



April 24 2023

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**VIA EMAIL AT JHOWARD@BROOKINGS.OR.US
WITH A COPY TO: NATASHA TIPPETTS,;
NTIPPETTS@BROOKINGS.OR.US**

Janell Howard
City Manager
City of Brookings
898 Elk Drive
Brookings, OR 97415

**Re: Objection and Request for Hearing regarding Notice to Abate issued to
St. Timothy's Episcopal Church on April 14, 2023**

Dear Ms. Howard:

This office represents St. Timothy's Episcopal Church ("St. Tim's" or the "Church") in the above referenced matter. St Tim's operates a church use ("Church") at the subject property at 401 Fir Street ("Property"). St. Tim's received a Notice to Abate issued by the City of Brookings (the "City") on April 14, 2023, directing the Church to file a conditional use permit application to abate the Benevolent Meal Service violation and stop providing "a variety of other social services" (the "Notice"). **On behalf of St. Tim's, we object to the Notice with regards to the "social services" violation, including the outreach clinic, the day program, and the advocacy program and requests a hearing regarding this aspect of the violation.**¹

Relief Requested

St. Tim's requests the following relief from the City Manager:

Determine that St. Tim's activities at the Property described as "social services" in the Notice do not violate BMC for one or both of the following reasons:

- (1) The activities described as "social services" in the Notice are typical functions conducted by Churches and Schools and are considered part of a Church or School use where they occur. As applied here, the "social services" uses at St. Tim's Church are properly classified as part of its Church use rather than a separate, stand-alone use.

¹ The City has agreed to extend the deadline for submitting objections to the Notice of Abatement as it relates to St. Tim's provision of meal services. St. Tim's reserve its rights to submit such objections at the appropriate time, if needed.

(2) The activities described as “social services” in the Notice are part of St. Tim’s legal non-conforming use of the Property and are allowed to continue.

Authority for City Manager Review

Pursuant to BMC 8.15.090.D.3, the City Manager must make a determination on an objection to a notice of abatement if it is filed within 10 days of the service of the notice of abatement. The Notice was served on April 14, 2023 and this objection is being filed within 10 days of that date.

Legal Argument

A. “Social Services,” including outreach programs, day programs, and advocacy programs, are typical functions conducted by Churches and Schools and are properly considered part of a Church or School use where they occur.

BMC 17.01.040 requires that all uses and activities comply with the relevant aspects of the BMC (but, as noted below, exempts legal nonconforming uses from land use regulations). The Notice states that St. Tim’s is providing a variety of other “social services, including an outreach clinic, a day program and an advocacy program in violation of 17.01.040 BMC.” The BMC does not define “social services,” outreach clinic, day programs or advocacy programs or define these activities as uses allowed or disallowed within any zoning district. In addition, there is no defined term in the BMC that “social services” could fit into.²

The Notice also concludes that there is no option for St. Tim’s to apply for a conditional use permit to allow these “social services” at the Property. The City seems to reach this result by concluding that, if a use is not specifically listed within the allowed or conditional uses under a certain zoning district, that the use is prohibited and could not be included as part of a listed use. Since “social services,” “outreach clinic,” “day program” and “advocacy program” are not uses specifically listed as allowed or conditional within *any* zoning district in the City, the City appears to conclude that these activities are prohibited City-wide even when they are provided as an integral part of an allowed or conditional use.

From the Notice, we glean that the City’s conception of “social services” includes any service provided to the needy, including provision of food, advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others.

The BMC does not define “church” or provide any information regarding the characteristics of this use, but does list “churches” as a use allowed conditionally within the R-1-6 zone. A

² For example, the Code defines “club” as “an association of persons (whether or not incorporated), religious or otherwise, for a common purpose, but not groups organized primarily to render a service carried as a business for profit.” BMC 17.08.030. While churches may be considered a club under this definition, the BMC does not further clarify the types of activities that would constitute “social services.” The Code defines “clinic” as a medical service use, which we do not believe the City intended to refer to by listing “outreach clinic.”

dictionary definition of “church” is “a building for Christian religious activities.” It is reasonable to rely on this dictionary definition since “church” is not defined in the BMC.

“Social services,” including outreach programs, day programs, and advocacy programs, are Christian religious activities and typically considered church functions where they occur as part of a church use.³ In fact, the “social services” the City seems to be concerned about have long been typical parts of church use. Alms—the giving of money and food to the hungry—dates to biblical times. *See* Deuteronomy 15:8 (“but you shall freely open your hand to him and shall generously lend him sufficient for his need in whatever he lacks”); Proverbs 19:17 (“one who is gracious to a poor man lends to the lord and he will repay him for his good deed”). Many churches in Brookings participate in these same activities as part of their church use.⁴

Other conditional uses in residential zones, such as schools, often provide social services, including outreach programs, day programs, and advocacy programs and these activities are considered part of the school use when they occur.⁵ For example, the Brookings-Harbor School district opened the Coast Community Health Center in November 2022, which seeks to provide health care to all students who need it free of cost, including well child checks, immunizations, follow-up visits and more.⁶

Typical elements of a use should be treated as part of that use for purposes of BMC regulations even when each detail of the use is not specified by the BMC to avoid unreasonable results. This is especially true when the BMC does not provide a definition of a use or any guidance on the characteristics of that use. Typical elements of a church include providing service to the needy,

