

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TEMPLE B'NAI TORAH, a Washington not  
for profit Corporation, and SEATTLE  
HOUSING AND RESOURCE EFFORT, a  
Washington not for profit Corporation,

Plaintiffs,

v.

THE CITY OF BELLEVUE, a municipal  
corporation,

Defendant.

No. C05-1921JCC

ANSWER AND COUNTERCLAIM OF  
DEFENDANT CITY OF BELLEVUE

Defendant the City of Bellevue (the "City") answers the complaint of Plaintiffs Temple B'Nai Torah (the "Temple") and Seattle Housing and Resource Effort ("SHARE") as follows:

**I. PARTIES**

1.1 The City admits that the Temple is a synagogue located in Bellevue, Washington with a mailing address of 15727 N.E. 4<sup>th</sup> Street, Bellevue, WA 98008, that the Temple's counsel in this matter is Mr. Charles R. Wolfe, and that the Temple and SHARE, and the WOMEN'S HOUSING EDUCATION AND EMPOWERMENT LEAGUE ("WHEEL") jointly applied for a Temporary Encampment Permit, requesting a maximum

1 occupancy of 100 residents, and requesting an exception from the 60 day duration provision  
2 contained within City of Bellevue Ordinance 5615 (the “Ordinance”). The City lacks  
3 sufficient information to form a belief as to the truth of the remaining allegations contained in  
4 paragraph 1.1, which shall have the effect of a denial.

5 1.2 The City admits that SHARE is a Washington non-profit corporation located in  
6 Seattle, Washington, that SHARE’s counsel in this matter is Mr. Theodore Paul Hunter, and  
7 that the Temple and SHARE jointly applied for a Temporary Encampment Permit pursuant to  
8 the Ordinance 5615 (the “Ordinance”). The City lacks sufficient information to form a belief  
9 as to the truth of the remaining allegations contained in paragraph 1.2, which shall have the  
10 effect of a denial.

11 1.3 The City admits that the City Council adopted the Ordinance on July 25, 2005,  
12 that it issued a Temporary Encampment Permit to the Temple and SHARE on November 3,  
13 2005, subject to conditions, and that the City’s mailing address is 11511 Main Street, P.O.  
14 Box 90012, Bellevue, WA 98009. All other allegations denied.

15 **II. JURISDICTION, VENUE, STANDING AND OTHER PRELIMINARY ISSUES**

16 2.1 Admitted that the Court has jurisdiction over Plaintiffs’ as applied claims to  
17 the extent they fall within the parameters of ch. 36.70C RCW. All other allegations denied.

18 2.2 Admitted.

19 2.3 Admitted that the Temple has standing to assert its own as applied claims to  
20 the extent they fall within the parameters of ch. 36.70C RCW. All other allegations denied.

21 2.4 Admitted that SHARE has standing to assert its own as applied claims to the  
22 extent they fall within the parameters of ch. 36.70C RCW. All other allegations denied.

23 2.5 Admitted.

**III. STATEMENT OF FACTS**

1  
2 3.1 The City lacks sufficient information to form a belief as to the truth of the  
3 allegations contained in paragraph 3.1, which shall have the effect of a denial.

4 3.2 The City lacks sufficient information to form a belief as to the truth of the  
5 allegations contained in paragraph 3.2, which shall have the effect of a denial.

6 3.3 The City lacks sufficient information to form a belief as to the truth of the  
7 allegations contained in paragraph 3.3, which shall have the effect of a denial.

8 3.4 The City lacks sufficient information to form a belief as to the truth of the  
9 allegations contained in paragraph 3.4, which shall have the effect of a denial.

10 3.5 The City lacks sufficient information to form a belief as to the truth of the  
11 allegations contained in paragraph 3.5, which shall have the effect of a denial.

12 3.6 The City lacks sufficient information to form a belief as to the truth of the  
13 allegations contained in paragraph 3.6, which shall have the effect of a denial.

14 3.7 Admitted that on July 25, 2005, the Bellevue City Council adopted the  
15 Ordinance. All other allegations denied.

16 3.8 Admitted that on September 15, 2005, the Temple and SHARE applied for a  
17 Temporary Encampment Permit, requesting a maximum occupancy of 100 residents, and  
18 requesting an exception from the 60 day duration provision contained within the Ordinance.  
19 Admitted that the Temple informed the City that the Temple considered the Ordinance to be  
20 facially invalid under the United States Constitution, the Religious Land Use and  
21 Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, *et seq.*, and the Washington  
22 Constitution. Admitted that the Temple and SHARE submitted a permit application and  
23 applied for numerous exceptions from the Ordinance. Admitted that Temple representatives  
24 stated that they believed they had a religious obligation to host a Temporary Encampment for  
25 90 days. All other allegations denied.



- 1 4. Plaintiffs' claims are not justiciable on grounds of ripeness, exhaustion or
- 2 otherwise.
- 3 5. Plaintiffs' claims are barred by applicable statutes of limitations.
- 4 6. Plaintiffs lack standing.
- 5 7. Certain of Plaintiffs' claims are not subject to adjudication under chapter
- 6 36.70C RCW for lack of jurisdiction.

