today.[7] By 2002, there were more than 1200.[8] While megachurches are on the rise, they represent only 0.5% of all the churches in the United States.[9] Some argue that megachurches represent a shift towards the original church. The first church began with 3,000 members and grew to 6,000 members.[10] St. Peter's church in the Vatican, which accommodates 60,000 people, is just one example of the huge scale that churches can have. According to Eddie Gibbs, a Professor at the Fuller Theological Seminary, megachurches "have removed every obstacle that keeps people from coming into the Christian church. Plus, they give people a feeling of anonymity. And that is particularly important to those who have been hurt or burnt out in smaller churches."[11]

According to the Hartford Institute for Religion Research, there are nine American cities with ten or more megachurches.[12] Table 1 shows the cities with ten or more megachurches in the United States. Texas cities dominate this list, with Houston, Dallas, and San Antonio in the top three positions. Megachurches abound in fast growing states such as California, Texas, Florida, and Georgia.[13] While these cities have a large number of megachurches, the typical megachurch is located in a suburb of a major city, with forty-five percent of megachurches located in newer suburbs.[14] For example, Arlington, Texas, has nine megachurches and Englewood, Colorado, has four. Megachurches choose suburban locations due to land availability and the location of their congregations. However, the scale of the congregations means that the churches draw from the region rather than from the neighborhood. Not every megachurch has a large building or giant campus. Only five percent of

---

6. SCOTT THUMMA, DAVID TRAVIS, & WARREN BIRD, MEGACHURCHES TODAY 2005: SUMMARY OF RESEARCH FINDINGS 6 (2005), http://www.hartfordinstitute.org/megachurch/megastoday2005summaryreport.pdf.

7. Kris Axtman, *The Rise of the American Megachurch*, CHRISTIAN SCI. MONITOR, Dec. 30, 2003, http://www.csmonitor.com/2003/1230/p01s04-ussc.html.

8. Hartford Inst. for Religion Research, *supra* note 3.

9. Jane Lampman, *Megachurches' Way of Worship Is on the Rise*, CHRISTIAN SCI. MONITOR, Feb. 6, 2006, http://www.csmonitor.com/2006/0206/p13501-lire.html.

10. *Acts* 2:41, 2:46 (Revised Standard Bible).

11. Axtman, *supra* note 7.

12. Hartford Inst. for Religion Research, *supra* note 3.

13. Thumma, Travis, & Bird, *supra* note 6, at 3.

14. *Id.* at 4.

megachurches have sanctuaries with 3,000 or more seats, while more than twenty percent have between 2,000 and 3,000 seats.[15]

Table 1. U.S. Cities with Ten or More Megachurches

City	Number of Megachurches
Houston, TX	33
Dallas, TX	19
San Antonio, TX	16
Atlanta, GA	16
Los Angeles, CA	15
Chicago, IL	13
New York, NY	13
Charlotte, NC	11
Indianapolis, IN	10

Table 2. Ten Largest U.S. Megachurches

City	Name of Church	Average Attendance
Houston, TX	Lakewood Church	30,000
Lake Forest, CA	Saddleback Valley Community Church	22,000
South Barrington, IL	Willow Creek Community Church	20,000
Dallas, TX	The Potter's House	18,500
Louisville, KY	Southeast Christian Church	18,757
Lithonia, GA	New Birth Missionary Baptist Church	18,000
Fort Lauderdale, FL	Calvary Chapel	18,000
Los Angeles, CA	Crenshaw Christian Center	17,000
Santa Ana, CA	Calvary Chapel of Costa Mesa	16,500
Houston, TX	Second Baptist Church	16,000

The largest megachurch is Lakewood Church, located in the Compaq Center, the former arena of the Houston Rockets, which opened in downtown Houston in 2005. Lakewood spent $75 million to renovate the Compaq Center and is paying $12.1 million in rent to the City of Houston for the next thirty years, with an option to extend the lease for an additional thirty years for $22.6 million.[16] This megachurch offers three English services and one Spanish language service each week.[17] The church has a seating capacity for 16,000 people.[18] In addition to

15. *Id.* at 2.
16. Axtman, *supra* note 7.
17. Lakewood Church, Services, http://www.lakewood.cc (last visited Mar. 11, 2008).
18. *Id.*

church services, the church hosts a summer concert series with Christian bands and has a family life center with classes for children and adults, a bookstore, and a café.[19] Lakewood also broadcasts one of its weekly services to over 140 countries and via the Internet.[20]

Megachurches such as Lakewood Church have found that the adaptive reuse of existing buildings can serve their needs. Other churches have found homes in other types of facilities. For example, HighPoint Church in Arlington, Texas, moved into the 423,000-square-foot former Johnson and Johnson research and development campus in 2004.[21] The renovated facility includes a 5,000-seat auditorium, a café, and a school.[22]

Other megachurches build new facilities at an existing site, such as the Evangel Fellowship Church in Greensboro, North Carolina. In 2003, this Church built its Power Center, a church with 1,800 seats, a book store, and administrative offices.[23] After opening the church, it then opened a youth recreation center, Power Play, which includes a movie theater, bowling alley, snack bar, and basketball court.[24] The church hopes to buy a vacant neighborhood school to open the Evangel Fellowship Training School.[25]

Other megachurches include a unique mix of activities. For example, The Community Church of Joy in Glendale, Arizona, sits on a 140-acre campus, has a sanctuary, day care, school, retirement village, fitness center, book store, and coffee shop, and plans to add a water park, Olympic aquatic center, hotel, and housing development.[26] The Fellowship Church in Grapevine, Texas, is one example of a church with a video arcade.[27] The church also offers a climbing wall and a bass fishing lake.[28] The idea is to make children want to come to church. Prestonwood Baptist Church in Plano, Texas, includes Preston World, a

---

19. *Id.*

20. *Id.*

21 HighPoint Church, *Our History*, http://www.churchunusual.com/history.html (last visited Mar. 11, 2008).

22. *Id.*

23 Amy Kingsley, *Residents Wary as Megachurch Expands Outreach Services*, YES! WEEKLY, Jan, 1, 2007, *available at* http://www.yesweekly.com/main.asp?search=1&ArticleID=2098&SectionID=1&SubSectionID=1&S=1.

24. *Id.*

25. *Id.*

26. Community Church of Joy, Resources, http://www.joyonline.org (last visited Mar. 11, 2008).

27. Patricia L. Brown, *Megachurches as Minitowns*, N.Y. TIMES, May 9, 2002, *available at* http://www.nytimes.com/2002/05/09/garden/09CHUR.html?ex=1187150400&en=dd4950be8363c3e7&ei=5070.

28. *Id.*

youth center with a 1950s style diner, fitness center, coffee shop, food court, and ball fields in addition to more traditional church facilities.[29] This church has been modeled on the idea of a Main Street. The executive pastor reports that they are not a large church, but instead a small town.[30]

Regional scale megachurches are of significant concern in communities where the churches are placed in a neighborhood setting. Residents have also raised concerns about the accessory uses that accompany a number of megachurches. Concerned neighbors have lobbied their local governments to put in place regulations that will prevent or minimize the effect of these large religious facilities. Neighbors complain that these churches are architectural eyesores, create traffic nightmares, and cause a burden on their neighborhoods.

