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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
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12 ELSINORE CHRISTIAN CENTER, A )  
CALIFORNIA NONPROFIT CORPORATION, )  
13 and GARY HOLMES, )  
14 Plaintiffs, )  
15 v. )  
16 CITY OF LAKE ELSINORE, A MUNICIPAL )  
CORPORATION OF THE STATE OF )  
17 CALIFORNIA, LAKE ELSINORE )  
REDEVELOPMENT AGENCY, A )  
18 MUNICIPAL CORPORATION OF THE )  
STATE OF CALIFORNIA, ROBERT A. )  
19 SCHIFFNER, PAMELA BRINLEY, DANIEL )  
METZE, GENIE KELLY, KEVIN PAPE, and )  
20 DOES 1-50 inclusive, )  
21 Defendants. )

CASE NO.

COMPLIANT FOR PRELIMINARY AND  
PERMANENT INJUNCTION; FOR  
ATTORNEY FEES; VIOLATION OF THE  
RELIGIOUS LAND USE &  
INSTITUTIONALIZED PERSONS ACT OF  
2000 (42 U.S.C. §2000cc); CIVIL RIGHTS  
VIOLATIONS (42 U.S.C. §1983);  
DAMAGES; AND FOR DECLARATORY  
RELIEF AND DEMAND FOR JURY  
TRIAL

22  
23 **INTRODUCTION**

24 1. This is a civil action seeking injunctive relief, declaratory judgment, and damages, both  
25 nominal and compensatory, to vindicate and to safeguard civil rights including the First and Fourteenth  
26 Amendment rights secured by the Constitution of the United States. The action is against the City of  
27 Lake Elsinore (hereinafter called "the CITY"), and The CITY'S elected officials. The CITY seeks to  
28 prevent a local church and congregation, including the individually named Plaintiff, from holding

1 services and practicing their religion on property they are under contract to purchase. In doing so, the  
2 CITY is violating the United States and the California Constitutions and the Religious Land Use &  
3 Institutionalized Persons Act of 2000.

4 2. Plaintiffs seek preliminary and permanent relief enjoining the CITY, its employees,  
5 successors and agents and all persons subject to its direction and control, from depriving Plaintiffs of  
6 their constitutional rights as guaranteed by the First and Fourteenth Amendments of the United States  
7 Constitution and from depriving Plaintiffs of their rights under the Religious Land Use and  
8 Institutionalized Persons Act of 2000 (42 U.S.C § 2000cc). Plaintiffs also seek declaratory relief  
9 pursuant to 28 U.S.C. §§ 2201 and 2202 to determine the constitutionality of the CITY'S zoning  
10 ordinance, on its face and as applied, and reasonable costs of litigation, including attorney's fees and  
11 expenses. Finally, Plaintiffs seek compensatory and nominal damages.

12 **JURISDICTION AND VENUE**

13 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1343(3)(4)  
14 and 42 U.S.C. §2000cc, Section 2 which confer original jurisdiction on federal district courts in suits  
15 to redress the deprivation of rights, privileges and immunities as stated herein. The Court has  
16 jurisdiction over the request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. This action  
17 is also authorized by 42 U.S.C. §1983 because Defendants are state actors who have abridged the  
18 constitutional rights of Plaintiffs.

19 4. This is a suit in equity authorized by law to be brought to redress the deprivation under  
20 color of law, ordinance, statute, regulation, custom and usage of the State of California, County of  
21 Riverside, City of Lake Elsinore, of rights, privileges and immunities secured by the laws and  
22 Constitutions of the State of California and the United States, particularly the First and Fourteenth  
23 amendments to the Constitution of the United States and the Religious Land Use and Institutionalized  
24 Persons Act of 2000.

25 5. Venue is proper in this District because the acts and transactions complained of occurred  
26 in this District pursuant to 28 U.S.C. § 1391(b).

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**PARTIES**

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6. At all times herein mentioned Plaintiff ELSINORE CHRISTIAN CENTER (hereinafter called "the CHURCH") was and is, a religious assembly or institution, and a nonprofit corporation organized and existing under the laws of the State of California and is presently located within, and is ministering within, the City of Lake Elsinore, County of Riverside, State of California.

