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**OPINION, U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT
(NOVEMBER 13, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL GRAND,

Plaintiff-Appellant,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO;
MICHAEL DYLAN BRENNAN, Mayor, in his official
and individual capacity; LUKE MCCONVILLE, City
Law Director, in his individual capacity; PAUL
SIEMBORSKI, City Planning Commission member,
in his individual capacity,

Defendants-Appellees.

No. 24-3876

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 1:22-cv-01594—Bridget Meehan Brennan,
District Judge.

Argued: October 21, 2025

Decided and Filed: November 13, 2025

Before: SUTTON, Chief Judge;
BATCHELDER and LARSEN, Circuit Judges.

OPINION

SUTTON, Chief Judge.

Daniel Grand lives in University Heights, Ohio. In 2021, he applied for a special use permit to use his home as “a place of religious assembly” under the local zoning laws. R.81-6 at 4. Before City officials could finally resolve his petition, however, Grand withdrew the request, stating that he did not “wish to operate a house of worship as is defined under the zoning ordinance.” R.88-4 at 1. He nonetheless filed this federal lawsuit against the City and several officials, raising an assortment of statutory and constitutional claims. The district court granted summary judgment for the City and its officials on the ground that some of Grand’s challenges were unripe and the rest failed on the merits. We affirm.

I.

Daniel Grand and his family live in University Heights. Grand’s Orthodox Jewish faith requires him to pray thrice daily with a group of ten men, what’s known as a “minyan” in Hebrew. R.81 at 7. His faith also forbids him from driving on the Sabbath, which makes traveling to and from synagogues difficult. To more easily, and more “seriously,” pray on the Sabbath, Grand began inviting friends to pray with him on the holy day. R.82-1 at 7; *see* R.81-1 at 3. To that end, he emailed around twelve of his neighbors, inviting them to three prayer sessions “for the inauguration of the Shomayah Tefilah Beis Hakeneset” at “[t]he Daniel J. Grand Residence.” R.88-2. The invitation referred to the event as a “shul,” which in Hebrew refers to a synagogue or a house where prayer groups are held. R.88. Grand introduced the Rabbi, Rabbi Roskam, for

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the event and asked guests to “spread the word” and “consider bring[ing] someone with you.” R.88-2.

A displeased neighbor forwarded Grand’s email to University Heights Mayor Michael Brennan, who forwarded it to University Heights Law Director Luke McConville. On January 21, 2021, McConville emailed Grand a cease-and-desist letter and told him to stop violating the City’s zoning laws. The letter informed Grand that the City “has been made aware that [he] intend[s] to use” his house as “a place of religious assembly.” R.81-6 at 4. Grand’s house is zoned U-1, the letter continued, which prohibits the “use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue.” R.81-6 at 4. Violations of local ordinances, the letter added, could result in “building code citations against you.” R.81-6 at 4. After Grand received the letter, he told Brennan over the phone that he wanted to host only a small, informal prayer group. Brennan, who claimed to have observed at least 120 people in the basement of another residential shul, expressed skepticism. Grand cancelled the next prayer meeting.

A day later, Grand applied to the City’s Planning Commission for a Special Use Permit. In a U-1 zone, the Code of Ordinances permits only single-family dwellings, municipal or library buildings, and buildings owned by a board of education. UHCO § 1250.02. If a property owner obtains a Special Use Permit, however, he may operate a “[h]ouse[] of worship” within a U-1 zone. UHCO § 1274.01(b)(1); *see* UHCO § 1250.02(g). The City’s Planning Commission issues the permits, and unsuccessful applicants may appeal to the City Council. UHCO § 1274.01(d)(2). A separate body, the Board of Zoning Appeals, “decide[s] any question involv-

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ing the interpretation of any provision” in the zoning code. UHCO § 1244.03. In his application, Grand indicated that he had “11 tables” and “21 chairs” in his recreation room, and that he wanted to use the room “for periodic religious gatherings.” R.81-8 at 2.

On March 4, 2021, the Planning Commission held a public hearing on Grand’s application. Through counsel, Grand described his plans for a men’s only prayer group, to meet “once a week and on certain high holidays.” R.82-1 at 140. Grand did “not disput[e]” that his proposed use would render his home “a place of religious assembly” within the meaning of UHCO § 1274.01(b)(1). R.82-1 at 140. But he distinguished his proposal from the “usual image[] of a formal synagogue.” R.82-1 at 140. Some of Grand’s neighbors spoke against the proposal on the grounds that Grand understated the size of his proposed gatherings, that he had advertised the meetings on the internet, and that his proposed use would create traffic, fire, and parking issues in the area. Grand pointed out that the prayer group could not be the source of parking problems, as members of his religion “can’t drive” on the “Sabbath and high holidays.” R.81-11 at 9. The Planning Commission tabled the discussion, requesting more details from Grand. It scheduled another hearing on Grand’s application for a few days later.

In emails exchanged after the first meeting, some members of the five-member Commission doubted whether Grand’s use would constitute a “[h]ouse of worship” and thus wondered whether he needed a permit at all. R.82-1 at 192–96. It is not clear, as one commissioner put it, when “a social gathering become[s] a house of worship.” R.82-1 at 192.

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Just before the Commission's second hearing, Grand withdrew his application. "I do not wish to operate a house of worship," he stated, as it is "defined under the zoning ordinance." R.88-4 at 1. The Commission still held the meeting as planned, and Mayor Brennan emphasized that Grand could not operate a "house of worship" without a permit. He also asked community members to report any violations to the City. The Commission never acted further on Grand's application.

The Planning Commission was not the only arm of City government that interacted with Grand during the spring of 2021. A Lieutenant in the University Heights Police Department directed patrol units to drive past Grand's house and check for code violations. A City prosecutor sought to investigate housing code violations inside the Grand residence. With the permission of Grand's wife, a housing inspector searched the house for violations. He apparently did not find any.

Around 18 months after withdrawing his application for a zoning variance, Grand filed this lawsuit in federal court against the City and several of its officials. He raised claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Freedom of Access to Clinic Entrances Act (FACE Act), the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, the Ohio Constitution, and other state laws. After the parties filed motions for summary judgment, the district court dismissed Grand's RLUIPA, Ohio Constitution, First Amendment, and Fourteenth Amendment claims as unripe. It then rejected as a matter of law his FACE Act, Fourth Amendment, and several state law claims on the merits. The district

court declined supplemental jurisdiction over Grand's Ohio Public Records Act claim.

II.

Article III confines the jurisdiction of the federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2. Certain “landmarks”—ripeness, mootness, and standing—distinguish the disputes amenable to the judicial process from those over which we have no power. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The judicial power of the United States does not extend to a claim when “it is filed too early (making it unripe), when it is filed too late (making it moot) or when the claimant lacks a sufficiently concrete and redressable interest in the dispute (depriving the plaintiff of standing).” *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008) (en banc). Several of Grand's claims face ripeness problems.

A.

Ripeness emerges from constitutional limitations on the authority of the federal judiciary and prudential concerns about how and when we exercise that power. *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). The doctrine disciplines the exercise of our jurisdiction, requiring us to stay our hand until a dispute comes into focus. *Warshak*, 532 F.3d at 525. To that end, we consider (1) whether the claim is fit for judicial decision in that it arises out of a concrete factual context and an actual or likely dispute, *Trump v. New York*, 592 U.S. 125, 131 (2020) (per curiam), and (2) whether withholding adjudication would do hardship to the parties, *id.* at 134; accord *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 149 (1967).

In the land-use context, one important factor in a dispute's fitness for judicial decision is a "finality" requirement—a concrete and final decision by the local authorities. *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 193 (1985), *overruled in part on other grounds by Knick v. Township of Scott*, 588 U.S. 180, 188 (2019). State and local regulators often have authority to grant variances, waivers, rezoning, and other forms of relief. *See Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 738 (1997). Challenges to land policy often allege that a given regulation breaks this law or that one because it "goes too far." *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). But "a court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes." *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 348 (1986). For that reason, land-use challenges are generally unripe until the "relevant administrative agency resolve[s] the appropriate application of the zoning ordinance to the property in dispute." *Miles Christi Religious Ord. v. Township of Northville*, 629 F.3d 533, 537 (6th Cir. 2010); *see Knick*, 588 U.S. at 197 (describing this "settled" finality requirement).

This approach ensures that municipal land-use policy begins in local, politically accountable hands. And it prevents us from swinging at a moving target. *See Miles Christi*, 629 F.3d at 537–38. We have applied this requirement to a variety of constitutional and statutory challenges to land-use policy. *See id.* at 536–37 (RLUIPA); *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1362 (6th Cir. 1992) (Equal Protection Clause); *Insomnia Inc. v. City of Memphis*, 278 F. App'x 609, 613 (6th Cir. 2008) (Speech Clause).

Gauged by these requirements, most of Grand's challenges to the ordinance are unripe. Grand does not point to a final decision implementing the challenged ordinance, and he does not show that delayed adjudication will harm him. As a result, his First Amendment, Fourteenth Amendment, Ohio Constitution, and RLUIPA claims are unripe, both because they are not fit for review and because Grand will not be prejudiced by any delay.

Unfit for review in the absence of a final decision. The relevant local agencies never reached a final decision about the application of the City's zoning rules to Grand. The Planning Commission implements the City's zoning ordinances, including any decisions about special use permits, and its decisions may be appealed to the City Council. Meanwhile, the Board of Zoning Appeals hears challenges to the Commission's interpretation of the zoning code. UHCO § 1244.03. As Grand concedes, neither the Planning Commission nor the City Council nor the Board of Zoning Appeals has ever determined whether UHCO § 1274.01 applies to the kinds of gatherings he has in mind. And because Grand withdrew his application, the zoning board has never issued a final decision—or for that matter any decision—about his eligibility for a special use permit. The government body “charged with implementing the regulations,” in short, has not “reached a final decision regarding the application of the regulations to the property at issue.” *Williamson Cnty.*, 473 U.S. at 186–87. Grand's claims thus never ripened into a dispute suitable for federal review.

Grace Community Church v. Lenox Township illustrates the point. 544 F.3d 609 (6th Cir. 2008). A town revoked a special use permit that it had previously

granted to a church after learning that the church violated the permit's conditions. *Id.* at 611. The church offered "no comment" at the revocation hearing, declined to appeal the decision, and failed to apply for reinstatement. *Id.* at 616. It instead sued the town in federal court. *Id.* at 612. Although the local planning commission revoked the permit, the church's silence meant that the commission rested the revocation on an "inconclusive but essentially un rebutted" finding that the church violated the permit. *Id.* at 616. That unappealed and inconclusive decision, we held, failed to ripen into a cognizable claim. *Id.* at 616–17.

Just so here. The University Heights Planning Commission never determined whether the ordinance applied to Grand's gatherings and never determined his eligibility for a special use permit. Nor was this the City's fault. Grand withdrew his application for a special use permit before anyone had a chance to adopt an interpretation of the ordinance or even to determine whether Grand needed a special use permit in the first place. Grand's claims, in truth, are further from maturity than Grace Community Church's claims.

Grand offers a few rejoinders. He contends that the cease-and-desist letter counts as a final decision. The problem with the argument is that it misapprehends the finality requirement. To ripen his claims, Grand needed a final decision from the agency with authority over the challenged regulations. That final decision would come from the Board of Zoning Appeals. McConville, the University Heights Law Director who sent the zoning-violation letter, has no role in the relevant agencies. And Mayor Brennan neither controls the Planning Commission nor sits on the Board of Zoning Appeals. Grand's case, at bottom,

turns on whether his proposed gatherings would render his home a “house[] of worship” under the ordinance. UHCO § 1274.01(b)(1). Only the zoning board, not Brennan or McConville, can answer that question. Due to Grand’s decision to withdraw his special use application, the zoning board had no application to act on, leaving us with “no idea” how the ordinance works in this setting. *Toilet Goods Ass’n, Inc. v. Gardner*, 387 U.S. 158, 163 (1967).

Even though Grand did not need to exhaust his local remedies, he did need to obtain a final decision. The point of this requirement is not to channel disputes through elaborate local procedures or three layers of state-court review. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 624 (2001). Its purpose is simply to determine the government’s position, which is why “nothing more than *de facto* finality is necessary.” *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021) (*per curiam*). No such finality exists.