"There is a national movement to quash the continued growth or the concept of the megachurch . . . The word megachurch has negative connotations in this country. It frightens people," according to Jared Leland of the Becket Fund, which fights religious discrimination.[31] Lawsuits and public disputes over zoning of megachurches are increasing in regularity throughout the country.[32] There are examples across the United States of local governments and churches arguing over the appropriateness of regulating churches. For example, in 2006, Palm Beach County, Florida, proposed a zoning ordinance that would cap churches to 750 seats and 75,000 square feet in urban areas; 500 seats and 50,000 square feet in suburban areas, and 250 seats and 25,000 square feet in rural areas.[33] The county was overwhelmed with opposition from church members throughout the county. While the size cap failed, the county has moved forward to add new parking regulations that would limit the ability of churches to expand.[34] Pastor Avis Hill of Westgate Tabernacle Church argues that, "[t]here's a large number of people who feel like the county is being hostile toward the religious community. The county is misjudging us if they think we are just going to keep going to worship without saying or doing anything."[35] In Scottsdale, Arizona, residents express concern regarding the SonRise Community Church's plans to build a religious school, complaining that

---

29. *Id.*
30. *Id.*
31. Mark Bergin, *Bullied Pulpits*, WORLD MAG., May 20, 2006, *available at* http://www.worldmag.com/articles/11864.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*

the traffic would become excessive.[36] The City denied the conditional use permit for the school application.[37] The church sued, arguing that the denial of the conditional use permit violated RLUIPA.[38] After complaints from neighbors about excessive traffic, Fairfax County in Virginia told McLean Bible Church that it must discontinue its college bible classes because they violated the County Zoning Ordinance.[39] The church sued the county, arguing that they were a church not a college.[40]

The increasing growth of megachurches across the United States and the passage of the Religious Land Use and Institutionalized Persons Act (RLUIPA) has created a challenge for planners to appropriately use land use controls for religious facilities. This Article presents an examination of the legal basis for land use regulation under RLUIPA, the types of regulatory controls local governments have put in place for megachurches in the face of RLUIPA, and offers recommendations for how local governments can legally and effectively regulate religious facilities.

II. LEGAL BASIS FOR REGULATING MEGACHURCHES

While community residents have raised concerns about the impacts of megachurches and have called for increased regulations, RLUIPA has limited the ability of local governments to put in place land use regulations on religious facilities. Since the passage of RLUIPA, local governments have developed a variety of zoning responses to the act.[41] As seen in the introduction, churches have argued that zoning ordinance changes are a violation of RLUIPA. This Part discusses the events that led up to the passage of RLUIPA, court cases resulting from RLUIPA, and the legal implications for planning and zoning.

The principal event that led to the passage of the RLUIPA was an abrupt change of course by the United States Supreme Court in the 1990 decision of *Employment Division, Department of Human Resources of Oregon v. Smith*.[42] *Smith* overruled what had been the basis of decisions for religious cases since the 1963 decision of *Sherbert v. Verner*.[43] In

---

36. *Id.*
37. *Id.*
38. *Id.*
39. Maria Glod, *Church Sues Fairfax County To Keep Religion Classes*, WASH. TIMES, July 18, 2006, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071701327.html.
40. *Id.*
41. 42 U.S.C.A. § 2000cc(a) (2000).
42. 494 U.S. 872 (1990).
43. 374 U.S. 398 (1963).

Sherbert the Court advanced the doctrine that the constitutionality of laws and regulations affecting religion was to be decided on the effect the laws or regulations had.[44] The *Sherbert* test was in two parts: first, whether a law or regulation imposes any burden on the free exercise of religion, and second, whether some compelling state interest justifies the substantial infringement of an individual's free exercise rights.[45] It is important to recognize that *effect on religion*, not *intent to affect religion*, is the key, even though the requirement is neutral with respect to religion, and that the Court imposed the highest level of judicial scrutiny—compelling state interest—on government regulation of religion.[46] Although there are different tests for different areas of regulation, the three most typical tests are the rational basis test (the most favorable to government—the plaintiff has the burden to show that governmental action was arbitrary, capricious, or unreasonable), intermediate scrutiny (the burden shifts to government to prove a substantial public purpose—used in gender discrimination cases and some First Amendment areas as well as certain land use takings situations), and strict scrutiny (compelling state interest—used in racial discrimination cases, content-based First Amendment cases, and in the *Sherbert* decision).[47]

The *Sherbert* ruling overturned a decision by a state unemployment commission to disallow unemployment compensation to a Seventh-Day Adventist who refused to work on Saturday and was discharged.[48] The state court ruled that the state's interest in administration of unemployment laws did not outweigh the employee's interest in the free exercise of her religion.[49] Unfortunately, there were no U.S. Supreme

---

44. *Id.* at 404.

45. *Id.* at 403, 406. *Sherbert* involved a Seventh-day Adventist who refused to work on Saturday and was thus deemed ineligible for unemployment benefits under a state requirement that a potential employee could not refuse to accept available suitable work without good cause. The Court ruled that the requirement was unconstitutional because it forced the plaintiff to choose between religion and receiving a check and that there were no serious administrative hurdles to dealing appropriately with this problem. *Id.* at 406, 408-09.

46. *Id.* at 406-07.

47. A complete listing of all the cases in which different tests are used is well beyond the scope of this Article. However, for a good example and explanation of the nature of the different tests and why they are used when different degrees of judicial deference are warranted, see *City of Cleveland, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985).

48. *Sherbert*, 374 U.S. at 410.

49. *Id.* at 408-09. Important cases following *Sherbert* dealt with similar issues of individuals being forced to choose between religion and state requirements. *See* Wisconsin v. Yoder, 406 U.S. 205, 208-09 (1972) (finding that an Amish church claimed successfully that school attendance requirements violated First Amendment rights); Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 709, 720 (1981) (finding that an employee who quit a job producing weapons successfully argued that denial of unemployment benefits was unconstitutional because producing weapons violated his religious beliefs). *Contra* United States v. Lee,

Court decisions applying a balancing analysis. There were, however, two important lower court decisions. In *Grosz v. City of Miami Beach*, a court of appeals found that city's interest in neighborhood order and quiet outweighed the holding of religious services in a private home by an infirm but not immobile rabbi.[50] In *Lakewood, Ohio Congregation of Jehovah's Witnesses, Inc. v. City of Lakewood*, another appeals court upheld the refusal of a City to rezone a single family property for church use, concluding that the First Amendment does not require governments to make the best or cheapest land available for religious use.[51]

Sherbert remained the law until the *Smith* decision twenty-seven years later.[52] In *Smith*, the Court rejected the *Sherbert* effects test, which balanced religious belief and practice against a showing by the government of a compelling interest.[53] The *Smith* decision placed an emphasis on the intent of governmental regulation of religion.[54] Government could single out religious practices as long as prohibiting or burdening religious practice was not the object of regulation, but "merely the incidental effect of a generally applicable and otherwise valid provision, [in which case] the First Amendment has not been offended."[55] The Court concluded that such laws do not have to be justified by a compelling governmental interest.[56] The Court, however, did not specifically indicate another appropriate standard of review, though it would appear to be some sort of intermediate scrutiny test. If a law was not a general law of neutral applicability, then the compelling governmental interest test would still apply. Thus, in *Church of the Lukumi Babalu Aye v. City of Hialeah*, the Supreme Court overturned an ordinance that prohibited the ritual sacrifice of animals but exempted licensed establishments that slaughtered animals for food.[57] The Court ruled that the ordinance was not neutral with respect to religion and lacked by a compelling governmental interest.[58] Had all cruel animal practices been outlawed, then there would have been a neutral law.[59]

---

455 U.S. 252, 254 (1982) (finding that an Amish farmer could not withhold social security tax payments).

50. 721 F.2d 729, 731, 741 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984).