7. At all times herein mentioned Plaintiff GARY HOLMES, was, and is, a citizen of the United States, and a resident of Lake Elsinore, County of Riverside, State of California and was and is a member and elder of Plaintiff CHURCH. Plaintiff GARY HOLMES is an individual residing within the County of Riverside and is suing in his individual capacity.

8. Defendant CITY OF LAKE ELSINORE, was and now is, a municipal corporation, created under the authority of, organized and existing under, the laws of the State of California, and situated in Riverside County and is empowered to act through its governing body, its officials, employees and official bodies. The CITY is empowered by the State of California to regulate and restrict the use of land within the CITY'S borders.

9. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, Defendant ROBERT L. SCHIFFNER was, and is, a member of the City Council for Defendant CITY and is sued in his/her official capacity only.

10. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, Defendant PAMELA BRINLEY was and is a member of the City Council for Defendant CITY and is sued in his/her official capacity only.

11. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, Defendant DANIEL METZE was and is a member of the City Council for Defendant CITY and is sued in his/her official capacity only.

12. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned Defendant GENIE KELLY was and is a member of the City Council for Defendant CITY and is sued in his/her official capacity only.

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1 to the East. The current location of the Church is 119 East Graham Avenue, Lake Elsinore. This  
2 location is less than 50 yards east of Main Street in the downtown area.

3 18. The Church has some members that live in downtown Lake Elsinore and walk to services.  
4 The Church has a food pantry wherein the Church provides food to both Church members and local  
5 resident/non-members as a ministry to those persons in need. This is used as a ministry opportunity to  
6 share the love of God to members and local downtown residents. At Christmas and Thanksgiving, the  
7 CHURCH provides meals to downtown residents as a ministry outreach.

8 19. The Church has been renting at its current location for over twelve years and is currently  
9 on a month-to-month lease. The Church is presently occupying two buildings to conduct its services and  
10 various religious activities. One of the buildings is more than 75 years old. The other is more than 50  
11 years old.

12 **Existing Parking Problems**

13 20. The CHURCH does not have its own parking facilities at its current location. Church  
14 members must park along the streets in downtown. One side of Graham Street is designated as a no  
15 parking zone. There are no handicapped parking spaces nor handicapped ramps for access to the Church  
16 property. Numerous members are elderly and/or handicapped and have difficulty in attending worship  
17 services because of the lack of parking and handicapped access. The Church is informed and believes  
18 that the current facilities do not meet the standards set by the Americans with Disabilities Act.

19 21. Approximately two years ago, defendant City began sponsoring an Open Air Market that  
20 takes place on one Sunday of each month. The City closes Main Street and a portion of Graham Street,  
21 which portion is in front of the Church for exhibitors. Parking has become a critical problem on the first  
22 Sunday of each month due to the reduction of available parking on Graham Street and Main Street. In  
23 fact, members will often only find parking spaces across town requiring lengthy walks to church.

24 22. The City additionally sponsors the Lake Elsinore Classic, which is a motocross race the  
25 runs through downtown on one Sunday each year. The same problems described above that occur as  
26 a result of the Open Air Market also occur on the Sunday that the Lake Elsinore Classic takes place.

27 23. The parking problems have increased over the last two years as a result of the Open Air  
28 Market and an increase in numbers of worshippers. The Church has become limited in its future ability

1 to grow due to parking problems, the size and nature of the old buildings and problems with handicapped  
2 access. The Church now seeks to purchase a building located at 217 North Main Street, Lake Elsinore  
3 (the "Subject Property") that has its own parking lot with handi capped accessibility and is large enough  
4 to allow the Church to grow in numbers. There are no other buildings in the downtown area which the  
5 CHURCH could either lease or purchase which would reasonably satisfy the needs of the Church.  
6 Further, there is no vacant land for sale in the downtown area upon which the Church can construct a  
7 suitable building.