Grand claims that any effort to obtain a final decision would have been futile, insisting that further proceedings before the Planning Commission had nowhere to go. Local authorities, it is true, may not hide behind “repetitive or unfair land-use procedures in order to avoid a final decision.” *Palazzolo*, 533 U.S. at 621. Ripeness, it is also true, does not require further proceedings after the government has already “dug in its heels.” *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 349 (2d Cir. 2005). But “futility” is not an exception to finality; it’s another way to state the rule. *See Bannum*, 958 F.2d at 1363. A government’s position is final when it has adopted a settled position or refused to answer a complaint. *See id.*

While the legal premise of this argument has merit, its application here does not. These zoning proceedings had not become an empty affair. The Commission tabled Grand's application before it could act on it. Then, after the Commissioners went back and forth by email about the merits of the application, the Commission scheduled a second hearing to consider Grand's position in greater detail. When Grand withdrew his application on the eve of the second hearing, he said that he was doing so because the ordinance did not apply to his planned use, and he therefore did not need a permit. Nothing about this sequence of events demonstrates prejudgment of Grand's claim. Quite the opposite. The emails between the Commissioners suggest that they found the issue complicated, and some viewed his use of his house for small prayer meetings as consistent with the ordinance. In the last analysis, we cannot say whether the City has "dug in its heels" because we still do not know where it stands on this application of the ordinance. *Murphy*, 402 F.3d at 349.

Grand insists that, at a minimum, his due process claim ripened immediately after the first Commission hearing. But it's difficult to see how Grand can have a cognizable due process claim when his actions—dropping any effort to obtain relief—brought to an end whatever process is due. *See Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000) ("In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her. . . ."); *Dusanek v. Hannon*, 677 F.2d 538, 543 (7th Cir. 1982).

No hardship to Grand. This approach does not unfairly harm Grand. It was his actions, not anyone

else's, that created the ripeness problem. A dismissal on ripeness grounds is *without prejudice*, and Grand remains free to file a new action if the City applies the ordinance to him in a way that violates his statutory or constitutional rights. Hardship from the denial of pre-enforcement review ordinarily emerges from a forced choice. Unable to assert his rights judicially, the plaintiff is left to pick between (1) compliance with a burdensome and potentially unlawful policy or (2) refusal to comply and the risk of sanctions that comes with it. *See, e.g., Abbott Lab's*, 387 U.S. at 153; *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 68 (2014); *Columbia Broadcasting Sys., Inc. v. United States*, 316 U.S. 407, 417–19 (1942). Not every claimant faces that dilemma, however. Some challenged policies do not “force” the plaintiff “to modify [his] behavior in order to avoid future adverse consequences.” *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 734 (1998).

The ordinance is such a policy, and Grand is such a plaintiff. If Grand wants clarity about the challenged policies, the local agencies remain available to provide it. Grand retains the right to apply for a permit, “complete the factual record,” “more fully explain [his] position,” or appeal any adverse determination by the Planning Commission. *Grace Community*, 544 F.3d at 616; *see Miles Christi*, 629 F.3d at 539. Any gate to relief is locked from within. Grand may open the door whenever he wishes. Until then, it is not for us to permit “litigation by hypothetical” when local authorities stand ready to provide whatever clarity or permission the claimant needs. *Warshak*, 532 F.3d at 529.

Grand returns to the cease-and-desist letter as a ground for distinguishing *Miles Christi*. He notes that,

in *Miles Christi*, local rules suspended enforcement of zoning rules during an appeal to the zoning board. See 629 F.3d at 542. Because University Heights lacks a similar suspension process during an appeal, he reasons, he cannot delay enforcement of the City's policy during an appeal and thus will suffer greater hardship from the denial of judicial review. But that distinction highlights the difference between the letter he received and the ticket issued in *Miles Christi*. The letter is not an enforcement action, and the City may not enforce it. During a proceeding before the Planning Commission or Board of Zoning Appeals, in other words, the letter would not impose a hardship. Grand needs no relief from a document that does not harm him. *Murphy*, 402 F.3d at 349 (“[T]he cease and desist order did not inflict an immediate injury.”).

As a final riposte, Grand urges us to conclude that the City's zoning rules chill First Amendment expression. Potential infringement of free-speech rights no doubt deserves weight in the hardship analysis. See, e.g., *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2358 (2025); *Driehaus*, 573 U.S. at 168. Yet it is specific objective harm, not “subjective ‘chill,’” that counts. *Laird v. Tatum*, 408 U.S. 1, 14–15 (1972). For that reason, we “look at each case to determine the consequences of staying our hand.” *Miles Christi*, 629 F.3d at 540. Grand admits, as an initial matter, that he has convened a minyan on the Sabbath at least once after the end of the Planning Commission meetings. That does not sound like chill. See *Laird*, 408 U.S. at 14 n.7. Grand, at all events, still holds the keys to resolving any uncertainty about the zoning policy. Having chosen not to obtain a final decision, indeed any enforceable decision, about the application of the

zoning rules to his home, he is the author of any chilling effect on his First Amendment interests, not the City.

Grand and the United States as amicus curiae argue that, even if the finality imperative applies to as-applied claims, it does not apply to facial challenges to zoning ordinances. We agree. Facial challenges assert that “no set of circumstances exists under which” the challenged enactment or action would be lawful. *United States v. Salerno*, 481 U.S. 739, 745 (1987). Waiting for the government to “reach[] a final decision regarding the application of the regulations,” *Williamson Cnty.*, 473 U.S. at 538, does not make sense if the regulations are unlawful no matter how the government applies them, see *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 287 (5th Cir. 2012). A zoning policy that permitted special use requests only by people of one faith, as an example, would be facially unconstitutional and could be challenged with, or without, a final decision by the relevant agency. In that setting, the claim is “generally ripe the moment the challenged regulation or ordinance is passed.” *Suitum*, 520 U.S. at 736 n.10; accord *Yee v. City of Escondido*, 503 U.S. 519, 532–35 (1992); *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 494 (1987).

While Grand’s facial claims do not have a finality problem, they fail for two independent reasons. For one, Grand forfeited these claims, as the district court correctly held. Parties forfeit arguments at the summary judgment stage by failing to adequately address them in response to a motion for summary judgment. *Bennett v. Hurley Med. Ctr.*, 86 F.4th 314, 324 (6th Cir. 2023). That is what happened. When the parties

cross-moved for summary judgment, Grand failed to provide any sustained argument in support of his facial arguments. He instead simply asserted, sporadically and without development, that the ordinance is unlawful on its face. Those conclusory references do not preserve his claims for appeal.

For another reason, any such claim fails as a matter of law. Facial challenges require a showing that the challenged action would violate the law under any set of circumstances. *Salerno*, 481 U.S. at 745. These kinds of claims face an “uphill battle” in the land-use setting. *Keystone Bituminous*, 480 U.S. at 494. This case shows why. To prevail, Grand would have to show that the city’s zoning policy—requiring permission for a place of religious assembly— could never be lawfully applied in any context. *See Bucklew v. Precythe*, 587 U.S. 119, 138 (2019); *Yee*, 503 U.S. at 532–35. He cannot make that showing, and he has not even tried. Surely, as one obvious example, the City could prohibit a 3,000 person worship hall from being placed in a residential part of University Heights. *See Mount Elliott Cemetery Ass’n v. City of Troy*, 171 F.3d 398, 405 (6th Cir. 1999). “[A] church has no constitutional right to be free from reasonable zoning regulations nor does a church have a constitutional right to build its house of worship where it pleases.” *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 652 (10th Cir. 2006). This example suffices to show that Grand cannot meet the *Salerno* standard.

III.

The district court correctly dismissed Grand’s Fourth Amendment and FACE Act claims on the merits.

Fourth Amendment. Grand argues that the City violated his Fourth Amendment rights by sending a housing inspector into his home without a warrant. The Fourth Amendment provides, in relevant part, that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const., amend. IV. Home inspections are “searches” within the meaning of the guarantee. *Camara v. Mun. Ct. of City & Cnty. of S.F.*, 387 U.S. 523, 528 (1967). And the Fourth Amendment ordinarily prohibits warrantless searches of a home. *See, e.g., Lange v. California*, 594 U.S. 295, 298 (2021).

Consent, however, creates an exception to the ordinary rule. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). That consent, moreover, need not come from the property owner himself. *See, e.g., United States v. Ayoub*, 498 F.3d 532, 537 (6th Cir. 2007). So long as the consenting party had “apparent or actual authority over the premises,” the consent is valid. *United States v. Sheckles*, 996 F.3d 330, 346 (6th Cir. 2021).

In this instance, Grand’s wife gave the inspector permission to search the house. Nothing about their exchange would lead an officer to think Grand’s wife lacked authority over the house. Her consent forecloses her husband’s argument.

FACE Act. Grand contends that the City violated the Freedom of Access to Clinic Entrances Act by ordering police officers to drive by his home and by asking his neighbors to file reports if they saw people congregating at his house. The FACE Act creates civil remedies against “[w]hoever . . . by force or threat of force or by physical obstruction . . . interferes with or

attempts to . . . interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.” 18 U.S.C. § 248(a)(2). We interpret the phrase “threat of force” as referring to a serious expression of intent to inflict bodily harm. *Cf. United States v. Doggart*, 906 F.3d 506, 510 (6th Cir. 2018) (interpreting statutes with similar language).

The district court held that the City’s actions do not constitute “force,” “threat of force,” or “physical obstruction” within the meaning of the Act. 18 U.S.C. § 248(a)(2). Grand’s reply brief, and only his reply brief, suggests that Brennan’s statement at the second Commission hearing amounted to a “threat of force.” 18 U.S.C. § 248(a)(2). To start (and to repeat), arguments made for the first time in a reply brief are forfeited. *Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010). To finish, Grand’s argument would fail even if he had properly raised it. Brennan’s only threat was to ticket Grand for violating the housing code. Few among us enjoy receiving a code citation. But Brennan’s reference to “appropriate remedies in court,” R.83-1 at 247, does not remotely express “intent to inflict bodily harm.” *Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1077 (9th Cir. 2002) (en banc).

Dismissal with prejudice. Grand objects to the district court’s dismissal of his unripe claims with prejudice. He articulates a perfectly sound legal argument but misconceives the situation. Federal courts indeed dismiss cases for lack of ripeness without prejudice. *Peters v. Fair*, 427 F.3d 1035, 1038 (6th Cir. 2005). And that is precisely what the district court did.

Supplemental jurisdiction. Grand contends that the district court erred by declining supplemental jurisdiction over his Ohio Public Records Act claim. We review this argument for abuse of discretion. *Landefeld v. Marion Gen. Hosp., Inc.*, 994 F.2d 1178, 1182 (6th Cir. 1993). “[A] federal court that has dismissed a plaintiff’s federal-law claims should not ordinarily reach the plaintiff’s state-law claims.” *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006); see 28 U.S.C. § 1367(c)(3). That is just what happened. No abuse of discretion occurred.

We affirm.

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**JUDGMENT, U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT
(NOVEMBER 13, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DANIEL GRAND,

Plaintiff-Appellant,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO;
MICHAEL DYLAN BRENNAN, Mayor, in his official
and individual capacity; LUKE MCCONVILLE, City
Law Director, in his individual capacity; PAUL
SIEMBORSKI, City Planning Commission member,
in his individual capacity,

Defendants-Appellees.

No. 24-3876

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

Before: SUTTON, Chief Judge;
BATCHELDER and LARSEN, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the
district court and was argued by counsel.

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IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

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**AMENDED MEMORANDUM OPINION
AND ORDER, U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OHIO EASTERN DIVISION
(OCTOBER 1, 2024)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL GRAND,

Plaintiff,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants.

Case No. 1:22-cv-1594

Before: Bridget MEEHAN BRENNAN,
U.S. District Judge.

**AMENDED MEMORANDUM
OPINION AND ORDER**

Before the Court are the parties' cross-motions for summary judgment. Plaintiff Daniel Grand moved for partial summary judgment on Counts One through Three, Five, Six, Eight through Twelve, and Fourteen, and only as asserted against University Heights and Mayor Michael Brennan. (Doc. 81.) Defendants opposed

that motion (Doc. 88), and Grand replied (Doc. 91). For the reasons explained below, Grand's partial motion for summary judgment is DENIED in its entirety.

All Defendants moved for summary judgment on all counts. (Doc. 79.) Grand partially opposed Defendant's motion (Doc. 89), and Defendants replied (Doc. 90). Defendants' motion for summary judgment is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen.