## 7 VI. COUNTERCLAIMS

### 8 A. INTRODUCTION

9 1. This counterclaim seeks a declaratory judgment that the City's application of  
10 the Ordinance to SHARE and the Temple is constitutional under the Free Exercise clause of  
11 the First Amendment to the United States Constitution, or other provisions of the United  
12 States Constitution, and is consistent with the applicable provisions of RLUIPA, 42 U.S.C. §  
13 2000cc, *et seq.*, and that the Ordinance is otherwise facially valid under these same  
14 provisions. Alternatively, the City also seeks a declaration that certain provisions of RLUIPA  
15 are unconstitutional as applied to the City because they exceed Congressional authority.

### 16 B. PARTIES

17 2. Defendant (Counterclaim Plaintiff) the City of Bellevue is a municipal  
18 corporation located within the State of Washington, County of King.

19 3. Upon information and belief, Plaintiff (Counterclaim Defendant) Temple B'nai  
20 Torah is a Washington non-profit corporation, which is located at 15727 NE 4th Street,  
21 Bellevue, Washington.

22 4. Upon information and belief, Plaintiff (Counterclaim Defendant) Seattle  
23 Housing and Resource Effort ("SHARE") is a Washington non-profit corporation located in  
24 Seattle, Washington.





1 18. The City's application of the Ordinance to the Temple and SHARE complies  
2 with the applicable provisions of 42 U.S.C. § 2000cc *et seq.*, and the Ordinance is otherwise  
3 facially valid under RLUIPA.

4 19. The City is entitled to a declaration that application of the Ordinance to the  
5 Temple and SHARE is in compliance with any applicable provisions of 42 U.S.C. § 2000cc *et*  
6 *seq.*, and that the Ordinance is otherwise facially valid under RLUIPA.

7 **THIRD CAUSE OF ACTION**  
8 **Declaratory Judgment – Unconstitutional Application of RLUIPA**

9 20. Plaintiff incorporates by reference, as if fully set forth herein, the allegations  
10 set forth in paragraphs 1 through 19 above.

11 21. If the Court rules that the City's application of the Ordinance to the Temple  
12 and SHARE is contrary to RLUIPA, the City seeks a declaration that RLUIPA is  
13 unconstitutional as applied to the City.

14 **FOURTH CAUSE OF ACTION**  
15 **Declaratory Judgment – Rights of Association**

16 22. Plaintiff incorporates by reference, as if fully set forth herein, the allegations  
17 set forth in paragraphs 1 through 21 above.

18 23. The City's application of the Ordinance to the Temple and SHARE does not  
19 violate any rights of association under the United States Constitution, and the Ordinance is  
20 facially valid under any such provisions of the United States Constitution.

21 **VII. PRAYER FOR RELIEF**

22 WHEREFORE, the City prays for the following relief:

23 1. That Plaintiffs' requests for relief be denied, and that their claims be dismissed  
24 with prejudice;

25 2. Entry of a declaratory judgment, pursuant 28 U.S.C. §§ 2201 and 2202,  
26 declaring that:

1 a. The City's application of the Ordinance to the Temple and SHARE did  
2 not violate the Free Exercise Clause of the First Amendment to the United States  
3 Constitution, and that the Ordinance is otherwise facially valid under the Free Exercise  
4 clause of the United States Constitution; and

5 b. The City's application of the Ordinance to the Temple and SHARE was  
6 in compliance with any applicable provisions of 42 U.S.C. § 2000cc *et seq.*, and that  
7 the Ordinance is otherwise facially valid under RLUIPA, and

8 c. In the alternative, RLUIPA is unconstitutional as applied to the City's  
9 application of the Ordinance to the Temple and SHARE; and

10 d. The City's application of the Ordinance to the Temple and SHARE  
11 does not violate any rights of association under the United States Constitution, and the  
12 Ordinance is facially valid under any such provisions of the United States  
13 Constitution;

14 3. Such further necessary or proper relief as may arise from entry of a declaratory  
15 judgment; and

16 4. Such additional and further relief as the Court may deem just and proper,  
17 including any fees or expenses allowed by law or equity.

18 DATED this 2nd day of December, 2005.

19 By s/ Lori M. Riordan  
20 Lori M. Riordan, WSBA # 16386  
21 CITY OF BELLEVUE

22 By s/ Matthew J. Segal  
23 Stephen A. Smith, WSBA # 08039  
24 Matthew J. Segal, WSBA # 29797  
25 Michael K. Ryan, WSBA # 32091

26 PRESTON GATES & ELLIS LLP

Attorneys for Defendant  
CITY OF BELLEVUE

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**DECLARATION OF SERVICE**

I declare, under penalty of perjury, under the laws of the State of Washington, that on December 2, 2005, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Charles R Wolfe  
US Bank Center  
1420 Fifth Ave., Ste. 2200  
Seattle, WA 98101  
Email: cwolfe@crwolfelaw.com  
Attorneys for Plaintiff Temple B'Nai Torah

and I hereby declare that I have arranged for service of the document(s) to the following non-CM/ECF participants by messenger, properly addressed, to the following:

Theodore Paul Hunter  
101 Yesler Way, Ste. 606  
Seattle, WA 98104  
Attorney for Plaintiff Seattle Housing and Resource Effort

Signed this 2<sup>nd</sup> day of December, 2005, at Seattle, King County, Washington.

Rhonda Hinman  
Rhonda Hinman, Legal Secretary

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