8 **Proposed New Location**

9       24.     On or about April 13, 2000, the CHURCH and ELSINORE NAVAL AND MILITARY  
10 SCHOOL, a corporation (hereinafter called "SCHOOL") entered into a written agreement whereby the  
11 CHURCH agreed to buy and the SCHOOL agreed to sell that certain parcel of real property located  
12 within Defendant CITY and legally described as:

13             Lots 1, 3, 5, 6, 7, 8, 9, 10, 11, and 12 in Block 52 of the Town of Lake Elsinore, in the  
14 City of Lake Elsinore, as shown by Map on file in Book 6, Page 302 of maps, San Diego  
15 County Records. Excepting therefrom the Westerly 15 Feet of Lots 11 and 12; Also  
16 Excepting the Easterly 15 Feet of Lot 1 as conveyed to the City of Lake Elsinore. Also,  
17 Excepting the Easterly 42.5 Feet of the Southerly 116 Feet of Lot 5; Also Excepting the  
18 Southerly 116 Feet of Lots 1 and 3,

19 APN 374-164-005 and commonly known as 217 N. Main Street, Lake Elsinore, California. The Subject  
20 Property is located in an area zoned as C-1 or Neighborhood Commercial zoning and is approximately  
21 three blocks from the present location. At that time, and at all times to the present, Plaintiffs are  
22 informed and believe that the SCHOOL has been renting the Subject Property to a month-to-month  
23 tenant who has been operating a discount canned food store and recycling center. Plaintiffs are informed  
24 and believe that the SCHOOL obtained a Judgment for Unlawful Detainer against its tenant prior to the  
25 CITY'S receiving and denying the CHURCH'S application for CUP in February 2001.

26       25.     The Subject Property consists of a 15,000 square foot building on a 1.4 acre site. The  
27 property is zoned as "C-1 Neighborhood Commercial District" (Lake Elsinore Municipal Code  
28 "LEMC"] 17.44) and is surrounded on all sides by properties zoned C-1 Neighborhood Commercial.  
The property to the immediate south is occupied by a public institutional use and the property to the  
immediate east is another church.

1           26.     The CHURCH is still under contract to purchase the Subject Property and has paid  
2 \$5,000 as a down payment.  Additionally, Plaintiff CHURCH has been paying \$1,500 per month to  
3 Seller SCHOOL since September 11, 2000 for the right to keep the escrow opened and to maintain the  
4 CHURCH’S right to purchase the Subject Property.  Said \$1,500 per month is being paid as a fee and  
5 is not being applied toward the purchase of the Subject Property.  Plaintiff CHURCH and SCHOOL are  
6 ready, willing and able to complete such purchase and sale of the Subject Property.

7           27.     On or about October 24, 2000, the CHURCH filed with Defendant CITY an application  
8 for a Conditional Use Permit (hereinafter referred to as “CUP”) which would allow the renovation and  
9 holding of religious services by the CHURCH on the Subject Property.  Said application was designated  
10 Conditional Use Permit No. 2000-07.

11           28.     Plaintiff CHURCH has complied with all of the requirements for said CUP including the  
12 payment of fees to the CITY in the amount of \$5,000, preparation and filing of an Environmental Impact  
13 Report at a cost to Plaintiff CHURCH of \$1,500 and the preparation of detailed plans for interior and  
14 exterior improvements to the Subject Property.  Plaintiff CHURCH has also paid approximately \$600  
15 for blueprints for submission to the CITY, and approximately \$600 to the County Fire Department.

16           29.     The staff of the CITY prepared a report to the Planning Commission and Design Review  
17 Committee for the Planning Commission hearing on February 21, 2001 (hereinafter referred to as the  
18 “First Staff Report”).  The First Staff Report recommended approval of the CUP.  However, said  
19 recommendation was conditioned upon the CITY'S agreeing to twenty-six (26) separate conditions to  
20 which the CHURCH consented, including a limitation as to the number of seats in the sanctuary in order  
21 to avoid a deficiency in the required parking stalls.  A copy of the First Staff Report is attached hereto,  
22 marked Exhibit "A" and incorporated by reference as if fully set forth herein.  The First Staff Report  
23 stated the following:

24                   “A Church use on a commercial site causes a loss in revenue because churches  
25 are exempt from paying property taxes since they are considered to be non-profit  
26 organizations.  When making a decision as to whether to allow a church to occupy a  
27 commercially designated area, the fiscal impacts should be factored. . . . Therefore, if the  
28 project is approved, this could be considered a permanent loss of tax revenue for this  
site.” (See Exhibit “A”, page 4, paragraph 2).