I. Background

A. Factual Background

This case arises from a land-use and zoning dispute between Plaintiff Daniel Grand ("Grand") and certain University Heights officials. The facts of this case are largely undisputed. Grand is an Orthodox Jew. (Doc. 79 at 1011; Doc. 79-1 at 1063; Doc. 81 at 1334.)¹ As such, Grand is required to pray (or "daven") three times daily with a group of ten men ("minyan"). (*Id.*) Typically, Grand does so at a synagogue or a shul. (Doc. 79 at 1011; Doc. 79-1 at 1063-64.) A shul is a place where davening occurs, which may or may not be a synagogue. (Doc. 81 at 1334; Doc. 81-1 at 1367.) Grand and practicing members of his faith do not

¹ For ease and consistency, record citations are to the electronically stamped CM/ECF document and PageID# rather than any internal pagination.

drive on the Sabbath (or “Shabbos”), a Jewish day of rest that runs from Friday evening to Saturday evening. (*Id.*) To pray with a minyan on the Sabbath, then, Grand and his fellow adherents must walk. (*Id.*)

Grand moved to University Heights, Ohio (“University Heights” or the “City”) in 2017. (Doc. 79 at 1010; Doc. 79-1 at 1041.) Previously, he lived in New York City and worked in real estate, including owning a property violation company where he was involved with local administrative departments. (Doc. 79-1 at 1041, 1053–55.) When Grand moved to University Heights, he initially lived on Silsby Road, but relocated to Miramar Boulevard in 2019. (Doc. 79 at 1011; Doc. 79-1 at 1040.) From his Miramar residence, Grand frequently attended prayers at various nearby synagogues. (Doc. 81-16 at 1530–31.) On the Sabbath, Grand and his family walked to the synagogue. (Doc. 81 at 1334.) To avoid having to walk to and from a synagogue on the Sabbath multiple times a day, Grand decided to host prayers at his home on Miramar—one prayer on Friday evening, one on Saturday morning, and one on Saturday evening. (*Id.*) Grand planned to host these meetings in a recreation room in his home. (Doc. 81-8 at 1459.) Grand constructed the recreation room when he moved to Miramar as an addition to his home for use as a computer room or a place to play music. (*Id.*)

On January 19, 2021, Grand sent an email inviting approximately twelve neighbors—and any others those invitees wanted to bring—to join him for a minyan prayer session at his home. (Doc. 88-2.) The invitation read, in pertinent part:

You are cordially invited to join us this Shabbos for the inauguration of the Shomayah Tefillah Beis

App.24a

Hakeneset located at 2343 Miramar Blvd. (The Daniel J. Grand Residence)

We would also like to take this opportunity to introduce to you our Rabbi -- Rabbi Roskam -- a smicha recipient from Rabbi Rueven Feinstein, and Rabbi Heinemann from Star-K

The Davening Times will be:

Friday Erev Shabbos Mincha 5:20 p.m.
[Friday evening]

Shabbos Shacharis followed by Kiddush 9:45 a.m. [Saturday morning]

Mincha Followed by Seudah Shlishit 5:00 p.m. [Saturday evening]

You will see the shul entrance-keep a look out for the Orange Windows-

And Please spread the word to whomever you feel might be interested in coming --

The shul is being put together for two reasons, one has always been to expand the community, so we can spread out and open up more houses on the other side of belvoir, and the other is to have a place where people come to really, seriously daven to Hashem-we want to have a place that doesn't have talking during the davening, a powerful place to have your prays heard and answered Bezrat Hashem.

(Id.)

On January 21, 2021, a local resident forwarded Grand's January 19th email invitation to University Heights Mayor Michael Brennan ("Brennan"). (Doc.

81 at 1334; Doc. 81-3.) That same day, Brennan forwarded the message to University Heights Law Director Luke McConville (“McConville”). (Doc. 81-5.) Around two hours later, McConville emailed Grand a cease-and-desist letter. (Doc. 81-6.) The email subject line referred to “Use of Premises as a Shul,” and the body of the cover email referred to “proposed use of said premises for religious assembly.” (*Id.* at 1452.) The letter stated:

I am writing to you in my capacity as Law Director for the City of University Heights (the “City”). The City has been made aware that you intend to use the premises at 2343 Miramar Boulevard (the “Premises”) as a place of religious assembly and in operation of a shul. Pursuant to the zoning map and codified ordinances of the City, the premises are zoned U-1 for residential use. The use or operation of the Premises as a religious place of assembly and/or in operation as a shul or synagogue is not permitted under the City’s ordinances.

The City hereby notifies you that the use of the Premises as a place of religious assembly and/or in operation of a shul or synagogue is prohibited. To the extent that the Premises are currently being used for said purposes or are intended to be used for such purposes in the immediate or near future, the City hereby demands that you immediately cease and desist any and all such operations. Violation of the City’s ordinances in this manner may result in building code citations against you and in the pursuit of additional remedies.

The City is particularly disturbed to learn of the proposed use of the Premises as a place of religious assembly given that you recently appeared before the City's Board of Zoning Appeals in connection with your application for variances. The City is exploring whether variances granted for the Premises may be voidable based upon a subsequent illegal use of the Premises, or due to material omissions during the hearing process relating to your intent to utilize the Premises as a place of religious assembly.

Allow me to refer you to City Codified Ordinance Chapter 1274 entitled "Houses of Assembly and Social Service Uses." Under Chapter 1274, you may make application to the City's Planning Commission for a Special Use Permit.

(*Id.* at 1454–55.) After McConville issued the letter, Brennan and Grand spoke about Grand's proposed activities. (Doc. 81 at 1335.) Grand explained that he wanted to host a small informal prayer group. (*Id.*) However, Brennan felt that Grand was being dishonest about his characterization of the small informal prayer group. (Doc. 88-3 at 2476.) This was based, in part, on (1) the content of the invite, which Grand allegedly contradicted in the phone call with Brennan, and (2) the City's prior experiences with "pop-up" synagogues and shuls.² (*Id.* at 2479–80.) To Brennan,

² Prior to the dispute here, University Heights shut down a separate residential shul after the City determined approximately 120 to 130 individuals were meeting in the basement. (Doc. 90 at 2569.)

Grand should be required to go through the necessary permitting process, which he told Grand during the call: “I made clear to him that we have requirements in the City of University Heights, that one seek and obtain a special-use permit before operating a house of worship . . . in our city.” (*Id.* at 2476.)

Grand’s residence is zoned U-1. (Doc. 79 at 1013.) According to the University Heights Code of Ordinances (“UHCO”), only permitted uses in U-1 zones are one-family dwellings, buildings owned by a board of education, buildings owned by the municipality, and buildings owned by a library board. UHCO § 1250.02. Churches are not permitted as a matter of right in U-1 districts. UHCO § 1256.01.

Pursuant to § 1250.02(g), a person may apply for a Special Use Permit (“SUP”). UHCO § 1250.02(g). If granted, a SUP allows certain buildings or uses in U-1, U-2, and U-4 districts where those buildings or uses would otherwise be prohibited. UHCO § 1250.02. The SUP process is found in UHCO § 1274. Among those buildings or uses that may qualify for a SUP are: “(1) Houses of worship . . . including . . . synagogues[.]” UHCO § 1274.01(b)(1). UHCO does not define houses of worship. Other buildings and uses qualify as well, such as physical or behavioral health care facilities, educational institutions, nurseries, day care centers, senior housing, and office space, among others. UHCO § 1274.01(b)(2)–(7). SUPs are issued by the University Heights Planning Commission (“Planning Commission”) if the applicant shows by “clear and convincing evidence” the special use “will not impair surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others or other applicable criteria in the

Planning and Zoning Code, and will not be otherwise contrary to the public health, safety and welfare.” UHCO § 1274.01(a), (d).

Upon receiving an application, the Planning Commission may hold a public hearing, to occur within 90 days. UHCO § 1274.01(d)(1). Approval by the Planning Commission is subject to approval by City Council, and any denial of a SUP by the Planning Commission can be appealed to the City Council. UHCO § 1274.01 (d)(2). At the time of the dispute here, the members of the Planning Commission were Brennan, Paul Siemborski (“Siemborski”), Michael Fine, John Rach, and April Urban. (Doc. 81 at 1338.)

After receiving the letter from McConville, and after his conversation with Brennan, Grand cancelled the prayer group scheduled for that weekend. (Doc. 81 at 1335; Doc. 81-2 at 1372.) In the early hours of the next day, at approximately 1:00 a.m., Grand emailed the Clerk for City Council so he could apply for a SUP, stating “unbeknownst to me, I will need to file for a special use permit with the city planning commission to have friends come over to pray at my house.” (Doc. 81 at 1335–36; Doc. 81-7 at 1457.) He applied for a SUP that same day, stating it was his intention to “utilize my current recreation room for periodic religious gatherings.” (Doc. 81 at 1336; Doc. 81-8 at 1459.) Grand provided information relating to the room, including that it is about 700 square feet, he has 11 tables and 21 chairs set up, the room is on slab with no basement below it, there are three means of egress, and there would be no traffic since prayers will only be held on the Sabbath when no driving is permitted. (Doc. 81-8 at 1459.) The Planning Commission sched-

uled a meeting for March 4, 2021, to address Grand's application. (Doc. 81-9 at 1463.)

On March 3, 2021, Grand submitted a "Letter of Clarity" to the Planning Commission, which stated he only seeks to "have an informal prayer group for services in my home on the Jewish Sabbath and High Holidays" and is not seeking to establish a formal house of worship, whether called a "shul" or "synagogue." (Doc. 81-16 at 1530–31.) The letter explained Grand was only seeking the SUP because University Heights officials told him to do so. (*Id.*)

The March 4 hearing lasted approximately three hours. (Doc. 79 at 1012; Doc. 81-11.) Before the hearing, McConville stated it would be conducted as a quasi-judicial hearing (Doc. 81-11 at 1476), allegedly the first time a Planning Commission hearing was held in this manner (Doc. 81 at 1339). Grand presented his application to the Planning Commission, through counsel, stating "this hearing is about whether a residence of University Heights may host prayer services in a designated, modest space in the resident's house and in a manner that is respectful of an unintrusive upon the resident's neighbors." (Doc. 81-11 at 1478–80.) Grand explained he wanted "to use the space in his house to host men's only prayer services for a prayer group once a week and on certain high holidays." (*Id.* at 1479.) After hearing from citizens, a Planning Commissioner made a motion:

I would then make a motion to table that the applicant come back with a more thorough presentation as to site plan with the review from the fire department, inspection of the building, what needs to be done, whether it's a realistic option from . . . and if he's going to

ask for a special use permit. Then it should be what the applicant has articulated, what the applicant wants to do.

(*Id.* at 1511–12.) Another Commissioner voted for the motion and requested for the next meeting “more drawings of the building and the site plans so we have a clearer understanding of how the space is to be used.” (*Id.* at 1512.) The motion to table passed three to two. (*Id.*) Essentially, the meeting adjourned so Grand could present a more thorough application, if he was going to present one at all, which included specific site plans.

Immediately following the meeting, members of the Planning Commission exchanged emails on Grand’s position. (Doc. 81-15 at 1523–28.) Commissioner Siemborski expressed his opposition to Grand’s SUP application. (*Id.* at 1527.) Commissioner Fine, in addition to articulating his thoughts on the hearing generally, stated:

As an aside, I do not know why anyone would need a special use permit to invited 10 friends to pray with them Friday night and Saturday morning in their living room. I also do not see how this would be different then my having friends over regularly for parties. There is no restriction on how much I can entertain. However, if I reconfigure my house for 10 or more people to come over regularly, give my group a name, and hire a prayer leader, that may be qualitatively different. It also raises suspicions that I am not really intending to limit my parties/meetings to Fri night and Sat day. However, there is a spectrum here, and I think that needs to be clarified.

Mr. Grand's problem is that he testified that all he wanted to accomplish was the former, but his actions speak to something further along the spectrum toward a real house of prayer.

(*Id.* at 1526.) Commissioner Urban replied to Commissioner Fine, stating:

I do think the application should be dismissed. I think the reason for dismissal should be that the use presented (the applicant proposed gathering [sic] 10-15 friends at his house once a week, as well as three times a year on the high holidays, for prayer) does not require a special use permit. We don't require other social gatherings occurring in a private home to have a special use permit. If the applicant's intentions are truly within the bounds they describe, why would he need a special use permit?

I believe we were to take the applicant at his word as he was under oath, and he maintained a smaller group size. If the application is dismissed, and it is stated that reasonably sized gatherings can occur in private homes what is the mechanism for enforcement if gatherings get out-of-hand in size or frequency? My guess is the cease and desist order and other nuisance property mechanisms. Given he is an owner-occupant, I think these could be reasonably effective if the situation worsened. But how can we tell when activity is truly a nuisance to neighbors from when neighbors are being unneighborly because of their differences?

(*Id.* at 1525.) Commissioner Fine replied, “[a]s I wrote previously, a tension exists regarding at what point does a social gathering become a house of worship.” (*Id.* at 1524.)

On March 12, 2021, the Planning Commission scheduled a second meeting for March 23, 2021. (Doc. 81-18.) When scheduling that meeting, Brennan explained in an email to a resident the first meeting was held as a quasi-judicial hearing so that if a decision of the Planning Commission was appealed, the record would be limited to what was presented to the Commission and nothing more. (*Id.* at 1539.) In this way, it would prevent Grand, or anyone else, from presenting new evidence to a reviewing body. (*Id.*) Brennan also stated: “To be clear, the administration does not endorse or support the application. Instead, this application was made only after the City sent a cease and desist letter to applicant in response to his widely circulated invitation announcing the opening of a shul.” (*Id.*)

On March 16, Grand emailed the Planning Commission, requesting to be put in touch with City officials so he could supplement the SUP application with a site plan. (Doc. 81 at 1341; Doc. 81-17 at 1534–35.) Brennan responded to Grand, stating that he closed his application after Grand presented his application in the first meeting and explained no additional presentation would be necessary. (Doc. 81-17 at 1533.) Brennan explained that “[s]ince the meeting, individual members [of the Planning Commission] have expressed their desire to discuss what has been presented. This discussion is not to be done as a group outside of the confines of a public meeting.” (*Id.*) Brennan was referring to the post-meeting email

exchange between the Planning Commissioners. (Doc. 81-15.) Those emails were not made part of the record in the underlying proceeding.

