

KNOW YOUR ZONING RIGHTS.

1. What is a Conditional Use Permit?

A Conditional Use Permit (CUP) is the Ordinance granted by the Town of Fairview that allows land zoned as Residential RE-1 to be used for another purpose such as a Religious Facility or Secular Business. The vast majority of CUP's add restrictions for height, light, traffic, set-backs, landscaping, fire safety, security, parking, drainage and impervious coverage. **These restrictions are legal as long as they are consistently applied.**

2. What is the CUP Process?

The LDS Temple has recently applied for a CUP with VARIANCES from the Town of Fairview to build a Religious Facility that exceeds current zoning restrictions for land zoned as Residential RE-1. The first step is a public hearing with the Planning & Zoning Commission (P&Z). The next step is a vote by the P&Z to approve, reject or condition the CUP. Generally the P&Z will vote to approve the CUP with precedent-based restrictions on height, light, traffic, set-backs, landscaping, fire safety, security, parking, drainage and impervious coverage. Then the CUP goes to the Town Council for approval, rejection or further conditions. It's that simple.

3. Not An Inch More Needs To Be Granted

The LDS Temple has the right to receive a CUP from Fairview with no less favorable or more favorable zoning restrictions granted to any other Religious Facility or Secular Business in the form of a valid CUP from Fairview on land zoned as Residential RE-1. In other words, NOT AN INCH MORE.

4. What Zoning Precedent & Variances Can Be Used By The LDS Temple?

Only valid CUP's variances granted by Fairview to other Religious Facilities or Secular Businesses on land zoned as Residential RE-1 can be used by the LDS Temple as legal precedent regarding the issuance of any CUP. No buildings anywhere in the world whether in Fairview's Commercial District, Collin County or any other City can be used as valid precedent. That means that even Town Hall isn't a valid precedent since it is in a Commercial District. Many people wrongly believe that if any Religious Facility or Secular Business is granted a variance in Texas or other States, then all other Religious Facilities or Secular Businesses must also be granted that variance. This is utterly false. Fairview already allows Religious Facilities with restrictions on zoning for Residential RE-1 land, so Fairview is not violating the rights of the LDS Temple by enforcing similar restrictions.

5. What Is "Unequal Treatment" Under the Law?

Under Federal Law (RLUIPA), Texas Law (TRFRA), the US Constitution, and the Texas Constitution, the Town of Fairview must provide "Equal Treatment" to the LDS Temple based on all previous CUP's granted to every other Religious Facility or Secular Business in Fairview on land zoned as Residential RE-1. The current LDS Meetinghouse has the tallest tower ever approved and built at 68'-0". The current Chase Oaks Church has the tallest roof peak ever approved and built at 38'-0". And no other Religious Facilities or Secular Businesses in the Fairview Residential District exceed these precedents. Therefore, if the Town grants a CUP with a max total tower height (as measured from the ground) of 68'-0" and a max total roof peak height (including any tower base roof peak and/or mechanical roofs) of 38'-0", then the LDS Temple CANNOT claim "Unequal Treatment".

6. What Is "Substantial Burden" Under the Law?

Since there is no "Unequal Treatment" claim, the only other recourse would be for the LDS Temple to claim that restricting the height, light (etc...) of their LDS Temple would place a "Substantial Burden" on their ability to practice any **central tenet and core belief** of their faith with no reasonable alternatives. Since there are already many other shorter and darker LDS Temples in and around Texas (such as McAllen, Oklahoma City, Baton Rouge, Bentonville, Lubbock, San Antonio, Austin, and Ft. Worth), the LDS Temple CANNOT claim that restricting the massive height, light, (etc...) of the proposed Fairview Temple is a "Substantial Burden".

7. This Is Not About Religion. It Is About Zoning.

Anyone suggesting that the LDS Temple cannot be built is wrong. It can be built. Anyone suggesting that the LDS Temple must be granted more favorable precedent is wrong. It can be restricted. Anyone making this about religion rather than zoning is wrong. Federal & State Law support the right of LDS to build the Fairview Temple while ALSO allowing the Town of Fairview the right to restrict the Temple height, light, (etc...) based on precedent. The better question is to ask the LDS Leadership why it did not mention the massive height of the building in its initial letter to neighbors, and why did a follow-up letter make a misleading statement that it is "only 2-stories"? Why were invalid precedents used in the application? Why is the massive 173'-8" tower height suddenly a "central tenet of worship"? And lastly, why are local LDS Members reluctant to call out Salt Lake Leaders for fostering sins of commission and omission in their public communication of this CUP process?

This document is for opinion only and does not provide legal advice. Please do your own research.