                  “The proposed project could improve the appearance of this northern edge the  
Historic District [sic] and could assist in the revitalization of the area.  Another possible,

1 indirect, economic benefit to the City could be the number of new persons brought to this  
2 section of the City that may not normally visit the area. These people could be potential  
3 customers for restaurants and retail shops on Main Street.” (See Exhibit “A”, page 4,  
4 paragraph 2).

5 “A finding can be made that a church can provide a service, not a retail service,  
6 but a religious services to the neighboring community.” (See Exhibit “A”, page 5).

7 “The Downtown Merchants Association has been trying to develop different  
8 events to encourage more pedestrian traffic. A church with attendance of 195 people on  
9 Sundays may help the Downtown Merchants Association with that goal.” (See Exhibit  
10 “A”, page 6)

11 “Staff recommends Planning Commission and Design Review Committee  
12 consider adoption of Resolution No. , and the request for approval of Conditional Use  
13 Permit 2000-07 for the conversion of a discount grocery store to a church facility . . .”  
14 (See Exhibit “A”, page 6).

15 30. Nevertheless, on February 21, 2001 the Planning Commission of Defendant CITY denied  
16 the issuance of the CUP on the basis set forth in the minutes of the planning commission hearing. A  
17 copy of said Minutes are attached hereto, marked Exhibit "B" and incorporated by reference as if fully  
18 set forth herein.

19 31. Thereafter the CHURCH filed an Appeal from said denial to the City Council of  
20 Defendant CITY. City staff then prepared a second report (hereinafter referred to as “Second Staff  
21 Report”) on said application, which report outlined to Defendant City Council members arguments upon  
22 which they could approve or deny the application. A copy of the Second Staff Report is attached hereto,  
23 marked Exhibit “C” and is incorporated by reference as if fully set forth herein.

24 32. On March 13, 2000 Defendants SCHIFFNER, BRINLEY, METZE, KELLY and PAPE  
25 as members of the City Council for Defendant CITY voted unanimously to deny said CUP by affirming  
26 the decision of the Planning Commission. The decision of the City Council is recorded in the Minutes  
27 of the City Council meeting and a copy of the Minutes are attached hereto marked as Exhibit "D" and  
28 incorporated by reference as if fully set forth herein. The basis of the City Council’s decision for denial  
is set forth on page 29 of said Minutes (Exhibit “D”) and are as follows:

a. [R]eplacement of the present retail use with a church “would result in the  
loss of a needed service and recycling center serving the general public”;

b. “[T]he conversion . . . may result in the immediate loss of property and  
sales tax revenue and limit future tax revenue . . .”;

c. [The project] “does not have adequate on-site parking”; and



1           37.     The CITY'S actions are also a violation of the Religious Land Use and Institutionalized  
2 Persons Act of 2000 ("RLUIPA"). The CITY'S actions are deliberately designed to chill Plaintiff  
3 HOLMES' and Plaintiff CHURCH congregation's free exercise of religion through individualized  
4 assessments.

5           38.     By letter dated March 13, 2001 Plaintiffs informed Defendants, and each of them, of and  
6 that Plaintiffs believed that denial of a CUP on the Subject Property would be in violation of this federal  
7 law. Defendants, and each of them, therefore, had knowledge of this law. A copy of said  
8 correspondence is attached hereto, marked Exhibit "E" and incorporated by reference as if fully set forth  
9 herein.