On March 23, 2021, hours before the second meeting, Grand withdrew his SUP application. His email read:

Mayor Brennan and Planning Commission,

Please be advised that I'm withdrawing my application for a special use permit. I do not wish to operate a house of worship as is defined under the zoning ordinance, in the privacy of my home.

(Doc. 88-4 at 2482.) The Planning Commission held the March 23 meeting as scheduled. During that meeting, Brennan stated the second meeting was called because members of the Planning Commission had "demonstrated a desire to discuss this matter, in essence to deliberate, in the form of e-mails" after the first meeting. (Doc. 81 at 1342.) Brennan then read Grand's withdrawal into the record. (*Id.*) Brennan then stated:

I therefore note for the record that the application is withdrawn. There is no special use permit for 2343 Miramar Boulevard. And I will remind the applicant that the cease-and-desist order of the City, dated January 21, 2021 remains in effect. Let there be no confusion, congregating at 2343 Miramar Boulevard or any other address located in a residence zoned U-1 without a special permit is a violation of city law.

I'm hopeful that the wording of the with-

drawal is not intended to suggest that congregating weekly at a residence to conduct activities consistent with those in a house of assembly does not require a special-use permit. As recently as two months ago, the city brought suit against the organizers of another residential shul, one on Churchill Boulevard, and ultimately obtained a permanent injunction in court.

To the community members who are here, let there be no question, there is no permission granted here to operate . . . a house of assembly or conduct activities consistent with one at 2343 Miramar Boulevard. If you observe such activities, and I hope you do not, but if you do, you may report them to the city, and the city will enforce its laws, which exist for the benefit of the entire community. And we will seek all appropriate remedies in court. With that I move to adjourn.

(Doc. 81 at 1342–43.)

Between the submission of the SUP until immediately after it was withdrawn, certain events occurred. In February 2021, after Grand submitted his SUP application, Grand noticed a neighbor had set up multiple cameras pointing directly at and into his home. (Doc 89-1 at 2541.) Grand filed two police reports. (*Id.*) The City declined to act. (*Id.*) Grand hung a landscaping mesh sheet to block the cameras, but the City instructed him to remove it. (*Id.*)

On March 23, 2021, UHPD Lieutenant Mark McArtor sent an email to patrol units advising they make frequent “drive-bys” of Grand’s residence to ensure

compliance with certain city laws. (Doc. 82-1 at 1772.) Also in March 2021, Grand's neighbors reported to the City and Brennan that Grand laid gravel for additional parking at his residence. (Doc. 82-1 at 1775.) Grand was previously denied a permit to pour concrete and so the neighbors wanted the City to intervene. (*Id.*) After UHPD officers told the neighbors the UHPD would not intervene, the neighbors contacted Brennan. (*Id.*) Brennan reached out to the UHPD, who reported back that "it would be my recommendation for the Building Department to take the lead on this matter going forward. . . . However, the PD will assist in any way we can to resolve the matter, to include patrol officers responding after hours to photograph/video possible evidence of a complaint/infraction." (*Id.*)

On March 28, 2021, after further complaints from a neighbor about building code violations at Grand's residence, the City Prosecutor raised conducting a full inspection of Grand's home. (*Id.* at 1779.) The City Prosecutor explained such an inspection would require either the property owner's permission or a search warrant. (*Id.*) Afterwards, a city inspector went to Grand's home to conduct an inspection. Grand's wife consented to the City's inspection of the house. (Doc. 79 at 1019; Doc. 79-9 at 1224; Doc. 90 at 2575.) The record does not reflect whether citations were issued.

B. Procedural History

Grand initiated this action on September 8, 2022, approximately a year and a half after the events giving rise to the dispute. (Doc. 1.) Since then, Grand amended his complaint twice (Docs. 25, 67) and dismissed several named defendants (Docs. 49, 50, 59,

60, 61). The remaining defendants are University Heights, Michael Brennan, Luke McConville, and Paul Siemborski.³ (Doc. 67.) Grand sued Brennan in his official capacity as Mayor of University Heights and in his individual capacity. (*Id.* at 573.) Grand's claims against McConville and Siemborski are brought in their individual capacities. (*Id.*) The operative complaint, the second amended complaint, asserts twenty claims. (*Id.* at 633–39.) Some claims are asserted against all Defendants, while others are asserted against a subset. (*Id.*)

The twenty claims are: First Amendment, Free Exercise Clause (Count One); First Amendment, Freedom of Assembly (Count Two); First Amendment, Prior Restraint (Count Three); Fourth Amendment, Unreasonable Search (Count Four); Fourteenth Amendment, Procedural Due Process (Count Five); Fourteenth Amendment, Equal Protection (Count Six); Fourteenth Amendment, Equal Protection (Class of One) (Count Seven); Religious Land Use and Institutionalized Persons Act (“RLUIPA”), Substantial Burdens (Count Eight); RLUIPA, Equal Terms (Count Nine); RLUIPA, Non-Discrimination (Count Ten); RLUIPA, Unreasonable Limitation (Count Eleven); Ohio Constitution, Freedom of Religious Exercise (Count Twelve); Common Law Right to Worship (Count Thirteen); Ohio Public Records Law (Count Fourteen); Invasion of Privacy (Count Fifteen); Freedom of Access to Clinic Entrances Act (“FACE Act”) (Count Sixteen); Intentional Infliction

³ The Court will use “Defendants” to mean all Defendants collectively. The Court will use “individual Defendants” to refer to Brennan, McConville, and Siemborski collectively. Otherwise, the Court will refer to each Defendant separately by name.

of Emotional Distress (Count Seventeen); Civil Conspiracy (Count Eighteen); Abuse of Process (Count Nineteen); and Malicious Prosecution (Count Twenty). (*Id.*) Grand asserts his federal claims pursuant to 42 U.S.C. § 1983.

Counts One through Thirteen are asserted against all Defendants. (*Id.* at 633–37.) Count Fourteen is brought against University Heights only. (*Id.* at 637.) Counts Fifteen and Seventeen are brought against Brennan only. (*Id.* at 637–38.) Count Sixteen is asserted against University Heights and Brennan. (*Id.* at 638.) Counts Eighteen and Nineteen are asserted against the individual Defendants. (*Id.* at 638–39.) Count Twenty is asserted against Brennan and McConville. (*Id.* at 639.)

Grand's second amended complaint seeks the following extensive relief: a permanent injunction permitting him to pray in his home with others without obtaining a SUP; a declaration that the City's conduct was unlawful; an order enjoining the City from treating Grand differently than other residents; an order enjoining the City from revoking permits previously provided to him; a declaration that the City discriminated against Grand for his religious beliefs; an order that the City's discriminatory actions are void; a declaration that Grand is entitled to a certificate of occupancy for his home; a writ of mandamus compelling the City to issue a certificate of occupancy; a writ of mandamus compelling the City to comply with the Ohio Public Records Act and an award of statutory fees, court costs, and attorneys' fees relating to the Ohio Public Records Act; damages relating to FACE Act violations; a declaration that the City's land-use ordinances are unconstitutional because they violate

the First Amendment, RLUIPA, and the Ohio Constitution; a permanent injunction barring the City from enforcing the ordinances; and an award of compensatory damages. (*Id.* at 639–40.)

The parties filed cross-motions for summary judgment. Defendants' motion for summary judgment seeks judgment on all claims and as to all Defendants. (Doc. 79.) Grand moved for partial summary judgment, seeking judgment only on certain claims and against only certain Defendants. (Doc. 81.) Specifically, Grand moved for partial summary judgment on Counts One through Three, Counts Five and Six, Counts Eight through Twelve, and Count Fourteen against University Heights. (*Id.* at 1328.) Grand moved for partial summary judgment on Counts One through Three, Counts Five and Six, and Count Twelve against Brennan. (*Id.*) Grand did not move for summary judgment on any claims he asserts against McConville or Siemborski. (*Id.*)

Grand only partially opposed Defendants' motion for summary judgment. (Doc. 89.) Specifically, Grand stated no opposition to summary judgment on Count Seventeen and Counts Nineteen and Twenty. (*Id.*) He further did not provide any opposition as it relates to Siemborski or McConville, except for Count Eighteen. (*Id.*) Defendants' opposed Grand's partial motion for summary judgment in full. (Doc. 88.) The motions are fully briefed. (Doc. 90, 91.)

In Grand's summary judgment papers, he affirmatively disclaims seeking to operate a house of worship at his home. (Doc. 81 at 1345.) Instead, he wants only to host a small informal prayer group. (*Id.*) Defendants, in their summary judgment papers, have stipulated that Grand, and anyone else in the City,

can hold small, informal religious (or non-religious) gatherings on a regular basis and such activity is not subject to any of the City's ordinances or permitting requirements. (Doc. 88 at 2419–20.) Thus, to the extent Grand's activities are consistent with this type of gatherings, the City will not take any action.

II. Analysis

A. Summary Judgment Standard

“A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). “Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and affidavits show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The moving party bears the burden of showing that no genuine issues of material fact exist.” *Williams v. Maurer*, 9 F.4th 416, 430 (6th Cir. 2021) (quotation and citations omitted).

A “material” fact is one that “might affect the outcome of the suit under the governing law[.]” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “And a genuine dispute of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Abu-Joudeh v. Schneider*, 954 F.3d 842, 849–50 (6th Cir. 2020) (quotation and citations omitted).

“Once the moving party satisfies its burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact.” *Queen v. City of Bowling Green*, 956 F.3d 893, 898 (6th

Cir. 2020) (quotation and citations omitted). On summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Kalamazoo Acquisitions, L.L.C. v. Westfield Ins. Co.*, 395 F.3d 338, 342 (6th Cir. 2005). A party asserting or disputing a fact must cite evidence in the record or show that the record establishes either the absence or the presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c) & (e). Rule 56 further provides that “[t]he court need consider only” the materials cited in the parties’ briefs. Fed. R. Civ. P. 56(c)(2); *see also* *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479–80 (6th Cir. 1989) (“The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.”).

“Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quotation and citation omitted). The Court’s role is not to make credibility determinations or weigh conflicting evidence. *Payne v. Novartis Pharms. Corp.*, 767 F.3d 526, 530 (6th Cir. 2014) (citation omitted). “The ultimate question is whether the evidence presents a sufficient factual disagreement to require submission of the case to the jury, or whether the evidence is so one-sided that the moving parties should prevail as a matter of law.” *Id.* (citation omitted).

“[A] plaintiff is deemed to have abandoned a claim when [he] fails to address it in response to a motion for summary judgment.” *Brown v. VHS of Mich., Inc.*, 545 F. App’x 368, 372 (6th Cir. 2013) (collecting cases). However, the party moving for summary judgment

“always bears the burden of demonstrating the absence of a genuine issue as to material facts” and this burden applies “regardless if an adverse party fails to respond.” *Carver v. Bunch*, 946 F.2d 451, 454–55 (6th Cir. 1991) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). A district court “cannot grant summary judgment in favor of a movant simply because the adverse party has not responded.” *Id.* Instead, “[t]he court is required, at a minimum, to examine the movant’s motion for summary judgment to ensure that he has discharged that burden.” *Id.*; see also *Delphi Auto. Sys., LLC v. United Plastics, Inc.*, 418 F. App’x 374, 381 (6th Cir. 2011) (holding a movant was not entitled to summary judgment simply because the other party failed to respond).

B. Ripeness

Before considering the merits, the Court must first resolve whether Grand’s claims are ripe for federal judicial review.⁴

“The ripeness doctrine encompasses ‘Article III limitations on judicial power’ and ‘prudential reasons’ that lead federal courts to ‘refuse to exercise jurisdiction’ in certain cases.” *Miles Christi Religious Ord. v. Twp.*

⁴ Defendants raise ripeness in their opposition to Grand’s motion for partial summary judgment, but only as to procedural due process (Count Five). Because the doctrine applies to all claims arising from a land-use dispute, and because it goes to whether the Court has subject matter jurisdiction, the Court considers ripeness *sua sponte* for all land-use related claims at issue here. See *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006) (a court has an “independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”).

of *Northville*, 629 F.3d 533, 537 (6th Cir. 2010) (quoting *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003)). Federal court jurisdiction is limited to justiciable cases and controversies, thereby eliminating from their judicial review abstract, unresolved, or premature matters. *Id.*; see also *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir. 2008); *Nat'l Park*, 538 U.S. at 807–08.