51. 699 F.2d 303, 309 (6th Cir.), *cert. denied*, 464 U.S. 815 (1983).

52. *Sherbert*, 394 U.S. at 389. For a discussion of pre-*Smith* decisions, see Kenneth Pearlman, Zoning and the Location of Religious Establishments, 31 CATH. LAW. 314-45 (1988).

53. *Smith*, 494 U.S. 872 883-84 (1990).

54. *Id.* at 882.

55. *Id.* at 892.

56. *Id.* at 883.

57. 508 U.S. 520 (1993).

58. *Id.* at 521.

59. *Id.* at 521-22.

The response to the *Smith* decision was swift. Congress passed the Religious Freedom Restoration Act of 1993 (RFRA).[60] The RFRA restored the compelling governmental interest test for laws that were nonetheless neutral toward religion if they substantially burdened religious practice.[61] The law applied to all levels of government, from the federal government to subdivisions of state governments.[62] Its application could have a tremendous impact on land use laws, affecting everything from the location of religious institutions to their setbacks and related matters. In 1997, the law was declared unconstitutional with respect to its application to states and their subdivisions in *City of Boerne v. Flores*, where the Supreme Court rejected a claim that the City's refusal to allow the expansion of a church in an historic review district violated RFRA.[63] The Court ruled that Congress only had the power to enforce the Fourteenth Amendment (the basis for the Act), not to determine the substantive content of the Amendment.[64] The Court found that the Act did not identify state treatment of religious practices that were in violation of the Constitution and thus correctible by remedial action by Congress.[65] Unfortunately, because RFRA was declared unconstitutional on more general issues of governmental powers, it meant that the effect of RFRA on local zoning matters remained undetermined.

Congress eventually responded by enacting the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) (thereby linking planners and prisoners inexorably together!).[66] In passing RLUIPA, Congress sought to avoid the issues raised in *Boerne* by identifying two areas in which Congress believes remedial legislation is necessary: land use and incarcerated persons. With respect to land use, Section (a)(1) of the Act provides:

> General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

---

60. 42 U.S.C. § 2000bb (2003).
61. *Id.*
62. *Id.*
63. 521 U.S. 507 (1997).
64. *Id.* at 508.
65. *Id.* at 508-09. For a detailed discussion of RFRA, see Kenneth Pearlman & Stuart Meck, *Land Use Controls and RFRA: Analysis and Predictions*, 2-Fall NEXUS: J. OPINION 127, 147 (1997). That article was part of a symposium on *Boerne*.
66. 42 U.S.C.A. § 2000cc(a).

(A) is in furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling governmental interest.[67]

This rule means that the Act applies to land use regulations that impose substantial burdens on religious exercise unless the government can demonstrate that the regulation furthers, in the least restrictive manner, a compelling governmental interest. The Act also states that these restrictions apply to a land use system where there are "formal or informal procedures or practices that permit the government to make . . . individualized assessments of the proposed uses for the property involved."[68] This individualized assessment is, of course, exactly what happens during the re-zoning process or in considering a request for a variance or a conditional use permit. Where subjective factors or criteria enter into a decision, a court is more likely to find an individual assessment. However, where general rules are applied neutrally and without subjective judgment, courts may make a finding of no individual assessment.[69] In addition, Section (b) of the Act prohibits treating religious institutions on less favorable terms than other institutions, prohibits banning religious assemblies entirely from a jurisdiction, and prohibits unreasonable limits and restrictions on religious assemblies, institutions, and structures within a jurisdiction.[70]

There are two principal issues that need to be resolved: first, the constitutionality of RLUIPA, and second, the extent to which RLUIPA will actually limit the ability of local officials to regulate religious institutions.

As of this writing, the answer to the first issue, the constitutionality of RLUIPA, has not received a definitive answer from the Supreme Court. In *Cutter v. Wilkinson* the Court did uphold the constitutionality of the RLUIPA section pertaining to institutionalized persons.[71] However, the Court explicitly stated that "Section 2 [the land use section] of RLUIPA is not at issue here. We therefore express no view on the validity of that part of the Act."[72] In its decision, the Court held that there

---

67. *Id.* § 2000cc(a)(1)(A)-(B).
68. *Id.* § 2000cc(a)(2)(C).
69. *See, e.g.*, Lighthouse Community Church of God v. City of Southfield, No. 05-40220, slip op. at 3 (E.D. Mich., Mar. 7, 2007) (finding that where parking requirements are based on a consideration of all uses of a property and are simply added up, such a computation is not an individualized assessment, though a decision on an application for a variance from the parking requirements is an individualized assessment).
70. 42 U.S.C.A. § 2000cc(b).
71. 544 U.S. 709 (2005).
72. *Id.* at 716.

was room in the Constitution for legislative action that was neither compelled by the Free Exercise Clause not prohibited by the Establishment Clause.[73] Further, it held that RLUIPA as it applied to institutionalized persons prevented governmental action that created exceptional burdens on private religious exercise.[74] In addition, the Court noted that the government had accommodated other religious exercise in institutions such as the military, where discipline and order was important.[75] Finally, the Court recognized that the Act did not discriminate among bona fide religious faiths.[76] An important concern of the Court was that prisoners are dependent upon government to be able to exercise their religious rights, something that is quite different in the land use area.[77]

Legal activity with respect to the land use provisions of RLUIPA has been slower in moving up the court system. Decisions in the courts of appeals have been few and not wholly conclusive. The United States Court of Appeals for the Seventh Circuit held that RLUIPA is constitutional on its face, though not necessarily in all applications.[78] The majority of district courts that have considered the constitutionality question have upheld RLUIPA and the language of most courts of appeals cases has been favorable.[79]

Assuming that RLUIPA is ultimately held constitutional, the key question becomes the extent to which RLUIPA will limit the ability of local governments to regulate religious establishments. In the context of this Article, this means whether auxiliary uses associated with megachurches—e.g., restaurants, hotels, hospitals, schools, movie theaters—can be regulated, and to what extent.

At the moment there is little guidance on the subject.[80] The language of the statute raises two major concerns. First, what is a religious exercise? Second, when is there a substantial burden on a religious exercise? As to the first question, the statute does not provide meaningful guidance on what can constitute a religious exercise. An

---

73. *Id.* at 719.
74. *Id.* at 720.
75. *Id.* at 722.
76. *Id.* at 723-24.
77. *Id.* at 725-26.
78. Charles v. Verhagen, 348 F.3d 601, 609 (7th Cir. 2003).
79. *See* Beckett Fund for Religious Liberty, http://www.becketfund.org (last visited Mar. 11, 2008).
80. Although RLUIPA and the Free Exercise clause contain different language, courts will look to First Amendment Supreme Court jurisprudence for guidance concerning RLUIPA. *See* Christian Methodist Episcopal Church v. Montgomery, No. 4:04-CV-22322-RBH, slip op. at 5 (D.S.C., Jan. 18, 2007).

excellent case that examines many of the issues discussed in this Article is a Michigan appellate court decision, *Shepard Montessori Center Milan v. Ann Arbor Charter Township*.[81] The appellate court initially concluded that RLUIPA did not render churches immune from compliance with local zoning procedures:

> In the land use context, Congress made several findings that shed some light on the present matter. Senators Hatch and Kennedy co-sponsored RLUIPA; they stated:
>
> > This Act does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provision in land use regulations, where available without discrimination and unfair delay.
> >
> > In many cases, real property is used by religious institutions for purposes that are comparable to those carried out by other institutions. While recognizing these facilities may be owned, sponsored or operated by a religious institution, or may permit a religious institution to obtain additional funds to further its religious activities, this alone does not automatically bring these activities or facilities within the bill's definition or [sic] religious exercise.
>
> The legislative history of RLUIPA states that it "is only the use, building or conversion for religious purposes that is protected and not other uses or portions of the same property." For example:
>
> > [I]f a commercial enterprise builds a chapel in one wing of the building, the chapel is protected if the owner is sincere about its religious purposes, but the commercial enterprise is not protected. Similarly, if religious services are conducted once a week in a building otherwise devoted to secular commerce, the religious services may be protected but the secular commerce is not.[82]

To be a religious exercise, a use need not be central to a religion's belief structure. Although the use must be intended for religious use, the extent of this requirement is not defined. In the *Shepard Montessori* decision, the court concluded that a faith-based primary school was such a religious use, a conclusion with which it is difficult to argue.[83] One question that needs to be answered is whether a sincerely held religious belief that an activity is a religious exercise is sufficient for a court to

---

81. Shepard Montessori Ctr. v. Ann Arbor Charter Twp., 675 N.W.2d 271 (Mich. App. 2003).

82. *Id.* at 278-79 (citations omitted).

83. *Id.* at 280-81. *But see* Grace United Methodist Church v. City of Cheyenne, 451 F.3d 643, 664 (10th Cir. 2006) (concluding that the operation of a proposed day care center was not the exercise of a sincere religious belief and thus would be in violation of the city's land use regulations).

accept the conclusion. If so, then the major concern becomes what constitutes a substantial burden on the religious exercise. Courts have developed two different tests on this point.

The *Shepard Montessori* court stated:

> The more difficult question is whether plaintiff introduced sufficient evidence to allow reasonable minds to differ with respect to whether defendants imposed a "'substantial burden'" on this religious exercise. The substantial burden must be based on a "'sincerely held'" religious belief. In *Lyng v. Northwest Indian Cemetery Protective Ass'n*, the Supreme Court indicated that for a governmental regulation to substantially burden religious activity, it must have a tendency to coerce individuals into acting contrary to their religious beliefs. Conversely, a government regulation does not substantially burden religious activity when it only has an incidental effect that makes it more difficult to practice the religion. Thus, for a burden on religion to be substantial, the government regulation must compel action or inaction with respect to the sincerely held belief; mere inconvenience to the religious institution or adherent is insufficient.[84]

Thus, the burden as laid down in this decision is that government regulation must compel or coerce action or inaction before it can be overturned on the basis of RLUIPA.[85] A number of other courts have adopted a similar standard.[86] The leading federal case on this point is *Midrash Sephardi, Inc. v. Town of Surfside*.[87] Under this decision, it is sufficient to show that a coercive change in conduct occurred as a result of the regulation.[88] How restrictive this approach to government regulation is unclear, but under the language of *Shepard Montessori* governments can still regulate even if the regulation creates inconvenience.[89] Before it can be disallowed, the regulation must "put . . . undue pressure on adherents to alter their behavior and to violate their beliefs in order to obtain government benefits."[90]

A more restrictive standard has found favor with some courts. In *Civil Liberties for Urban Believers v. City of Chicago*, the Seventh Circuit ruled that for a regulation to be voided because of RLUIPA it

---

84. *Shepard Montessori Ctr.*, 675 N.W.2d at 281 (citations omitted); *see* Episcopal Students Found. v. City of Ann Arbor, 341 F. Supp. 2d 691 (E.D. Mich. 2004) (finding that a restriction on a proposed expansion to offer concerts and other social events to create a spiritual community does not violate RLUIPA).

85. *Episcopal Students Found.*, 341 F. Supp. 2d at 709.

86. *See* Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter, 456 F.3d 978, 988 (9th Cir. 2006).

87. 366 F.3d 1214 (11th Cir. 2004).

88. *Id.* at 1227.

89. *Shepard Montessori Ctr.*, 675 N.W.2d at 281.

90. Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 348 (2d Cir. 2007).

would have to render religious exercise impracticable.[91] Under this standard, RLUIPA would be less of a barrier to local government regulation.[92]

Even if the first standard is ultimately adopted by most courts, it is still fair to conclude that RLUIPA may not act as a bar to regulation of the auxiliary activities of megachurches. Indeed, in a recent federal appellate decision, the United States Court of Appeals for the Ninth Circuit in *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, adopted the weaker standard and quoted language in an earlier decision holding "for a land use regulation to impose a 'substantial burden," it must be 'oppressive' to a 'significantly great' extent.[93] That is, a 'substantial burden' on 'religious exercise' must impose a significantly great restriction or onus upon such exercise.'"[94] *Guru Nanak* found for the plaintiff in a decision in which the denials of two conditional use applications for a temple were found to amount to a RLUIPA violation because they inhibited the sect's religious exercise by making it unlikely that they would ever get approval, especially since they met the zoning requirements or regulations and had agreed to all of the conditions that the planning board wanted to impose.[95] It can hardly be argued that restrictions on many types of accessory megachurch activities are "oppressive" to a "significantly great extent" in the exercise of the religion, as opposed to inconvenience.

Indeed, it is fair to say that most of the RLUIPA decisions overturning local restrictions do so in situations in which principal religious uses are discouraged or prohibited from being located within jurisdictions or within specific districts. "The need for religious institutions to have the ability to develop 'a physical space adequate to their needs and consistent with their theological requirements' is at the heart of the RLUIPA's land-use provisions."[96] Other decisions upholding

---

91. Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003).

92. *Id.*; *see* Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir. 2007); San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024 (9th Cir. 2004).

93. Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter, 456 F.3d 978 (9th Cir. 2006) (quoting *San Jose Christian Coll.*, 360 F.3d at 1034); *cf.* Elsinore Christian Ctr. v. City of Lake Elsinore, 197 F. App'x 718, 719 (9th Cir. 2006).

94. *Guru Nanak Sikh Soc'y*, 456 F.3d at 988 (quoting *San Jose Christian Coll.*, 360 F.3d at 1034).

95. *Id.*

96. Church of the Hills of Bedminster v. Twp. of Bedminster, No. Civ. OS-3331(SRC), slip op. at 5 (D.N.J. Feb. 24, 2006) (quoting 146 CONG. REC. § 7774-01, 7774 (daily ed. July 27, 2000) (joint statement of Sen. Hatch and Sen. Kennedy on the Religious Land Use and Institutionalized Persons Act of 2000)).

RLUIPA involve issues of space and expansion. Thus, one court has held that a parish center that contains a kitchen, office space, a social hall, and handicapped bathrooms is part of a religious exercise and that lot limitation requirements and setback lines may violate RLUIPA absent a compelling interest.[97] The same court also noted that the parish center would serve as a meeting place for the parish counsel, would include an office for religious education, and could facilitate gatherings related to church services that would, in the process, alleviate crowding in the rectory.[98] There was also a finding by the local board of zoning adjustment that this would constitute a substantial burden.[99] Furthermore, restrictions that require churches to hold religious activities away from the church or double up on services may well constitute a substantial burden.[100] On the other hand, courts may well require governments to give serious consideration to expansion of uses in already existing structures, but not necessarily for any extension for the building out of administrative offices that a church desires.[101] Similarly, RLUIPA will not automatically bar a jurisdiction from declining a permit for a school addition, although religious schools do fall under the protection of RLUIPA.[102] Nor is a religious organization exempt from complying with local zoning procedures, such as making applications for special use permits.[103]

Recent court decisions have permitted regulation of a number of different types of situations. The United States Court of Appeals for the Eleventh Circuit has upheld a separation requirement of 1,000 feet for all nonagricultural or residential uses in an agricultural district, applied to a religious institution as not creating a substantial burden or violating the equal treatment provisions of RLUIPA.[104] This is the case whether there is a substantial burden on religious practice or not. It has been held that

---

97. *See* Mintz v. Roman Catholic Bishop of Springfield, 424 F. Supp. 2d 309, 311 (D.C. Mass. 2006).