10          39.     An actual controversy and dispute exists between the parties hereto, which requires this  
11 Court to decide the issues presented. Plaintiffs have exhausted all of their legislative and administrative  
12 remedies. There is no plain, adequate or speedy remedy at law that is applicable herein.

13          40.     Unless enjoined and restrained by this Court, Plaintiffs' First Amendment rights to free  
14 speech, freedom of assembly, free exercise of religion and equal protection will continue to be violated.  
15 Further, Plaintiffs' rights under the Religious Land Use and Institutionalized Persons Act of 2000 will  
16 also continue to be violated. Plaintiffs have also suffered monetary damages as a result of Defendants'  
17 unconstitutional actions.

18          41.     All of the acts of Defendant CITY, its officers, agents, servants and employees, as alleged  
19 herein, were conducted under the cover and pretense of the statutes, policies, regulations, customs and  
20 the usages of Defendant CITY.

21          42.     Unless Defendants, and each of them are enjoined and restrained from enforcing the  
22 aforesaid Municipal Code against Plaintiffs, and each of them, or in the alternative, that Defendants, and  
23 each of them, are commanded to issue Plaintiff CHURCH a CUP without restrictions as to time and  
24 manner of permitted uses of the aforesaid property, Plaintiffs will continue to suffer irreparable injury.

25          43.     WHEREFORE, Plaintiffs pray for relief against Defendants as hereinafter set forth in the  
26 prayer for relief.

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1 **SECOND CAUSE OF ACTION**

2 **Violation of the Religious Land Use and Institutionalized Persons Act of 2000,**

3 **42 U.S.C. §§2000cc(a)**

4 44. Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1  
5 through 43, inclusive, as though fully set forth herein.

6 45. Plaintiffs allege that Defendant CITY has in place formal or informal procedures or  
7 practices that permit Defendants, and each of them, to make individualized assessments of the proposed  
8 religious use for the Subject Property. Defendant CITY further makes and has in place one or more land  
9 use regulations which direct that no property within the jurisdiction of the CITY may be used as a church  
10 without the prior issuance of a CUP. The conditions of said ordinance constitute a substantial burden  
11 on the religious exercise of Plaintiff and constitute unlawful restrictions on the use of the Subject  
12 Property by Plaintiff.

13 46. Additionally, Defendants' have imposed and implemented, and threaten to impose and  
14 implement, land use regulations in a manner that have imposed a substantial burden on Plaintiffs'  
15 religious exercise. Defendants' actions are not in furtherance of any compelling governmental interest,  
16 nor are they the least restrictive means of furthering any particular governmental interest. Defendants'  
17 actions violate 42 U.S.C. § 2000cc(a).

18 47. As a proximate result of the actions of Defendants, and each of them, Plaintiffs have been  
19 damaged, and continue to be damaged for the costs incurred in applying for the CUP set forth in the  
20 Statement of Facts above and other costs which are presently unknown, but which are within the  
21 jurisdictional limits of this Court, and Plaintiffs will amend their complaint to set forth the nature and  
22 full extent of said damages when the same have been ascertained. Plaintiffs are entitled to an order from  
23 this Court permanently enjoining Defendants, and each of them, from enforcing said land use regulations  
24 against Plaintiffs, and to an Order authorizing the CHURCH to proceed with its renovation and  
25 occupation of said facility.

26 48. Plaintiffs have incurred substantial attorney fees and expenses herein and request that they  
27 be awarded such fees and expenses pursuant to 42 U.S.C. 1988(b) and other applicable statutes.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of the Religious Land Use and Institutionalized Persons Act of 2000,**

3 **42 U.S.C. §§2000cc2(b)(3)**

4 56. Plaintiffs repeat and incorporate by reference the allegations contained in Paragraphs 1  
5 through 55, inclusive, as though fully set forth herein.

6 57. Defendant CITY has enacted a Zoning Ordinance, which constitutes a land use regulation.  
7 Plaintiffs allege that said land use regulation facially excludes religious assemblies from its jurisdiction  
8 or unreasonably limits religious assemblies, institutions, or structures within its jurisdiction. Plaintiffs  
9 allege that said land use regulation facially violates 42 U.S.C. §§2000cc2(b)(3). As applied to Plaintiffs,  
10 Plaintiffs further allege that the CITY'S denial of the CHURCH'S application for the CUP was in  
11 violation of 42 U.S.C. §§2000cc2(b)(3).