In assessing ripeness, courts must resolve two questions: “(1) is the dispute ‘fit’ for a court decision in the sense that it arises in ‘a concrete factual context’ and involves ‘a dispute that is likely to come to pass’? and (2) what are the risks to the claimant if the federal courts stay their hand?” *Miles Christi*, 629 F.3d at 537 (quoting *Warshak*, 532 F.3d at 525).

In the land-use context, the concepts of “a concrete factual context” and “a dispute that will likely come to pass” hinge on whether there has been a final determination by the appropriate local or administrative body. *Id.* (citing *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985)). Meaning, has the disputed issue been presented to local authorities and, if so, has the local or administrative body “adopted a ‘definitive position’ as to ‘how the regulations at issue apply to the particular land in question.’” *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 448 (6th Cir. 2023) (quoting *Pakdel v. City & Cnty. of San Fran.*, 594 U.S. 474, 478–79 (2021)); see also *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1363–64 (6th Cir. 1992) (“By finality we mean that the actions of the city were such that further administrative action by [the plaintiff] would not be produc-

tive.”). Final decisions in this context do not require exhaustion. *Miles Christi*, 629 F.3d at 541;

Catholic Healthcare, 82 F.4th at 448. That is, plaintiffs do not need to prove that their land-use request was reviewed by every applicable authority at the local level. Nor does a plaintiff need to exhaust appeals. Instead, finality is a “relatively modest’ showing that the ‘government is committed to a position’ as to the strictures its zoning ordinance imposes on a plaintiff’s proposed land use.” *Catholic Healthcare*, 82 F.4th at 448 (quoting *Pakdel*, 594 U.S. at 479); see also *McCausland v. Charter Twp. of Canton*, No. 23-1479, 2024 WL 3045525, at *6 n.6 (6th Cir. June 18, 2024) (explaining recent Supreme Court precedent does not require exhaustion but does still require finality).

The finality requirement has been applied to “constitutional and statutory challenges to local land-use requirements,” including those at issue here. See, e.g., *Grace Cmty. Church v. Lenox Twp.*, 544 F.3d 609, 615 (6th Cir. 2008) (RLUIPA claims); *Insomnia, Inc. v. City of Memphis*, 278 F. App’x 609, 616 (6th Cir. 2008) (First Amendment claim arising under the Free Speech Clause); *Bannum*, 958 F.2d at 1363–64 (Equal Protection Clause under Fourteenth Amendment); *Murphy v. New Milford Zoning Comm’n*, 402 F.3d 342, 350 (2d Cir. 2005) (First Amendment claim arising under the Free Exercise Clause). Procedural due process claims are also subject to the finality requirement unless the “denial of procedural due process itself creates an injury.” *Bigelow v. Mich. Dept’t of Nat. Res.*, 970 F.2d 154, 160 (6th Cir. 1992).⁵

⁵ Grand’s denial of due process claim is subject to the same

Absent a showing the City expressed a final or definitive position, this Court does not have subject matter jurisdiction. *See, e.g., Insomnia*, 278 F. App'x at 610 (affirming dismissal of constitutional claims on ripeness grounds where interim order instructed applicant to reapply under different code provisions); *Grace Cmty. Church*, 544 F.3d at 611 (affirming dismissal of RLUIPA and Equal Protection claims as unripe where planning commission's revocation of SUP to operate a church in a residential area was not appealed to the local body's reviewing authority); *Miles Christi*, 629 F.3d at 53 (affirming dismissal of RLUIPA and constitutional claims on ripeness grounds where city officials initially determined plaintiff's at-home religious activities required a permit and cited plaintiff for failing to obtain a SUP, but where the zoning board had not yet stated whether the local ordinance applied to plaintiff's stated use); *but see Catholic Healthcare*, 82 F.4th at 448 (finding First Amendment and RLUIPA claims ripe where township insisted on and then denied (twice) plaintiff's application for SUP to put up religious displays and appeal to zoning board of appeals was unsuccessful).

Following the Sixth Circuit, district courts have required finality as a condition precedent for ripeness. *See, e.g., Yetto v. City of Jackson*, No. 17-cv-1205, 2019 WL 2715545, at *9–10 (W.D. Tenn. June 28, 2019)

ripeness inquiry because it is indisputably ancillary to these constitutional and statutory challenges. *See Bigelow*, 970 F.2d at 160. And, even if it was not, Grand was afforded due process. Grand submitted a SUP application and presented it to the Planning Commission, but later withdrew it because, as he stated at the time of withdrawal, the local ordinance did not apply to small religious assemblies.

(dismissing case as unripe where plaintiff withdrew application for special use permit before final determination was made regarding whether ordinances applied to religious gatherings in home even though city issued a cease-and-desist order); *Oliver v. Etna Twp.*, No. 22-cv-2029, 2024 WL 1804993, at *5–6 (S.D. Ohio Apr. 24, 2024) (dismissing as unripe claims relating to rezoning application that was withdrawn before the city’s decision on the application); *Daisy Invest. Corp. v. City of Seven Hills*, No. 22-cv-1276, 2024 WL 3759648, at *6 (N.D. Ohio Aug. 12, 2024) (finding claim ripe where the city denied variance and sent a letter to applicant that the “mayor, administration, and city council” reviewed regarding proposed special use permit).

So, what types of statements or decisions can be considered final for ripeness purposes?

In *Miles Christi*, plaintiff began using his residential home for religious activity, including religious gatherings of increasing size. 629 F.3d at 535. After an investigation and discussion with the plaintiff, the city official with authority to interpret and apply local ordinances told plaintiff they needed to request a variance from the board of zoning appeals or submit a site plan to the city planning commission. *Id.* at 536. After no action from plaintiff, the city issued a citation, and a lawsuit followed. *Id.* at 537. The Sixth Circuit rejected the argument that the city official’s insistence that plaintiff file for a variance or file a site plan was “the kind of decision necessary to overcome . . . ripeness concerns.” *Id.* at 538. Further, the city’s ordinances provided that the zoning board of appeals was responsible for interpretation of the ordinances and that any matter before the planning

commission could be tabled until the board could weigh in. *Id.* Thus, the remaining open questions were: “(1) Has Miles Christi put its house to a ‘more intensive use’ within the meaning of § 170–33.2 of the Northville Code? (2) Is the Miles Christi house a ‘church’ within the meaning of § 170–26.2 of the Code? and (3) Does Miles Christi have an obligation to submit a site plan in the first instance in view of the meaning of these ordinances and its request for a variance?” *Id.* Since none of these were answered, finality was not demonstrated.

Also instructive is the district court’s holding in *Yetto*. In *Yetto*, plaintiffs hosted at their residence approximately twenty to thirty gatherings each year with members of their faith led by a priest. 2019 WL 2715545 at *3–4. After an initial investigation, the city planner sent a zoning violation letter to plaintiffs, indicating a church might be operating at the residence and places of worship required a special exception since the residence was in a residential only zone. *Id.* The letter stated an application must be made to the Board of Zoning for approval and any further use of the property will result in a fine or an injunction. *Id.* In discussions with the city, plaintiffs referred to the residence as a church, but later, plaintiffs explained they were only holding informal prayer gatherings. *Id.* The city still then required plaintiffs to apply for a SUP. City representatives testified if plaintiffs demonstrated they were not using their property as a church, and instead, were only using it for small gatherings akin to bible studies, the ordinance would not apply, and a special permit would be unnecessary. *Id.* Without a definitive answer at that time, the city assumed the

ordinances applied to plaintiffs' activities, and so, plaintiffs filed for a permit. *Id.* at *4–5.

Prior to a decision on the permit, plaintiffs withdrew their application and sued in federal court alleging, as relevant here, violations of RLUIPA. *Id.* During litigation, both parties agreed that if plaintiffs were using the property akin to a bible study or other small gathering the ordinance would not apply in the first place. *Id.* The court found the cease-and-desist letter was not sufficient to meet the finality requirement. *Id.* at *8. Instead, the court found the letter put plaintiffs on notice about the purported violation and potential penalties, but that no enforcement action was taken at that time. *Id.* The court rejected plaintiffs' argument the letter "enjoined" them from future activities because plaintiffs could engage in the process to either get a permit or receive a determination that a permit was not necessary. *Id.* Since plaintiffs withdrew their application before that could be done, the claims were not ripe.

On the other hand, the Sixth Circuit in *Catholic Healthcare* found the plaintiff's claims to be sufficiently ripe, but the plaintiff there identified prior denials of SUP applications, citations issued to him for failing to have a SUP, and the zoning board's denial of his appeal. 82 F.4th at 448.

Moving to the facts of this case, the City neither reached nor stated a "definitive position" such that the finality requirement has been met. Grand received a cease-and-desist letter stating he needed to submit a SUP application for a "religious place of assembly." Grand promptly contacted city officials to obtain information on how to submit his application (within hours of receiving the City's letter and speaking with

Brennan), applied the day after receiving the letter, and the Planning Commission held a hearing on March 4, 2021. Brennan, one voting member of the Planning Commission, expressed his views during and after that meeting. But the Planning Commission tabled Grand's petition so members could receive more information and determine the ordinance's applicability.

Grand insisted the ordinance did not apply. After the meeting, certain members of the Planning Commission appeared to agree, with one member stating "I do not know why anyone would need a special use permit to invite 10 friends to pray with them Friday night and Saturday morning in their living room. I also do not see how this would be different then my having friends over regularly for parties." (Doc. 81-15 at 1526.) No vote was taken and no pronouncement from the Planning Commission was ever stated. Thus, like in *Insomnia, Grace Cmty. Church, Miles Christi*, and *Yetto*, the Planning Commission had not yet reached a final decision on the ordinance's applicability to Grand's small, religious gatherings. Grand also asserts Brennan's comments after Grand withdrew his application are evidence of First Amendment violations, but (1) there was no longer an application pending with the city, and (2) even as Mayor, Brennan was only one member to the Planning Commission, and he is not a member of the Board of Zoning Appeals—the entity who interprets the UHCO. *Cf. Miles Christi*, 629 F.3d at 538 (finding no finality where entity charged with interpretation of ordinances had not yet rendered a decision on the application of the zoning code to dispute).

The Sixth Circuit has long recognized land-use disputes like the one presented here may "be satisfac-

torily resolved at the local level,” thereby obviating the need for any litigation, let alone federal judicial review. *Miles Christi*, 629 F.3d at 537. This is why finality is a critical component of the court’s ripeness assessment.⁶ Grand withdrew his application after the hearing. In so doing, he advised City officials withdrawal was appropriate because the ordinance did not apply, and no SUP was required for his small, religious gatherings. Notably, this is where the factual record ends. There is no evidence that Grand was denied the ability to engage in small religious gatherings in his home after withdrawing the SUP application. There is no evidence the City insisted he obtain a SUP for these small religious gatherings or that it interfered with Grand’s religious gatherings after he withdrew the application. While Brennan stated the cease-and-desist order was still in effect, Grand’s withdrawal of his application indicated he believed his conduct was not subject to the prohibitions in the letter.

Simply put, the factual record before the Court is that the ordinance did not apply, Grand withdrew his application, and the City did nothing further. And while not “factual,” the City’s stated position in

⁶ This Court recognizes that finality is required for as-applied challenges. *Tini Bikinis-Saginaw, LLC v. Saginaw Charter Twp.*, 836 F.Supp.2d 504, 517–18 (E.D. Mich. 2011) (distinguishing ripeness doctrine between as-applied and facial challenges). Some of Grand’s statements suggest a possible facial challenge, but such a challenge is neither stated nor developed in argument. Moreover, the parties’ agreement that the ordinance does not apply eliminates a facial challenge altogether. *See Yetto*, 2019 WL 2715545, at *7 (dismissing facial challenges to Ordinances where parties agreed that plaintiffs’ conduct did not qualify as operating a place of worship, and therefore, did not come within the bounds of the city’s ordinances).

briefings before this Court is that the ordinance does not apply to Grand and that it agrees that small, religious gatherings do not require a SUP. Thus, to the extent a “definitive” statement was made, it appears such a statement was made in Grand’s favor.⁷

For the reasons stated above, the Court dismisses Counts One through Three and Five through Twelve for lack of subject matter jurisdiction.⁸

C. Fourth Amendment (Count Four, all Defendants)

Grand’s Fourth Amendment claim alleges Defendants conducted an unreasonable search of his house by “engaging in unwarranted, indiscriminate, and intrusive video surveillance and surveillance by other means.” (Doc. 67 at 634.) Defendants moved for summary judgment. (Doc. 79 at 1018.) Grand opposed that motion but did not move for summary judgment himself. (Doc. 89 at 2527.)