³ *See*, Jackie Rehwald, *New Church in North Springfield Partners with Gathering Friends to Serve Poor, Homeless* (July 21, 2019), <https://www.news-leader.com/story/news/local/ozarks/2019/07/21/new-church-north-springfield-focuses-those-poverty-homeless/1760513001/> (Church in Springfield working to serve the “practical needs” of the poor and homeless including lowering barriers to food and clothing, “offering a safe place for foster kids and their biological parents to visit with each other, serving dinner and fellowship to those living in the neighborhood and creating a welcoming place for homeless folks who might need a drink of water or to rest on a couch for a little while”); Nancy West-Brake, *Local Church Seeks Donations for Coat Drive* (Dec. 3, 2012); Neighborhood Christian Legal Clinic, *Home*, <https://www.nclegalclinic.org/> (last visited Apr. 23, 2023) (providing legal services from the Trinity Outreach Center); Catholic Charities, *Catholic Charity assistance near you.*, https://www.needhelpayingbills.com/html/catholic_charities_financial_a.html (last visited Apr. 23, 2023) (list of nationwide network of churches that provide emergency housing, financial assistance, clothing, rental assistance, medical needs, free holiday assistance, counselling, immigration programs, and employment services); Fame Church LA, *FAME Legal Clinic*, <https://www.famechurchla.org/free-legal-clinic/> (last visited Apr. 23, 2023); *Madison Avenue Christian Church Continues Its Community Ministry During Crisis, Including Meals*, Northern Kentucky Tribune (Apr. 7, 2020), <https://www.nkytribune.com/2020/04/madison-avenue-christian-church-continues-its-community-ministry-during-crisis-including-meals/>.

⁴ Brookings Nazarene, *Community Care*, <https://www.brookingsnaz.org/community-care> (last visited Apr. 21, 2023); Trinity Lutheran Church, *Outreach*, <https://tlcbrookings.org/outreach> (last visited Apr. 21, 2023)

⁵ *See also*, Beaverton School District, *Clothes for Kids*, <https://www.beaverton.k12.or.us/departments/communications-community-involvement/volunteer/clothes-for-kids> (last visited Apr. 23, 2023); Mills Street Elementary, *Counseling*, <https://www.lisd.net/Page/16818> (Apr. 23, 2023);

⁶ *School Based Health Center – Coast Community Health*, Brookings-Harbor School District, <https://www.brookings.k12.or.us/apps/pages/sbhc> (last visited Apr. 21, 2023); Reynolds High School, *College and Career Center*, <https://www.reynolds.k12.or.us/rhs/college-and-career-center-0> (last visited Apr. 23, 2023).

including providing advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others. We urge the Planning Commission to determine that the “social service” related activities occurring at St. Tim’s listed in the Notice are part of its church use, which is authorized at the Property.

B. St. Tim’s Operation of the Church at the Property is a Legal Nonconforming Use Which Includes “Social Services.”

1. The Church is a legal nonconforming use because it predates the 1989 Land Development Code.

The Notice alleges that St. Tim’s is violating BMC 17.01.040, because the Church conducts “a variety of other social services, including Outreach Clinic, Day Program, and Advocacy Program.” From the wording of the Notice, it appears the City intended this to be a non-exclusive list and is alleging that any “social service” use, which is not defined by the Code is prohibited at the Property.

BMC 17.01.040 only applies to buildings, structures, use and occupancy *established after the effective date of the Code*. If a building’s use was in place before the Code was enacted, then those provisions do not apply because it is a nonconforming use. BMC 17.01.030. BMC 17.120 governs nonconforming uses and allows nonconforming uses to continue, subject to that section’s regulations.

As the Notice seems to admit (stating that St. Tim’s “operates under a de facto conditional use permit”), St. Tim’s has existed at 401 Fir Street for more than 30 years before the Land Development Code was adopted in 1989, and is a legal nonconforming use governed under BMC 17.120.

The BMC defines “use” as the “purpose for which land and/or a structure is designed, arranged, or intended, or for which it is occupied or maintained.” BMC 17.08.210. The “use” of the Church at the Property therefore includes the entirety of the operations occurring at the Property. Even if some elements of the Church use would not be allowed under the current BMC, which St. Tim’s disputes, the nonconforming use protections apply to all of the Church operations that predate the Code, including any “social services” conducted as part of the Church operations, so long as those uses have been maintained over time. St. Tim’s has continuously conducted “social services,” as the City appears to envision that term, since its establishment and has the right to continue these uses under BMC 17.120.

2. The Church’s legal nonconforming use includes “social services,” including an outreach program, day program and advocacy program.

As we discuss above, the Code does not define “social services,” “outreach clinic,” “day program,” or “advocacy program.” The Notice also seems to require St. Tim’s to cease its conduct of “a variety of other social services” which are not specified. From the Notice, we

glean that the City's conception of "social services" includes any service provided to the needy, including provision of food, advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others.

Since its establishment at the Property, St. Tim's has offered services or alms to the needy in furtherance of Christian beliefs to feed the hungry, respect the dignity of every human being, and build community. St. Tim's use of the Property as a Church within the Episcopalian faith *necessarily* includes elements of service to the poor. These elements include opening the Church as a sanctuary for prayer, providing advice on a variety of topics, providing opportunities for fellowship with others, and providing information to the community. These core religious functions, in some form, have continuously been part of the Church use at the Property since its inception and have not ceased for any two-year period. Therefore, the Church maintains the legal right to continue these uses as part of its Church operations. BMC 17.120.

Thank you for your consideration of this matter. We respectfully request that the City dismiss the Notice of Abatement because St. Tim's is operating in compliance with the BMC. St. Tim's has also filed an appeal for a hearing with the Planning Commission under BMC 8.15.090.C.

Very truly yours,



Allison J. Reynolds