12 58. WHEREFORE, Plaintiffs pray for relief against Defendants as hereinafter set forth in the  
13 prayer for relief.

14 **SIXTH CAUSE OF ACTION**

15 **Constitutional Violations (Free Speech/Freedom of Assembly)**

16 59. Plaintiffs repeat and incorporate by reference allegations contained in paragraphs 1  
17 through 58, inclusive, as though fully set forth herein.

18 60. This action arises under the United States Constitution, particularly under the provisions  
19 of the First and Fourteenth amendments to the Constitution of the United States, and Article I, Section  
20 4 of the California Constitution. Defendants' actions as set forth herein violate those Constitutions.

21 61. Defendant CITY'S zoning ordinance and policies, as set forth herein, both on their face  
22 and as applied, abridge Plaintiffs' rights to the freedom of speech.

23 62. Defendant CITY'S zoning ordinance and policies, as set forth herein, both on their face  
24 and as applied, abridge Plaintiffs' rights of free speech because they are content based and violate the  
25 constitutional principle that the government may not discriminate against speech based upon its content  
26 absent a compelling governmental interest.

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1 Institutionalized Persons Act of 2000, the First Amendment to the United States Constitution, the equal  
2 protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section  
3 7 of the California Constitution. Specifically, Plaintiffs contend that the basis of denial of Plaintiff's  
4 application for CUP violates the established laws set forth above, that Defendants' requirement of a CUP  
5 for churches is invalid on its face, and that churches must not be denied a CUP on the basis of lost tax  
6 revenue to the CITY without a compelling governmental interest and that the CITY is entitled to the  
7 issuance of a CUP by Defendant CITY without any restrictions as to attendance, times of services and  
8 related activities.

9 80. Defendants contend that a CUP is required and that they may arbitrarily deny the issuance  
10 of the CUP on the basis of a potential loss of sales and property tax revenue or on the basis that  
11 Defendants prefer a nonreligious use for Subject Property, for any other reason whatsoever. Plaintiffs  
12 dispute such a contention.

13 81. An actual controversy exists between Plaintiffs and Defendants regarding Plaintiffs' rights  
14 under the ordinance and the purported requirement that the CHURCH obtain a CUP prior to its use  
15 thereof. Such a declaration is necessary and appropriate. Plaintiffs desire a declaration as to the validity  
16 of the ordinance, both on its face and as applied to Plaintiffs' activities, and if it is found to be valid,  
17 whether Plaintiffs' above-described activities are a violation of it. A judicial declaration is necessary and  
18 appropriate at this time so that Plaintiffs may ascertain their rights and duties in the premises without  
19 first subjecting themselves to liability for violating the ordinance.

20 WHEREFORE Plaintiffs request judgment against Defendants and each of them as follows:

21 ON ALL CAUSES OF ACTION:

22 1. The Court grant preliminary and permanent injunctive relief preventing Defendants from  
23 requiring a Conditional Use Permit from Elsinore Christian Center or any member thereof regarding the  
24 use and occupation of that certain parcel of real property commonly known as 217 N. Main Street, Lake  
25 Elsinore, California or in the alternative, a mandatory preliminary and permanent injunction  
26 commanding the City of Lake Elsinore to issue a Conditional Use Permit to Plaintiff EL SINORE  
27 CHRISTIAN CENTER permitting Plaintiff CHURCH to hold religious and related services on said real  
28 property at all reasonable times and without other unreasonable restrictions.



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**VERIFICATION**

I, James Hilbrant, a citizen of the United States and a resident of California, have read the foregoing Verified Complaint, and declare under the penalty of perjury that the foregoing is true and correct.

Executed this the 29<sup>th</sup> day of May, 2001.

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James Hilbrant, Pastor  
Elsinore Christian Center