98. *Id.* at 319.

99. *Id.* at 322.

100. Cathedral Church of the Intercessor v. Inc. Village of Malverne, No. CV02-2989(TCD)(MO), slip op. at 8 (E.D.N.Y. Mar. 6, 2006).

101. Castle Hills First Baptist Church v. City of Castle Hills, No. SA-01-CA-1149-RF, slip op. at 11 (W.D. Tex. Mar. 17, 2004); Cathedral Church of the Intercessor Inc. v. Malverne, 353 F. Supp. 2d 375, 393 (E.D.N.Y. 2005).

102. *See* Westchester Day Sch. v. Vill. of Mamaroneck, 386 F.3d 183, 190 (2d Cir. 2004) (declining to extend RLUIPA to any school case); *see also* Westchester Day Sch. v. Mamaroneck, 504 F.3d 338, 352-53 (2d Cir. 2007).

103. Christian Methodist Church v. Montgomery, No. 4:04-CV-22322-RBH, slip op. at 9 (D.S.C. Jan. 18, 2007).

104. Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295, 1307, 1313-14 (11th Cir. 2006).

requiring a special exception to have a religious usage in a district does not, by itself, violate RLUIPA, absent a showing that a property is unique or the only available property.[105] Further, local governments do not have to permit a church to locate wherever it desires. If there is a significant amount of land available in other districts, then denial of a permit may not necessarily violate RLUIPA.[106] A court has held that RLUIPA does not require local jurisdictions to allow a church any amount of parking it desires, even if parking is part of a seriously held belief to increase church membership.[107] Further, a religious institution must show why it is substantially burdened. A church that was allowed to build a 55,000-square-foot project must demonstrate why this constitutes a substantial burden, when its current membership (120) is far lower than a membership (800-1000) that would require 55,000 square feet.[108] On the other hand, where a church needed to expand a religious school and there were no other opportunities available, refusal to allow the expansion can constitute a substantial burden.[109] It has also been held that the use of eminent domain does not fall within the purview of RLUIPA.[110] Moreover, the mere requirement to file a Planned Unit Development (PUD) application has been held not to violate RLUIPA.[111]

Additionally, where a local government treats a religious institution under less than equal terms with other similar uses, then such treatment will violate the equal terms provision of RLUIPA.[112] For example, if a community's zoning ordinance permits organizations such as private clubs, civic and fraternal organizations, and theaters in a specific district but prohibits religious institutions, then it will have violated RLUIPA because it ignores the purpose of the RLUIPA's equal terms provisions.[113]

---

105. Hollywood Cmty. Synagogue Inc. v. City of Hollywood, Florida, 430 F. Supp. 2d 1296, 1338-39 (S.D. Fla. 2006).

106. Petra Presbyterian Church v. Vill. of Northbrook, 409 F. Supp. 2d 1001, 1007 (N.D. Ill. 2006); Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 406 F. Supp. 2d 507, 518 (D.N.J. 2005).

107. Castle Hills First Baptist Church v. City of Castle Hills, No. SA-01-CA-1149-RF, slip op. at 11 (W.D. Tex. Mar. 17, 2004).

108. Vision Church v. Vill. of Long Grove, 468 F.3d 975, 992 (7th Cir. 2006), *cert. denied*, 128 S. Ct. 77 (2007).

109. Westchester Day Sch. v. Vill. of Mamaroneck, 504 F.3d 338, 352-53 (2d Cir. 2007).

110. Faith Temple Church v. Town of Brighton, 405 F. Supp. 2d 250, 254 (W.D.N.Y. 2005); St. John's United Church of Christ v. City of Chicago, 401 F. Supp. 2d 887, 899-900 (N.D. Ill, 2005).

111. San Jose Christian Coll. v. City of Morgan Hill, 360 F.3d 1024, 1032 (9th Cir. 2004).

112. 42 U.S.C. § 2000cc(b) (2000).

113. New Life Ministries v. Charter Twp. of Mt. Morris, No. 05-74339, slip op. at 4-5 (E.D. Mich. Oct. 12, 2006).

There does seem to be a dispute as to whether the "substantial burden" requirement is applicable to the equal treatment provision.[114]

What becomes apparent in reading the existing decisions is that they are highly fact intensive. RLUIPA is limited to circumstances of individualized determination, and in many cases it is difficult to generalize from a given outcome. The posture of the religious organization or the government may bear heavily on each decision. Even the extent to which one is willing to work with the other may be important. Unfortunately, there are no significant decisions bearing on the megachurch situation. One author, recognizing this lack, has called for Congress to consider amending RLUIPA to handle the auxiliary use problems by allowing it to be used only where an auxiliary use is "shown to substantially relate to the religious, educational, or charitable mission of that religious institution."[115] The present authors believe that this would be helpful, but that ultimately the courts are going to have to confront the issues of megachurches and their auxiliary uses. To a large extent, the cases indicate that courts are not going to give carte blanche to religious institutions. For example, in *Petra Presbyterian Church v. Village of Northbrook*, Judge Posner, writing for a panel of the Seventh Circuit, ruled that a

> ban on churches in [an] industrial zone cannot in itself constitute a substantial burden on religion, because then every zoning ordinance that did not permit churches everywhere would be a prima facie violation of RLUIPA. Religious organizations would be better off if they could build churches anywhere, but denying them so unusual a privilege could not reasonably be thought to impose a substantial burden on them. . . . Unless the requirement of substantial burden is taken seriously, the difficulty of proving a compelling governmental interest will free religious organizations from zoning restrictions of any kind (citations omitted).[116]

A church, the court concluded, would have to show that exclusion from a particular zone created a substantial hardship because of the paucity of other available land.[117] If plenty of land was available and there was no violation of the less favorable terms requirement, then there would be no

---

114. *Compare* Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214, 1228-31 (11th Cir. 2004) (finding no substantial burden required), *with* Lighthouse Institute for Evangelism v. City of Long Branch, 406 F. Supp. 2d 507, 516 (D.N.J. 2005) (finding that a substantial burden is required).

115. Sara C. Galvan, *Beyond Worship: The Religious Land Use and Institutionalized Persons Act of 2000 and Religious Institutions' Auxiliary Uses*, 24 YALE L. & POL'Y REV. 207, 236 (2006).

116. Petra Presbyterian Church v. Vill. of Northbrook, 489 F.3d 846, 581 (7th Cir. 2007).

117. *Id.*

substantial hardship.[118] Ultimately, a rule of reason should prevail, especially where the auxiliary uses are not traditional to religious usage. After reviewing the current status of RLUIPA in the courts, the authors reviewed how cities surveyed are applying this statute in their zoning ordinances.