Grand’s Fourth Amendment claim involves three fact patterns. One, neighbors directed video cameras at his home. (*Id.* at 2527.) Two, police officers drove by the house. (*Id.*) Three, University Heights’ conducted an “illegal” inspection of his home. (*Id.*) In their papers, Defendants argue the neighbors’ conduct lacked government action and was not a search, the monitoring

⁷ This raises a mootness issue for some of claims and requested relief. Mootness was not raised by the parties, and that the Court need not address it after having determined Grand’s claims are not ripe for federal judicial review.

⁸ As it relates to Grand’s RLUIPA claims, the Court notes Grand affirmatively disavowed any intention to hold religious gatherings of the sort subject to the UHCO.

of Grand's home was not a search, and the inspection of Grand's home was consensual. (Doc. 79 at 1019–20; Doc. 90 at 2574–75.)

The Fourth Amendment to the United States Constitution provides “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]” U.S. Const. amend. IV. “The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Camara v. Mun. Ct. of City & Cnty. of S.F.*, 387 U.S. 523, 528 (1967). “To determine whether a Fourth Amendment violation has occurred, we ask two primary questions: first, whether the alleged government conduct constitutes a search within the meaning of the Fourth Amendment; and second, whether the search was reasonable.” *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2019).

Neighbors’ Surveillance. “[T]he Fourth Amendment proscribes only governmental action and does not apply to a search or seizure, even an unreasonable one, conducted by a private individual not acting as an agent of the government or with the participation or knowledge of any governmental official.” *United States v. Lambert*, 771 F.2d 83, 89 (6th Cir. 1985) (citing *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). “[T]o trigger Fourth Amendment protection under an agency theory, the police must have instigated, encouraged, or participated in the search,’ and ‘the individual must have engaged in the search with the intent of assisting the police in their investigative efforts.” *United States v. Robinson*, 390 F.3d 853, 872 (6th Cir. 2004) (quoting *Lambert*, 771 F.2d at 89).

Grand argues the cameras pointed at his residence were set up by his neighbor in February 2021 shortly after he submitted his application for a SUP. (Doc. 89 at 2528.) However, Grand does not provide the Court with any facts that indicate any Defendant requested or ordered the neighbor to set up such surveillance. Grand cites to a March 2021 meeting where Brennan stated that Grand's neighbor had cameras focused on his property and reported such material to Brennan "at all hours of the night." (*Id.*) But in his deposition, *Grand* explained that Brennan was frustrated by the neighbor sending such "evidence" to him "at all hours of the night." (Doc. 79-1 at 1105.) That is, Brennan was not asking for the neighbors' surveillance footage, but instead, was angered by the neighbors sending that footage and reporting other sorts of evidence throughout the evening. Grand therefore concedes Brennan did not instigate, encourage, or participate in the monitoring of his home. Further, if the neighbors set up cameras in February 2021, and Grand relies on Brennan's statements in a March 2021 meeting, Brennan's statements could not have been the source of the neighbor's conduct.

Monitoring of Home. A "search" within the meaning of the Fourth Amendment occurs when "a government official invades an area in which a person has a constitutionally protected reasonable expectation of privacy." *United States v. May-Shaw*, 955 F.3d 563, 567 (6th Cir. 2020) (quotation and citation omitted). A person must "exhibit 'an actual (subjective) expectation of privacy'" and that "expectation is one 'that society is prepared to recognize as reasonable.'" *Id.* (quoting *Katz v. United States*, 389 U.S. 347, 361 (1967)). Under well-settled law, the Fourth Amendment does

not “preclude an officer’s observations from a public vantage point where he has a right to be and which renders the activities clearly visible.” *California v. Ciraolo*, 476 U.S 207, 213 (1986). A person has no reasonable expectation of privacy where the “same views enjoyed by passersby on public roads” were used by police. *United States v. Houston*, 813 F.3d 282, 287–88 (6th Cir. 2016).

Grand presents no evidence police officers conducted a “search” within the meaning of the Fourth Amendment. Instead, in his opposition, Grand cites an email from the University Heights Police Department instructing officers to “please make frequent drive-bys at [Grand’s residence] for violations to 452.03 PROHIBITED STANDING OR PARKING PLACES of parking on landscaped surfaces.” (Doc. 82-1 at 1772.) But merely driving by Grand’s residence is not a “search.” In fact, the Sixth Circuit has rejected Fourth Amendment claims involving far more intrusive conduct. *See, e.g., Houston*, 813 F.3d at 289 (with respect to a front porch, holding that the government “could have staffed an agent disguised as a construction worker to sit atop the pole or perhaps dressed an agent in camouflage to observe the farm from the ground level for ten weeks”); *May-Shaw*, 955 F.3d at (long-term surveillance of carport next to home through video did not violate Fourth Amendment because area recorded was “was readily accessible from a public vantage point”). In short, Grand has presented no evidence driving by his home constituted a search.

Home Inspection. Home inspections conducted by municipal governments are a “search” within the meaning of the Fourth Amendment. *Camara*, 387 U.S.

at 534 (holding that housing code inspections are subject to Fourth Amendment). Typically, the municipality either needs a warrant or probable cause to conduct the inspection. Consent is an exception to the warrant or probable cause requirement. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (“one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent”); *United States v. Jenkins*, 92 F.3d 430, 436 (6th Cir. 1996) (same).

Defendants assert the inspection was consensual. (Doc. 79 at 1019; Doc. 90 at 2575.) Grand’s wife gave consent for the inspection. (Doc. 79 at 1019; Doc. 90 at 2575.) She testified to this fact. (Doc. 79-9 at 1224.) There is no dispute about her consent and no evidence from which the Court could infer that her permission was not freely given. Consensual searches do not violate the Fourth Amendment.

None of Grand’s Fourth Amendment theories survive Defendants’ motion for summary judgment. Count Four is dismissed with prejudice.

D. Common Law Right to Worship (Count Thirteen, all Defendants)

Grand alleges all Defendants violated his common law right to worship. (Doc. 67 at 637.) Grand did not move for summary judgment on this claim. All Defendants did. (Doc. 79 at 1030.) Grand did not oppose Defendants’ motion. In their motion, Defendants argue Ohio has not recognized a common law right to worship as pleaded in Grand’s second amended complaint. (*Id.*) Grand has not supplied this Court with any authority to suggest Ohio recognizes such a cause of action, and this Court has found none. Accordingly,

Defendants' motion for summary judgment on this claim is granted. Count Thirteen is dismissed with prejudice.

E. Ohio Public Records Law (Count Fourteen, University Heights only)

Grand moved for summary judgment on his claim that University Heights violated R.C. § 149.43(C)(1)(b), the Ohio Public Records Act. (Doc. 81 at 1361–62.) University Heights also moved for summary judgment on this claim. (Doc. 79 at 1030.) Both parties opposed the other's motion. (Doc. 88, 89.)

R.C. § 149.43 allows an individual to request documents from public entities. R.C. § 149.43(B)(1). If the government entity does not “promptly” provide those documents, the aggrieved person may bring an action to seek those documents, and additionally seek statutory damages, costs, and reasonable attorneys' fees. R.C. § 149.43(C)(1).

Grand argues University Heights violated the Act when the City failed to timely respond to his records request relating to documents in the City's possession about him. (Doc. 81 at 1362.) Grand sent a document request to the City on July 28, 2021 which was not responded to until after this lawsuit was filed on September 8, 2022. (*Id.*) For its part, University Heights argues only that this Court is the improper venue and jurisdiction to bring a claim under R.C. § 149.43. (Doc. 79 at 1030.) Section 149.43(C)(1)(b) allows an aggrieved person to commence a mandamus action which may be initiated in the court of common pleas, the Ohio Supreme Court if it has original jurisdiction, or the court of appeals if it has original jurisdiction. Because the statute specifically requires a party

to file in one of those three courts, the City argues this Court is the improper venue and jurisdiction. (Doc. 79 at 1030–31.)

The City’s argument is misplaced. State statutes cannot divest a federal court of jurisdiction. See *Superior Beverages Co., Inc. v. Schieffelin & Co.*, 448 F.3d 910, 917 (6th Cir. 2006) (citing *Ry. Co. v. Whitton*, 80 U.S. 270, 286 (1871)). Instead, “[i]n determining its own jurisdiction, a District Court of the United States must look to the sources of its power and not to acts of states which have no power to enlarge or to contract the federal jurisdiction.” *Id.* (quoting *Grand Bahama Petrol. Co., Ltd. v. Asiatic Petrol. Corp.*, 550 F.2d 1320, 1325 (2d Cir. 1977)). This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) because the facts giving rise to this claim involve the “same case or controversy” as the federal claims also asserted in this case. Thus, R.C. § 149.43(C)(1)(b) does not deprive this Court of jurisdiction. See *First Response Metering, LLC v. City of Wilmington*, No. 20-cv-329, 2021 WL 1172070, at *3 (S.D. Ohio Mar. 29, 2021) (rejecting argument that statute in the Ohio Revised Code deprived federal court jurisdiction where statute required filing in court of common pleas).

However, supplemental jurisdiction pursuant to § 1367 is discretionary, not mandatory. See *Charvat v. NMP, LLC*, 656 F.3d 440, 446 (6th Cir. 2011) (“Although the district court may exercise supplemental jurisdiction over these state-law claims pursuant to 28 U.S.C. § 1367, supplemental jurisdiction is discretionary, not mandatory.”). Accordingly, while the Court may exercise jurisdiction to reach the merits of this claim, it need not do so. In this case, the Court exercises its discretion to deny supplemental jurisdiction so

that a state court can evaluate the claim and the reasonableness of any damages sought. Therefore, the claim is dismissed.

F. Invasion of Privacy (Count Fifteen, Brennan only)

Brennan moved for summary judgment on Grand's invasion of privacy claim. (Doc. 79 at 1031.) Grand did not move for summary judgment on this claim but did oppose Brennan's motion. (Doc. 89 at 2536.)

In Ohio, invasion of privacy involves four distinct torts: "(1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation, for the defendant's advantage, of the plaintiff's name or likeness." *Devore v. Rolls-Royce Energy Sys., Inc.*, 373 F.Supp.2d 750, 769 (S.D. Ohio 2005) (quoting *Hamrick v. Wellman Prods. Grp.*, No. 03CA0146-M, 2004 WL 2243168, at *7 (Ohio Ct. App. Sept. 29, 2004)). Grand asserts an intrusion upon seclusion invasion of privacy claim. (Doc. 67 at 637.) Under this type of claim, a person "who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." *Retuerto v. Berea Moving Storage & Logistics*, 38 N.E.3d 392, 406 (Ohio Ct. App. 2015) (quoting *Hamrick*, 2004 WL 2243168, at *8). The intrusion must be "done in a manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities."

Strutner v. Dispatch Printing Co., 442 N.E.2d 129, 132 (Ohio Ct. App. 1982).

Grand's claim is premised on various alleged activities surrounding his home, including surveillance by neighbors and police. (Doc. 67 at 596–97, 599, 605–11.) Grand's second amended complaint alleges Brennan ordered the surveillance or was at least aware of it. (*Id.*) Brennan argues any monitoring does not constitute invasion of privacy because it involved public observation not rising to the level of invasion of privacy. (Doc. 79 at 1031–32.) Grand's opposition does not address this argument, and instead, only asserts Brennan was at least aware that neighbors were surveilling his property. (Doc. 89 at 2536.)

Ohio courts consistently reject invasion of privacy claims where a party observes another's movements in a public place. *See Moran v. Lewis*, 114 N.E.3d 1254, 1259 (Ohio App. Ct. 2018) ("liability for intrusion into another's seclusion or private affairs does not exist where the defendant observes or records a person in a public place"). While surveillance of another's home may amount to a nuisance, observations of another's home from public places does not— in itself—amount to invasion of privacy. *See Blevins v. Sorrell*, 589 N.E.2d 438, 441 (Ohio Ct. App. 1990) (defendant's conduct, while found to be a nuisance, did not constitute invasion of privacy where surveillance cameras were set up by defendant neighbor to observe conduct that might amount to city ordinance violations); *Branan v. Mac Tools*, No. 03AP-1096, 2004 WL 2361568, at *10 (Ohio Ct. App. Oct. 21, 2004) ("Photographing of appellant's house or vehicles parked in front of the house would not constitute an invasion of privacy under these conditions. Since appellant has

not alleged any photography of the interior of his house, these actions alone would not sustain the tort of wrongful invasion of privacy.”). Thus, to the extent this claim involves alleged surveillance of areas in which anyone passing by could see, the claim must be dismissed.

Moreover, Grand has not put forth any evidence in his opposition that creates a dispute of material fact as to whether *Brennan* intruded upon his private activities in a place that was not public. Brennan’s mere awareness of such activities by Grand’s neighbors is insufficient to establish Brennan’s liability. This claim is dismissed with prejudice.