III. SURVEY METHODOLOGY

While the U.S. Supreme Court has yet to rule on a case related to land use and RLUIPA, other courts have provided guidance. To gain an understanding of the types of regulations used by local governments across the United States, a survey was developed and sent by e-mail or Web site to government officials in every city in the United States known to have a megachurch, according to the Hartford Institute for Religious Research. A total of 440 cities are known to have a megachurch. These cities were selected because communities with one or more megachurches were expected to be the most likely to have considered a regulatory response to them. Of these 440 cities, 260 had a contact e-mail address or Web form on the city Web site for a planner. Each of the 260 cities was contacted, requesting that a qualified staff member complete the survey. If a city did not respond, a reminder message was sent. A total of 119 cities responded, for a forty-six percent response rate.

Table 3. Responding Communities

Responding City	Responding City	Responding City
Anchorage, AK	Columbus, GA	New Hope, MN
Hoover, AL	Gainesville, GA	Plymouth, MN
Little Rock, AR	Griffin, GA	Richfield, MN
Lowell, AR	Marietta, GA	Springfield, MO
Chandler, AZ	Norcross, GA	Billings, MT
Glendale, AZ	Woodstock, GA	Cary, NC
Phoenix, AZ	Cedar Falls, IA	Durham, NC
Tucson, AZ	West Des Moines, IA	Raleigh, NC
Anaheim, CA	Bloomington, IL	Fargo, ND
Corona, CA	Chicago, IL	Lincoln, NE
Covina, CA	Hoffman Estates, IL	Medford, NJ
Diamond Bar, CA	Oak Brook, IL	Albuquerque, MN
Folsom, CA	Rock Island, IL	Henderson, NV
Garden Grove, CA	Rockford, IL	Canton, OH
Lemon Grove, CA	Carmel, IN	Cincinnati, OH
Long Beach, CA	Hammond, IN	Cleveland, OH
Los Gatos, CA	Noblesville, IN	Columbus, OH

118. *Id.* at 851-52.

Responding City	Responding City	Responding City
Oakland, CA	South Bend, IN	Dayton, OH
Oceanside, CA	Olathe, KS	Grove City, OH
Palo Alto, CA	Louisville, KY	Mansfield, OH
Redlands, CA	Owensboro, KY	Broken Arrow, OK
Rialto, CA	Lexington, MA	Oklahoma City, OK
Riverside, CA	Auburn Hills, MI	Gresham, OR
Roseville, CA	Cascade Township, MI	Salem, OR
Santa Cruz, CA	Grand Rapids, MI	Columbia, SC
Santa Fe Springs, CA	Grandville, MI	Mount Pleasant, SC
Colorado Springs, CO	Holland, MI	Spartanburg, SC
Longmont, CO	Kalamazoo, MI	Memphis, TN
Wheat Ridge, CO	Kentwood, MI	Nashville, TN
Boca Raton, FL	Troy, MI	Cedar Hill, TX
Fort Myers, FL	Anoka, MN	Killeen, TX
Gainesville, FL	Apple Valley, MN	Norfolk, VA
Lake Worth, FL	Bloomington MN	Roanoke, VA
Lakeland, FL	Brooklyn Park, MN	Vienna, VA
Largo, FL	Burnsville, MN	Virginia Beach, VA
Longwood, FL	Eden Prairie, MN	Everett, WA
Margate, FL	Golden Valley, MN	Mountlake Terrace, WA
Tampa, FL	Lakeville, MN	University Place, WA
Alpharetta, GA	Maplewood, MN	Brookfield, WI
		Green Bay, WI

The survey asked questions about the planners' knowledge of RLUIPA, whether they have modified their ordinance related to religious institutions since the passage of RLUIPA, the number of megachurches in their community, the kinds of controls the city was using to deal with them, and their sense of the success of their approach. Each responding community was asked to provide a copy of their regulations for religious institutions if they had amended their regulations since the passage of RLUIPA. Thirty-three communities (twenty-eight percent of respondents) reported a modification. Each of the thirty-three communities were asked to provide an electronic copy of their regulations for religious institutions. Twenty-seven communities provided a copy or Web link to their regulations and an additional two ordinances were identified through a Web search. These ordinances were analyzed to determine if they are in compliance with RLUIPA.

IV. SURVEY RESULTS

The survey revealed that there are significant variances in terms of knowledge about how RLUIPA impacts land use regulation and in the

approaches taken by communities to regulate religious facilities in the face of megachurch development.

To begin, planners were asked if they are familiar with the laws affecting free exercise of religion prior to the RLUIPA. Sixty-seven percent reported that they are familiar with RFRA. Planners were then asked "Do you understand the zoning limitations put in place by the Religious Land Use and Institutionalized Persons Act?" Sixty-two percent responded that they do understand the zoning limitations, while twenty-three percent were unsure. This result indicates that a number of planners need further information about RLUIPA and how it impacts their land use regulations.

All of the communities surveyed have one or more megachurches in their community. Respondents were asked about the types of supplemental uses on the site of each religious facility. The megachurches in the study cities have a variety of supplemental uses, as shown in Table 4. For example, eight of the communities report that one or more of their megachurches have a restaurant. The term "restaurant" can mean a number of things. Many megachurches offer a coffee shop where members can purchase coffee and pastries, while others go further—for example, the Brentwood Baptist Church in Houston, Texas, includes a McDonald's.[119]

Fitness centers are becoming more common. For example, the Southeast Christian Church in Louisville, KY, with an average weekly attendance of 18,000, provides a 50,000-square-foot activities center that includes sixteen basketball courts, a health club, and a rock climbing wall.[120] The church also includes a restaurant, bank, shops, and a school.[121] Southeast Church has been deliberately designed like a shopping mall, with the sanctuary as the anchor tenant.[122] The church has large hallways, a concert-hall sized atrium with glass elevators,

---

119. Brown, *supra* note 27. Unfortunately, there are no decisions that deal with the question of regulation of a restaurant as an accessory religious use. There have been arguments by religious institutions that it was unfair to treat churches more stringently than restaurants that are presumptively similar, but the factual circumstances of the cases have not led to a definitive result. *See* Vision Church v. Vill. of Long Grove, 468 F.3d 975, 1003 (7th Cir. 2006) (rejecting argument because the restaurant regulations involved business districts whereas the religious regulations involved residential districts: hence the court never decided whether restaurants were similar to religious uses).

120. Brown, *supra* note 27.

121. *Id.*

122. *Id.*

escalators, and giant monitors that display the day's events.[123] The church is open daily from 5:30 am to 11:00 pm.[124]

While none of the responding cities reported that their mega-churches currently have a hotel, the Community Church of Joy in Glendale, Arizona, provides a conference center, school, and bookstore.[125] The church has plans to build a hotel, convention center, skate park, water-slide park, and housing development.[126] The Senior Pastor plans that the church will become a destination center and, effectively, a town within a town.[127] The idea is that people can live on the grounds and never have to leave except to go to work.[128]

Other supplemental uses include a school of arts, a video store, and sales in parking lots including cars and pianos. Some uses are quite common, such as youth centers and bookstores, while others, such as banks, were not known to be present in the responding communities. That said, there are examples where megachurches have incorporated these uses. The planner responding to the survey from Colorado Springs did not report that they knew of any megachurches that offer a hotel. However, the New Life Church in Colorado Springs, Colorado, with an average weekly attendance of 14,000, includes a small hotel that allows people to take personal spiritual retreats.[129] The nine "extended prayer rooms" offer guests the opportunity to stay for an extended period of time at the World Prayer Center at a rate between $65 and $95 per night.[130]

Table 4. Supplemental Uses at Megachurches

Supplemental Use	Number of Cities Reporting One or More Megachurches with This Use
Bookstore	51
Conference Center	36
Day Care	73
Elementary/Middle School	44
High School	29
Youth Center	57

123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. World Prayer Ctr., http://theworldprayercenter.org/visit/stay.jsp (last visited Mar. 11, 2008).
130. World Prayer Ctr., Rooms, http://theworldprayercenter.org/events/extended_rooms.jsp (last visited Mar. 11, 2008).

Supplemental Use	Number of Cities Reporting One or More Megachurches with This Use
Seniors Housing	9
Other Types of Housing	4
Athletic Fields	37
Fitness Center	15
Restaurant	8
Bank	0
Hotel	0
Amusement Park	0
Video Arcade	0

While 27.5% (thirty-three cities) have modified their regulations related to religious institutions since the passage of RLUIPA, only six cities reported that the change to the ordinance was a result of RLUIPA. Two of the six reported that they were threatened with a RLUIPA-related lawsuit, which resulted in a change to the ordinance. An additional four cities reported that they were threatened with a non-RLUIPA-related lawsuit and changed the regulations. In one of these cases, the neighbors threatened a lawsuit because they did not want a church in their neighborhood. In the end the church decided not to build at the site. A second case involved a regulation that limited both the number of seats a religious institution can have and the street classification. The ordinance was amended to allow any number of seats in a church when a property is located on any street classification other than local. Of the thirty-three cities that have modified their regulations, a total of four responded that they have received a request for a megachurch since the time of adoption.

The survey asked whether the city is considering adopting a variety of types of controls for churches, as shown in Table 5. Many communities indicated that they are considering requiring churches to obtain a conditional use permit, while a smaller number are considering design review, design standards, or impact assessments.

Table 5. Controls that Cities Reported Considering

	Currently Considering	Considered but Rejected
Temporary Moratorium	1	1
Square Footage Limitation	0	2
Design Standards	2	15
Design Review	1	20
Conditional Use Permit	1	24
Impact Assessment	4	15

Respondents were asked which issue citizens and government officials have expressed the most concern about in regards to megachurches. Traffic was by far the most commonly cited concern (thirty-nine responses), followed by parking (eighteen responses) and property tax exemption (five responses). Other concerns included storm-water runoff and noise. While noise was raised by only three respondents, it created a problem in one community in which a megachurch took over an industrial building in an industrial park. State noise regulations govern how loud businesses can be adjacent to religious institutions. The result was that some of the industrial businesses had to reduce their noise even though they were in an industrial park and were in existence before the church arrived. The responding official reported that the industrial park was designed for industries and they should not have to worry about conflicting land uses, such as a religious institution.

Survey respondents were asked to think about how they would evaluate a megachurch that has multiple uses. Most of the cities responded that when evaluating a megachurch they would look at each individual use on a site rather than the site as a whole. Forty reported that they would view the site on each individual use, while fifty-four would view the site as a whole. The remainder said that it would depend on the application. One community reported that they would base the review on the highest parking use required. Another reported that a planned unit development zoning would be required if there was more than one use on the property.

Respondents were then asked to rate the success of their approach in regulating megachurches. The majority, fifty-three percent, report that their approach has been neither successful nor unsuccessful. Thirty-two percent report their approach has been successful and four percent report their approach as very successful. As an example of a very successful approach, one city reported that in their case the city staff worked closely with the applicant and the surrounding community members to reach an agreement and discuss any concerns, and then proposed site plan and design prior to the hearing date for the ["Conditional Use Permit"] (CUP). The respondent reported:

> Churches have always required a use permit, and during the review of the use permit, we have always been able to resolve any issues that have proved problematic. We see churches as providing a valuable service to the community (usually providing services that taxpayers might otherwise be called on to provide). An example of the way things can work out is a megachurch that needed a use permit to expand. During the public hearings, it was found that the sound of the live band playing on Sundays

> and during practices was impacting the adjacent residential. So, after a lot of back and forth between the church and the community, the church agreed to a number of measures, including limitation on hours for the band and sound attenuation for the building, that led to the eventual approval of their use permit.

Another respondent reported mixed results for their traffic impact report requirement, which has been effective in some cases and ineffective in others. The respondent reported:

> Where it has not been effective is when the church has threatened to bring 1,000 parishioners to the public meeting and the decision makers were not willing to face the pressure. We seem to compromise which has created some temporary unsafe traffic situations that even the parishioners are starting to recognize as a problem.

The survey results revealed that a number of cities have megachurches with accessory uses and plans for further accessory uses. A number of cities have developed regulatory responses with mixed success. The following Part analyzes the ordinances of cities that have adopted changes to the religious institutions sections of their ordinance.

V. ORDINANCE ANALYSIS

A total of twenty-nine ordinances were analyzed as part of this study. As mentioned previously, RLUIPA has identified the need for local governments to treat religious uses no more stringently than other like uses, such as assembly facilities. One way to achieve this shared treatment is by classifying religious uses in a similar manner as other uses. Fifteen of these ordinances provide definitions that are associated with religious uses. Most use typical definitions of churches, but two municipalities define churches as part of a definition of places of public assembly. For example, Marietta, Georgia, defines a public assembly as, "a building, or part of a building, in which facilities are provided for such purposes as meetings for civic, educational, political, religious or social purposes and may include a banquet hall, private club, fraternal organization or religious institution."[131] This definition groups all types of assembly into a common definition and is an appropriate way to ensure that the uses are treated equally.

This Article identifies several examples of megachurches that have grown over time, adding a variety of secondary facilities that are on the grounds of the religious institution. Some communities have developed ordinances to specifically deal with the issue of megachurches.

---

131. MARIETTA, GA., CODE § 700 (1996).

One city requires a minimum lot size of two acres for a church if it has access to a sewer and five acres if it will be using a septic system. This type of standard is only appropriate if other like uses are treated similarly, which in this case they are not. There is no reason to have a minimum lot size for a religious facility. A small neighborhood church might be perfectly appropriate on a one-half acre lot, rather than two acres.

The City of Plymouth, Minnesota, limits churches in its city center district to occupying locations where the religious institution takes up no more than twenty percent of a shopping center building. It also limits the use to worship services and "directly related social events."[132] In the central commercial district in Lemon Grove, California, churches are allowed with a special permit if they do not exceed 20% of the floor area.[133] This type of ordinance focuses on the impact of a religious facility. If a church has its religious services a few times a week along with some social activities, this can create many dead periods throughout the day. If a community wants to ensure an active space, regulations limiting the amount of space that can be used by a church or other like use may be appropriate. Some cities have used this argument to regulate telecom hotels—requiring that the first floor be used for retail or other uses while upper floors could be used for telecom hotels.[134]

Conditional use permits are required by fifteen of the cities in this study. These vary from requiring a conditional use permit in single-family residential districts to specific requirements, such as one in Corona, California, that requires a conditional use permit if the church has more than 10,000 square feet in a commercial district.[135] Columbus, Georgia, requires a conditional use permit if a church will have more than 250 seats and if there will be a school, daycare, personal care facility, or convent associated with the church.[136]

The City of Apple Valley, Minnesota, adopted the following unusual ordinance:

> Churches, unless a compelling governmental interest to restrict same is found relating to the following or similar criteria:

---

132. CITY OF PLYMOUTH, MINN., ZONING ORDINANCES § 21475.09 (2007).

133. LEMON GROVE, CAL., MUN. CODE ch. 17.16.060(2)(d) (2005).

134. Jennifer Evans-Cowley, *A New Land Use in Downtown: How Cities Are Dealing with Telecom Hotels*, 25(5) J. URBAN AFFAIRS 551, 570 (2003).

135. CORONA, CAL., MUN. CODE ch. 17.92.030 (2001).

136. COLUMBUS, GA., UNITED DEV. ORDINANCES art. 2, § 3.2.53 (2006).

(1) When located within a multitenant building, a finding that occupancy of more than 50% of the total floor area by combined church uses has an adverse effect upon the remaining occupants;
(2) When located within a multitenant building, a finding that the number of parking stalls and the time at which they are needed by the church use(s) has an adverse effect by conflicting with the parking needs of the other building occupants;
(3) When located as a free-standing facility, a finding that the church use has an adverse effect upon the adjacent and surrounding occupied properties;
(4) Churches located under this Part shall not be entitled to "sensitive land use" status for the purposes of determining a separation distance from regulated land uses which otherwise require such a separation.[137]

Springfield, Missouri, has developed an ordinance that allows churches by right in residential districts if they meet certain performance standards.[138] Churches are allowed if they are located on an arterial street or larger and if they have a minimum of two acres of land for off-street parking and buffer yards.[139] Cary, North Carolina, also requires places of worship to be located on a collector or arterial and on a minimum two-acre lot.[140] Margate, Florida, has taken a similar approach, allowing churches in single-family residential and business zoning districts but requiring both a minimum 40,000-square-foot lot with 200 feet of frontage on a roadway and that the church is at least 40 feet from any other building with a 10-foot setback from property lines.[141] The City of Salem, Oregon, puts caps on the number of seats allowed in different districts.[142] For example, they allow a maximum of a 375-seat church in some single-family districts.[143] In other residential districts there is a cap of 500 seats.[144] In one of the commercial districts there is a requirement that a church be located at the intersection of an arterial and collector street.[145] The cap on seats is inappropriate, especially when it is limited to churches and not other like uses. The ordinance should focus on the

137. APPLE VALLEY, MINN., CODE OF ORDINANCES § 155.203(5) (2004).
138. SPRINGFIELD, MO., ZONING ORDINANCES div. 4-1003 (2007).
139. *Id.* One question is the extent to which parking may be deemed a compelling governmental interest. Whether it is or not, the courts are likely to make certain that the government has been able to demonstrate that the parking requirements, frequently based on some notion of seats per parking space, are the least restrictive necessary. *See* Lighthouse Cmty. Church of God v. City of Southfield, No. 05-40220, slip op. at 3 (E.D. Mich. Mar. 7, 2007).
140. CARY, N.C., LAND DEV. ORDINANCE ch. 5.2.2(E) (2003).
141. MARGATE, FLA., ZONING ORDINANCES art. VII, § 7.2 (2003).
142. SALEM, OR., REVISED CODES tit. X, ch. 119.500 (2003).
143. *Id.*
144. *Id.*
145. *Id.*

impact of the development rather than limiting the number of seats. On the other hand, courts may require churches to explore options to build larger properties.[146]

Most of the ordinances reviewed allow for spires to exceed the height limitations of the district. Spires are classified with other types of accessory attachments to the tops of buildings. Some, such as Apple Valley, Minnesota, allow any "tower" to be up to fifty percent higher than the height allowed in the district.[147] Others specify an exact height, such as Killeen, Texas, which allows up to seventy-five feet for a spire.[148]

How many parking spaces are needed for a place of public assembly? Some ordinances treat churches the same way they treat other public assemblies, such as Killeen, Texas, which requires one space per four seats.[149] Others have regulations that are quite different. For example, one community requires 1 space per 25 square feet of floor area or 3.5 fixed seats, but an auditorium use would require 1 per 100 square feet or 4 fixed seats. Another, recognizing that churches have a need for overflow parking, allows for church and school parking in the grass. This city's parking requirements are the same for churches as they are for other types of assembly uses. Another community allows for up to 50% of the parking for places of worship to be grassed. One community places a cap on the number of spaces allowed. This city requires one space per three seats in the sanctuary or one space per fifty square feet with a maximum of 125% of the required spaces. Additionally, the code requires that all uses associated with the primary use be considered, including the hours of operation and peak hours to determine the minimum number of parking spaces needed to adequately serve all of the uses. An administrative procedure allows for a reduction in parking requirements if the mix of uses during the times of operation limit the need for parking. Parking regulations for religious uses should be the same for other types of assembly facilities. The opportunity to provide grass as overflow parking, engage in shared parking arrangements, and put in place parking caps are all appropriate tools as long as they also apply to other similar uses.

Accessory uses are a concern that has been raised by citizens across the country. Longwood, Florida, addresses secondary uses by restricting the types of uses allowed in association with religious institutions:

---

146. Episcopal Student Found. v. City of Ann Arbor, 341 F. Supp. 2d 691, 694 (S.D. Mich. 2004) (exploring options before seeking demolition permit to build larger facility).

147. APPLE VALLEN, MINN., CODE OF ORDINANCE § 155.334 (1983).

148. KILLEEN, TEX., CODE OF ORDINANCES ch. 31, art. IV, § 471 (1963).

149. *Id.* ch. 3, art. IV, § 487.

"Allows adult and child care where not the principal use, food but not a restaurant, a community center that is operated by the religious institutions, have to have a parking plan that identifies the parking requirements of each separate use as well as the proposed parking ratio." This type of regulation is perfectly appropriate. This does not restrict the practice of religious activity; it regulates accessory uses.

While many communities are attempting to regulate megachurches, some of these ordinances may not be upheld in legal challenges using RLUIPA. The key issues are the treatment of churches in a manner similar to other like uses and focusing on the land use impacts rather than the religious elements of use. Moreover, courts will undoubtedly adopt some notion of a rule of reason. Thus, for example, a church's failure to make any effort to comply with local zoning regulations may be taken in account by a court when examining the factual issues in a case. As one court wrote:

> The plaintiffs' position that, under the RLUIPA, a church should be allowed to operate wherever it so chooses, without regard for zoning rules is simply unreasonable and not supported by the statute [RLUIPA] or by the First Amendment [Free Exercise clause]. Numerous courts have upheld zoning regulations as applied to churches as not creating a substantial burden on religion.[150]

VI. CONCLUSION

Megachurches have created a mega-headache for some communities. The traffic generation, accessory uses, and other impacts have led some communities to attempt to regulate the placement and site standards for religious institutions. RLUIPA provides limitations on the ability of local governments to regulate religious uses. Local governments can regulate the impacts of religious uses, but other similar uses should also be treated in the same ways.

While many communities are regulating megachurches, some of their ordinances many not be upheld in court challenges based on RLUIPA. The accessory uses of some megachurches can be regulated differently than the church itself. These uses are not central to the practice of religion and can be treated similarly to how they are in any other area of the community. For example, if a church places a

---

150. *See, e.g.*, The Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch, 406 F. Supp. 2d 507 (D.N.J. 2005); Williams Island Synagogue, Inc. v. City of Aventura, 358 F. Supp. 2d 1207 (S.D. Fla. 2005); Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 760 (7th Civ. 2003); Christian Methodist Episcopal Church v. Montgomery, No. 4:04-CV-22322-RBH, slip op. at 9 (D.S.C. Jan. 18, 2007).

McDonald's on its property, it can be regulated the same as any other fast-food restaurant in the city. The key issue is the treatment of religious facilities in a manner similar to other like uses. Regulations should focus on the land use impacts rather than the religious components of the use.

This study highlights the growth of megachurches throughout the United States. As more and more megachurches develop with significant accessory uses, local governments will need to balance the requirements of RLUIPA with ensuring public safety in siting these facilities in appropriate locations that minimize the land use impacts.