G. FACE Act (Count Sixteen, University Heights and Brennan)

Count Sixteen alleges a violation of the FACE Act against University Heights and Brennan. (Doc. 67 at 638.) University Heights and Brennan moved for summary judgment on this claim. (Doc. 79 at 1026.) Grand did not move for summary judgment on this claim but did oppose University Heights’ and Brennan’s motion. (Doc. 89 at 2534.)

The FACE Act, codified at 18 U.S.C. § 248, protects individuals from being intimidated or prohibited from entering a place of worship. Specifically, the Act imposes civil liability on those who “by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempt to injure intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.” 18 U.S.C. § 248(a)(2).

University Heights and Brennan first argue the FACE Act claim fails because Grand has not presented evidence either University Heights or Brennan used force, a threat of force, or physically obstructed Grand from seeking to exercise his First Amendment right at a place of worship. (Doc. 79 at 1026.) Grand argues the police presence around his home and Brennan's statements about resident reporting is "sufficient to support the reasonable inference that Grand and his friends would be intimidated by the threat of arrest if they congregated at his home to pray." (Doc. 89 at 2534.)

Grand presented no evidence University Heights or Brennan used force or a threat of force within the meaning of the FACE Act. A "threat of force" under the FACE Act means "a statement which, in the entire context and under all the circumstances, a reasonable person would foresee would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person." *Planned Parenthood of Columbia/ Willametter, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1077 (9th Cir. 2002); *United States v. Hart*, 212 F.3d 1067, 1071 (8th Cir. 2000) (same). There is no indication that Grand, or his friends, would be subject to arrest for any violations of any order by University Heights or Brennan. Grand makes no effort to explain why a police presence or resident reporting would result in an arrest. In fact, in the cease-and-desist letter, University Heights communicated to Grand that violations of the City's ordinance "may result in building code citations against you and . . . the pursuit of additional remedies." (Doc. 79-3 at 1205.) Grand presents no evidence he or others were ever at risk of arrest.

University Heights and Brennan also argue the FACE Act claim fails because Grand's house is not a "place of worship" under the meaning of the Act. (Doc. 90 at 2583.) Grand, without citing any authority, argues the Act "does not distinguish between a formal place of worship like a synagogue, or a private prayer group held in a residential home." (Doc. 89 at 2534.) In a recent case, the Second Circuit concluded the FACE Act only applies to "a place recognized or dedicated as one primarily used for religious worship." *Jingrong v. Chinese Anti-Cult World All. Inc.*, 16 F.4th 47, 58–59 (2d Cir. 2021). In *Jingrong*, the Second Circuit found the phrase "place of worship" in the FACE Act ambiguous. *Id.* at 58. For instance, a "place of worship" could mean a specific building used only for religious purposes, or it could feasibly mean places "such as a public-school classroom where a religious student group meets at lunchtime or a café where believers gather to study and discuss religious texts." *Id.* However, in analyzing the legislative history, the Second Circuit concluded "Congress did not intend all locations where incidental worship activities occur to qualify as 'places of religious worship.'" *Id.* at 59. The court explained:

"Places of religious worship" may be fixed or moveable, enduring or temporary, bounded within a structure or structureless. But the basic feature of "a place of religious worship," as recognized by Congress, is that religious adherents collectively recognize or religious leadership designates the place as one primarily for religious worship.

Id. Under that reading of the statute, plaintiffs could not maintain a cause of action where the alleged

“place of worship” were tables set up on a sidewalk. *Id.* at 60.

The holding in *Jingrong* is persuasive here. Grand unequivocally disavowed using his home as a “place of worship.” For his FACE Act claim to survive, Grand would have to present facts that his home was “primarily used for religious worship,” which he cannot do.

For these reasons, the FACE Act claim is dismissed with prejudice.

H. Intentional Infliction of Emotional Distress (Count Seventeen, Brennan only)

Brennan moved for summary judgment on Grand’s claim of intentional infliction of emotional distress (Count Seventeen). (Doc. 79 at 1032.) Grand did not oppose summary judgment on this claim.

Under Ohio law, to “establish a *prima facie* claim for intentional infliction of emotional distress . . . a plaintiff must prove (1) that the defendant intended to cause the plaintiff serious emotional distress, (2) that the defendant’s conduct was extreme and outrageous, and (3) that the defendant’s conduct was the proximate cause of the plaintiff’s serious emotional distress.” *Burgess v. Fischer*, 735 F.3d 462, 480 (6th Cir. 2013) (quoting *Phung v. Waste Mgmt., Inc.*, 644 N.E.2d 286, 289 (Ohio 1994)). “Liability can only be found where conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* (citations omitted).

Brennan argues his conduct was not “extreme and outrageous,” and Grand did not suffer “severe emotional distress.” (Doc. 79 at 1032–33.) Having not

opposed summary judgment, Grand failed to present evidence of “extreme and outrageous conduct” or that he suffered “severe emotional distress,” and the record reflects none. Thus, there is no evidence of “extreme” or “outrageous” conduct, or that Grand suffered severe emotional distress. *See Colston v. Cleveland Pub. Libr.*, 522 F. App’x 332, 340 (6th Cir. 2013) (affirming summary judgment on Ohio intentional infliction of emotional distress claim where plaintiff failed to produce evidence of extreme and outrageous conduct or serious emotional distress). Count Seventeen is dismissed with prejudice.

I. Civil Conspiracy (Count Eighteen, Individual Defendants)

Count Eighteen asserts a claim for civil conspiracy under § 1983 against the individual Defendants. (Doc. 67 at 638.) All three moved for summary judgment. (Doc. 79 at 1027.) Grand did not move for summary judgment on this claim but did oppose summary judgment. (Doc. 89 at 2535.)

To succeed on a civil conspiracy claim, a plaintiff must show “that (1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed’ in furtherance of the conspiracy that caused the injury.” *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014) (quoting *Revis v. Meldrum*, 489 F.3d 273, 290 (6th Cir. 2007)).

The individual Defendants argue, as members of the same organization, they cannot be liable for conspiracy under the intra-corporate doctrine. (Doc. 79 at 1028.) Grand argues the individual Defendants engaged in a conspiracy to require Grand to apply for

a SUP when they knew no permit was necessary to host small informal prayer groups in his home. (Doc. 89 at 2535.) He relies on emails between the individual Defendants and a map which identified city residents who opposed Grand's use of his home as a shul. (*Id.*) Grand does not address the intra-corporate doctrine. (*Id.*)

“The intra-corporate conspiracy doctrine provides that employees of a corporation or governmental entity cannot conspire among themselves because they are treated as one entity.” *Nuovo v. The Ohio State Univ.*, 726 F.Supp.2d 829, 845 (S.D. Ohio 2010) (citing *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 509 (6th Cir. 1991)). In *Hull*, the Sixth Circuit held:

In the present case, plaintiff is alleging a conspiracy between a school district superintendent, the executive director of the district, and a school administrator, all of whom are employees or agents of the Board. Since all of the defendants are members of the same collective entity, there are not two separate “people” to form a conspiracy.

Hull, 926 F.2d at 510. The same is true here. The individual Defendants are all members of the University Heights government and were acting as such. Grand does not dispute this fact and he offers no argument in response. The Court finds the intra-corporate doctrine applies and dismisses this claim with prejudice.

J. Abuse of Process (Count Nineteen, Individual Defendants) and Malicious Prosecution (Count Twenty, Brennan and McConville only)

The individual Defendants moved for summary judgment on Grand's abuse of process claim. (Doc. 79 at 1033.) Brennan and McConville also moved for summary judgment on Grand's malicious prosecution claim. (*Id.*) Grand has not opposed summary judgment on either count.

In Ohio, abuse of process requires a plaintiff to show: "(1) that a legal proceeding has been set in motion in proper form and with probable cause; (2) that the proceeding has been perverted to attempt to accomplish an ulterior purpose for which it was not designed; and (3) that direct damage has resulted from the wrongful use of process." *Voyticky v. Vill. of Timberlake*, 412 F.3d 669, 677 (6th Cir. 2005) (quoting *Yaklevich v. Kemp, Schaeffer, & Rowe Co.*, 626 N.E.2d 115, 116 (Ohio 1994)).

To state a claim for malicious prosecution, a plaintiff must show: "(1) malice in instituting or continuing the prosecution, (2) lack of probable cause, and (3) termination of the prosecution in favor of the accused." *Id.* at 675–76 (quoting *Trussell v. Gen. Motors Corp.*, 559 N.E.2d 732, 736 (Ohio 1990)).

The individual Defendants argue no criminal or other legal proceedings were initiated against Grand, and therefore, these claims fail as a matter of law. (Doc. 79 at 1033–34.) Grand does not argue there was any legal proceeding, and there is no record evidence of any legal proceeding initiated against Grand. Because both torts under Ohio law require such a pro-

ceeding, his claims fail as a matter of law and are dismissed with prejudice.

III. Conclusion

For the reasons stated above, Grand's partial motion for summary judgment is DENIED in its entirety. Defendants' motion for summary judgment is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen.

IT IS SO ORDERED.

/s/ Bridget Meehan Brennan

U.S. District Judge

Date: October 1, 2024

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**AMENDED JUDGMENT ENTRY, U.S.
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OHIO EASTERN DIVISION
(OCTOBER 1, 2024)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DANIEL GRAND,

Plaintiff,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, ET AL.,

Defendants.

Case No. 1:22-cv-1594

Before: Bridget MEEHAN BRENNAN,
U.S. District Judge.

AMENDED JUDGMENT ENTRY

For the reasons stated in the Court's contemporaneously filed Amended Memorandum Opinion and Order, Plaintiff's motion for partial summary judgment (Doc. 81) is DENIED in its entirety. Defendant's motion for summary judgment (Doc. 79) is GRANTED in part. Counts One through Three and Five through Twelve are DISMISSED for lack of subject matter jurisdiction. Defendants' summary judgment motion is

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GRANTED as to Counts Four, Thirteen, and Fifteen through Twenty, with those counts now summarily DISMISSED pursuant to Rule 56 of the Federal Rules of Civil Procedure. The Court DECLINES supplemental jurisdiction on Count Fourteen. Accordingly, the Court terminates this case pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

/s/ Bridget Meehan Brennan
U.S. District Judge

Date: October 1, 2024

**CONSTITUTIONAL AND STATUTORY
PROVISIONS AND ORDINANCES INVOLVED**

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 USC § 2000cc

Protection of land use as religious exercise

(a) Substantial burdens

(1) 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—

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

(2) Scope of application

This subsection applies in any case in which—

- (A) the substantial burden is imposed in a program or activity that receives Federal

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financial assistance, even if the burden results from a rule of general applicability;

- (B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or
- (C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that

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- (A) totally excludes religious assemblies from a jurisdiction; or
- (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction. (Pub. L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

§ 2000cc-2. Judicial relief

(a) Cause of action

A person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

§ 2000cc-3(g) — Broad Protection

This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution.

UHCO § 1250.02

Purposes of the Zoning Code

Permitted uses in One-Family Residence Districts are:

- (a) One-family dwellings.
- (b) Buildings, structures and grounds owned and operated by a board of education, municipality or by a library board.

(Ord. 56-53. Passed 10-1-1956.)

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- (c) Home occupations solely to the extent defined in Section 1240.15 or permitted under Section 1280.12.

(Ord. 85-6. Passed 5-6-85.)

- (d) The following signs are permitted in any residential district, providing such signs are back from the street line at least ten feet:

- (1) Bulletin boards aggregating not over twelve square feet in area for schools or churches;
- (2) A sign not over two square feet in area, containing the name or address of any occupant of the premises, or both the name and address;
- (3) One sign, not over 12 square feet in area on the site of a building under construction in conformity to this Zoning Code and only while such building is under construction, bearing the names of any contractor or contractors in such construction;
- (4) Such signs as shall be authorized by Section 808.06(h) of the Codified Ordinances and Section 1266.11.

(Ord. 97-64. Passed 12-15-1997; Ord. 2009-10. Passed 3-16-2009.)

- (e) Planned multi-family residential areas, when contiguous to U-4, U-6, U-7, U-8, or U-9 Districts, subject to the standards and criteria of Section 1280.07.

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- (f) Planned one-family residential areas, subject to the standards and criteria of Section 1280.08.
- (g) Public, semi-public and other uses permitted upon special permits subject to the standards and criteria of Chapter 1274.
- (h) Accessory buildings and accessory uses, including space on the premises for the keeping of two cars in the accessory building, and may have three cars, provided space does not exceed more than 35% of the rear yard area. A greater number of car spaces may be provided in such accessory building, if the area of the lot contains at least 3,000 square feet for each car space and does not exceed 35% of the rear yard.
- (i) Keeping of chickens and chicken coops or chicken runs in a U-1 District, upon issuance by the Building Department of a special use permit subject to the criteria of Codified Ordinance Section 1478.251. The keeping of chickens and/or chicken coops or chicken runs shall be prohibited in any zoning district other than U-1.

(1982 Code, § 1109.02) (Ord. 99-45. Passed 12-20-1999; Ord. 2007-28. Passed 6-26-2007; Ord. 2018-14. Passed 4-2-2018.)

UHCO § 1256.01

Permitted Uses in Residential Districts

Permitted uses include one-family dwellings and accessory uses customary to residential occupancy. Uses not listed, or not substantially similar in

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character, require a Special Use Permit pursuant to Chapter 1274.

**UHCO § 1274 –
Houses of Assembly and Social Service Uses**

1274.01 Intent and Permitted Uses.

- (a) This chapter is established in order to permit, under special circumstances and conditions, uses which foster the most desirable use of the land in the City; which insure compatibility and stability with existing and proposed adjacent uses; and which harmonize and integrate into the existing zoning and use plans those special uses authorized under special permit recommended by the Planning Commission as approved by Council in the U-1, U-2 and U-4 residential districts.
- (b) The following are hereby declared to be special uses to which this chapter shall apply:
 - (1) Houses of worship or religious education, including churches, temples, synagogues, religious organizations, parish houses and parochial schools;
 - (2) Facilities for the physical, behavioral or mental health care and/or education of children through the twelfth-grade level only, including nurseries, day care centers, orphanages and treatment institutions and dormitories or cottages necessarily related thereto. Individuals not receiving such services may reside on the premises so long as they provide support services;
 - (3) Senior housing and care facilities, including independent congregate living, assisted living,

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- nursing, rest or convalescent homes, and other facilities for similar care and treatment;
- (4) residential behavioral health care facilities;
 - (5) Conversions to condominiums to the extent otherwise governed by ordinance;
 - (6) Office, research and high-tech production facilities which are:
 - A. Specifically designed and intended for occupancy by a single user;
 - B. Accessible only from either Fairmount Boulevard or Belvoir Road.
 - (7) Any other use not otherwise specified or authorized in this Planning and Zoning Code, to the extent that the requirements hereinafter set forth can reasonably be effectuated.
- (c) This chapter shall not apply to dwelling units used for child care or as foster homes which are otherwise approved by the Board of Zoning Appeals in compliance with Section 1478.01.
- (Ord. 99-45. Passed 12-20-1999.)
- (d) A Special Use Permit for any use described in this section shall be applied for and shall be issued on the recommendation of the Planning Commission, subject to any reasonable conditions the Planning Commission may impose uniformly in similar circumstances, for any permitted location, after the applicant demonstrates to the Planning Commission by clear and convincing evidence that the provisions of this chapter will be met and that the special use will not impair

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surrounding property values or uses, vehicular parking and pedestrian or traffic conditions, lighting glare at night, noise pollution to others or other applicable criteria in the Planning and Zoning Code, and will not be otherwise contrary to the public health, safety and welfare.

- (1) The Planning Commission may hold public hearings on any such application to the extent it deems reasonable, but not more than ninety days after the filing of the application and after compliance with all submissions or revisions thereof required under Section 1274.04.
- (2) The recommendation of the Planning Commission shall be subject to the approval of a majority of Council. A denial by the Planning Commission may be appealed to Council by applicant's filing a written appeal within 15 days of such denial. The appeal shall be heard by Council within 45 days of the filing thereof.
- (3) Upon approval by Council, a certificate of occupancy should be issued.

(Ord. 82-26. Passed 7-6-1982.)

(e) Group Homes.

- (1) Definition of "group home".
 - A. A "group home" means a residence which is occupied by and provides residential services to unrelated individuals who do not otherwise qualify as a family and who have physical handicaps and/or moderate mental and/or social limitations

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and who live or propose to live together and function in the manner of a family, while monitored by State licensed professional caregivers.

- B. "Group home" does not include cooperative residences for any other individuals or entities, or fraternities, sororities, social or business lodges, or any other combination of voluntary living arrangements.
 - C. "Group home" does not include any court ordered rehabilitation or maintenance living arrangements and/or care and/or treatment and/or rehabilitation services for severely mentally retarded or psychotic individuals, releasees from federal, state or county treatment or penal institutions, juvenile offenders, drug or alcohol offenders or wards of the court or welfare system.
- (2) Criteria for group homes. In the event that the premises are occupied or proposed to be occupied by persons otherwise excluded by definition or if refusal to allow the proposed occupancy conflicts with State and Federal law, not otherwise superseded by the University Heights Charter and ordinances under Article XVIII Section 3 of the Ohio Constitution, then the issue of occupancy shall further be determined only upon appeal to the Board of Zoning Appeals which may grant a non-transferable special or conditional use permit, if the applicant qualifies

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the use as a “group home”, and if the following conditions also apply:

- A. Such site previously shall have been zoned or permitted for use and occupancy or legally occupied by two or more families and the number of occupants would otherwise be permitted upon the application of all other ordinances dealing with “occupancy,” (e.g., 1478.03).
- B. No change in the exterior appearance of the premises shall occur. There will be no additional garage space.
- C. Traffic or traffic congestion is not likely to increase or be adversely affected, and
 - 1. No parking in addition to the parking (1240.20(a), 1280.03) for which the premises were designed will be available for residents and/or staff.
 - 2. No trucks will be parked outside of the premises as governed by Section 452.18.
- D. If the persons occupying the premises require care and attention, there will be at least one person identified to the City on site as a caregiver twenty-four hours, seven days a week. Such caregiver will be included in calculating the occupancy of the premises, if there are sleeping facilities needed or provided on the site for such caregiver.
- E. Excluding students at John Carroll University and residents on the Bellefaire

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campus, otherwise as governed by these ordinances, the total number of units, and the housing and the total number of occupants housed and residing in the City in space for six or more residents per housing unit regulated by the Ohio Building Code, shall be limited to ten housing units and 60 residents, in the absence of credible evidence demonstrating a lack of additional equivalent space legally available for the same use in each and all abutting and contiguous municipalities.

- F. Residences owned or occupied or operated as a group home or as a permitted facility described in Section 1274.01 (b)(2)(3)(4) or (6) shall not be permitted on any part of a lot located within a radius of 2000 feet from any part of any lot occupied by any other such facility.
- G. The Board may also take into consideration walking distance to public transportation and that such distance is reasonably likely to cause a safety risk to aged (over seventy years), handicapped or disabled residents.
- H. Applicant must represent that the granting of a special permit herein is not likely to place any citizen in physical danger or jeopardy allowing the proposed occupancy, *e.g.* felons on parole or release programs, who have been convicted of violent crimes such as murder, assault, rape, intimidation and/or hard

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drug addiction; or profoundly or severely mentally retarded or known psychotic individuals who cannot function a society without being a risk to themselves or others, or any similar demonstrable likely danger.

(1982 Code, § 1124.01) (Ord. 91-11. Passed 5-6-1990.)

1274.02 Area, Yard and Height Regulations.

- (a) Area Usage and Frontage Regulations. The ground area shall be a separately owned lot as platted or replated on City and County maps and occupied by buildings which shall not exceed 25% of the total area of the lot. Not less than 50% of the total lot area shall be developed as planted areas.
- (1) Minimum area of the lot shall be:
 - Senior housing and care facilities 4 acres
 - Office, research and hightech production facilities 10 acres
 - All other permitted uses 3 acres
 - (2) Minimum lot frontage shall be 150 feet.
 - (3) The portion of the site which is not covered with buildings and parking shall be developed as planted areas and landscaped as specified by Section 1274.03.
- (b) Yard Regulations.
- (1) Front. The front yard shall be not less than 75 feet in depth or not less in depth than the setback building line designated for the district on the zoning map and shall remain

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unoccupied except for a driveway for ingress and egress.

- (2) Side and rear. Each lot shall have side and rear yards unoccupied by buildings, equal to the height of the main building except adjacent to a U-1, U-2 or U-4 District where such yards of not less than 50 feet shall be required. Rear and side yards may include accessory uses as permitted in division (c)(2) hereof.
- (c) Use of Yards for Accessory Off-Street Parking and Loading.
- (1) Front. No off-street parking or loading shall be permitted in the required front yard setback except for passenger loading and unloading. Where offstreet parking is behind the setback line and is buffered from view according to Section 1274.03, the Planning Commission may permit not more than 10% of the required parking spaces in front of the main building.
 - (2) Side and rear. Accessory off-street parking, loading or driveways shall be permitted no closer than ten feet from a side or rear property line or 30 feet from a U-1, U-2 or U-4 District. This area shall be a landscaped buffer, with screening provided according to Section 1274.03.
- (d) Height Regulations. Height of buildings (exclusive of towers, steeples, cornices, antennas, or similar features as approved by Council) shall not exceed the following:

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- (1) Thirty-five feet when set back 50 feet from side or rear property lines.
 - (2) Forty-five feet when set back 100 feet from side or rear property lines.
- (e) Frontage and Location Regulations.
- (1) Subject to all other provisions of this chapter, special use permits may be permitted only on land fronting on the following streets: Cedar Road, Warrensville Center Road, South Taylor Road, Fairmount Boulevard, North Park Boulevard, Green Road.
 - (2) A special use permit may be issued by the Planning Commission for land fronting on other streets where the applicant demonstrates by clear and convincing evidence that the use will benefit and not impair surrounding property values or uses, vehicular parking and pedestrian congestion or traffic conditions, noise pollution and will not be otherwise contrary to the public health, safety or welfare, subject to the approval of a majority of Council.
- (f) Prohibitions. Except for existing approved uses,
- (1) No building may be used for the uses defined in this chapter unless originally designed and approved for such use.
 - (2) The conversion of a residence, store or other building, for a use defined in Section 1274.01 is prohibited.

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- (3) All uses defined in Section 1274.01 must have frontage on one of the streets referred to in division (e) hereof.
- (4) No use permitted herein shall include sleeping or residential use accommodations on any part of the site.
- (5) No variance from any of the requirements or prohibitions under Chapter 1274 may be granted without the approval of the Planning Commission and the approval of Council, each following public hearings at which the applicant demonstrates a clear benefit to the community and that denial will result in an unnecessary hardship to the applicant.

(1982 Code, § 1124.02) (Ord. 99-45. Passed 12-20-1999.)

1274.03 Landscaping and Screening Requirements.

- (a) All portions of the site not devoted to buildings and pavement shall be landscaped and screening shall be provided in order to: remove, reduce, lessen or absorb the impact between one use or zone and another; reduce the impact of parking areas; and obscure the view of waste receptacles, parking areas and loading areas.
- (b) Required Open Space. A minimum of 50% of the site shall be devoted to open space and shall be landscaped according to the requirements of this section.
 - (1) Landscaped areas having a width of ten feet or more, including but not limited to areas devoted to required setbacks and interior

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parking lot landscaping, shall be included as satisfying the open space requirement.

- (2) Landscaped areas having a width of less than ten feet, but not less than five feet, which are located adjacent to buildings may be included as meeting the open space requirement when the Planning Commission determines that the area is of sufficient size and shape to provide for a suitable landscaped area.
 - (3) Landscaped areas having a width of less than five feet shall not be included as satisfying the open space requirement.
- (c) Landscaping Along Street Frontage. All areas within the required building and parking setback, excluding driveway openings, shall be landscaped. The following minimum plant materials shall be provided and maintained:
- (1) One major shade tree, for every 50 linear feet of the lot frontage or fraction thereof, not including drive entrances. Each tree, at the time of installation, shall have a clear trunk height of at least six feet and a minimum caliper of two inches.
 - (2) One shrub for every ten linear feet of lot frontage or fraction thereof, not including drive entrances.
 - (3) Grass, ground covers or other live landscape treatment, excluding paving or gravel.
- (d) Screening of Parking Lots Along Public Streets. Whenever parking areas consisting of five spaces or more are located such that the parked cars will

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be visible from a public street, screening shall be provided and maintained between the parking area and the street right-of-way. To the extent that the provisions of Section 1274.03(b) have not satisfied the provisions of this section, additional screening shall have a minimum height of three feet and shall be placed along the perimeter of the parking area to effectively obscure a minimum of 50% of the view of the parking area.

- (e) Landscaping on the Interior of Parking Lots. For any parking area that is designed to accommodate 40 or more vehicles, a minimum of 10% of the parking lot area shall be planted as landscaped island areas, developed and reasonably distributed throughout the parking lot so as to provide visual and climatic relief from broad expanses of pavement.
 - (1) Each landscaped island shall be a minimum of ten feet in any horizontal dimension.
 - (2) Within the landscaped islands, there shall be provided one major shade tree for every ten parking spaces. Each tree, at the time of installation, shall have a clear trunk height of at least six feet and a minimum caliper of two inches.
 - (3) Landscaped areas adjacent to the perimeter of the parking area shall not be counted as interior parking lot landscaped areas.
- (f) Screening Adjacent to residential Districts. Screening shall be provided within the required setback areas adjacent to residential districts in compliance with the following: