We have reviewed the Robbinsdale City Council’s determination that the Kyles have violated the City’s “single family” occupancy ordinance.

In our view, if the City chose to enforce its decision, the decision will not withstand judicial scrutiny. This is because: (1) the grievance at issue is purely private and the City’s ordinances do not allow the City to enforce its ordinances for purely private grievances—the ordinances expressly require public, community harm as a condition to enforcement; and (2) in advising the City, the City’s lawyers have relied upon inapplicable legal authority that fails to recognize that the Kyles’ are using their property for faith-based purposes that is protected by the First Amendment (Free Exercise Clause) and possibly the Minnesota Human Rights Act. As such, the Kyles’ faith-based use of their home will be subject to a “strict scrutiny,” “compelling governmental interest” standard of review and not the “rational basis” test cited in the City’s legal memorandum.

**I. Robbinsdale City Ordinances Require Public, Not Private, Harm as a Condition to City Enforcement**

Apparently overlooked by the City in its decision and debate is the fact that section 425.07 of the Robbinsdale City Ordinances requires that the City’s enforce its property management code “exclusively for the purpose of promoting public, as opposed to private, welfare”:

425.07. Discrimination and privacy. The PMC is to **be enforced exclusively for the purpose of promoting public, as opposed to private, welfare.** Except as may be specifically provided herein or incidental to the enforcement hereof, the PMC is **not intended to interfere with personal privacy or with private legal rights and liabilities,** including without limitation landlord/tenant and lessor/lessee relationships**. In enacting and enforcing the PMC, the City neither expressly nor by implication assumes any obligations or liabilities respecting such private rights or disputes, including those which involve or arise out of the non-conformity of any premises in the City to the provisions of the PMC.**

Robbins. Ord. § 425.07 (emphasis supplied).

Section 425.07 clearly prohibits the City from employing its police enforcement power to protect purely private interests.

We have listened to the tape of the neighbor’s testimony and complaints to the City’s Planning Commission. The neighbor complains of: (1) children walking on her newly planted grass and picking flowers in her yard; (2) children’s soccer balls rolling into her chives and raspberries; (3) Kyle residents walking on the pathway on the side of the Kyles house and on the Kyle property to enter the Kyle property from the back; (4) an unspecific and vague noise and traffic complaint that was not shared by any other neighbor who testified, is not corroborated by City Police Chief who lives on the other side of the Kyles, and is not affirmed by any of the 38 neighbors who signed the petition supporting the Kyles. In the public record that would be presented to a court, there is therefore no evidence that Kyles’ use of their home has caused any public, community harm.

Because the grievances in the record are purely private concerns—concerns that do not involve the community or other neighbors—section 425.07 prohibits the City from taking any enforcement action even if the Kyles are in technical violation of the single family rules. Section 425.07 expressly prohibits what the Kyles’ neighbor appears to be attempting to do here—using and abusing the City and its police power to enforce a private grievance.

Please note, we find the neighbor’s concerns to be sincere. And the reality is that her sincere complaints will not withstand a dispassionate application of the law. If the new neighbor desires to resolve her grievances through a lawsuit, a sober and sane court will inform her that her best route would be to politely knock on the Kyles’ door and ask that the children in the house stay off of her lawn. She will have no success bringing her own lawsuit against the Kyles and if she does she will likely end up paying the Kyle’s attorneys fees for the reasons cited below.

**II.** **The Kyles’ Use of Their Home For a Faith-Based Ministry that Provides Discerning Shelter for People in Need is a Use Protected by the Free Exercise Clause of the First Amendment.**

It is clear from the Kyles’ testimony and the many letters of support submitted by the Kyles that the Kyles are using their property for a faith-based ministry. Although the Kyles are obviously Christian, it also appears from the letters and testimony that their hospitality and charity is not limited to fellow Christians.

Putting aside for a moment the very clear enforcement limitations imposed on the City by section 425.07 above which we believe is dispositive in the Kyles’ favor, because the Kyles are using their home for faith-based purposes, if the City or the neighbor attempts to enforce code violation, we believe that a court will apply First Amendment, Free Exercise principles. In our view, the City would have to prove that its forcible removal (or threat thereof) of the non-blood residents—including a single, Native American mother and her two daughters—from the Kyles home was a “narrowly tailored” response to a “compelling” City interest. Trinity Lutheran Church v. Comer, 582 U.S. \_\_ (2017); Wisconsin v. Yoder, 406 U.S. 205 (1972).

Because all of the complaints in the record are private grievances coming from one new-to-the-neighborhood neighbor, the City appears to bear the impossible burden of proving that the City (not the new neighbor) has a compelling interest in physically removing a mother and her two children from the Kyle home when one neighbor out of 39 has complained about issues that, even if true, only affect that one neighbor. This is made doubly difficult when the City’s own Chief of Police who lives on the other side of the Kyles does not share the new neighbor’s complaints and has asked the City on the record to apply “the spirit” of the law and to refrain from enforcing the ordinance against the Kyles.

In our view, the cases cited by the City, Village of Euclid v. Amber, 272 U.S. 365 (1926) and Belle Terre v. Boras, 416 U.S. 1 (1974) are inapplicable because the property owners in these cases, unlike the Kyles in the present case, were not using their properties for faith-based purposes and did not have the nearly unanimous support of their neighbors. These commercial/investment cases did not therefore involve property use protected by the First Amendment and so did not trigger the “strict scrutiny”/”compelling governmental interest” standard of review test.

Village of Euclid involved a real estate developer and speculator who alleged that the City’s re-zoning of a fraction of its property was an unconstitutional monetary taking. Belle Terre involved a property owner who wanted to maximize the income value of a zoned single family home by subdividing it and renting six separate units to unrelated college students with no homeowner present and thus no means for responsibly managing the property. The Belle Terre owner, unlike the Kyles, was not using the property for faith-based purposes, did not have the support of his neighbors, and was seeking only pecuniary gain. In our view, the Kyles’ use of their home as a faith-based ministry makes the Belle Terre case and its economic, rational basis test irrelevant to a proper legal analysis.

Finally, even applying the economic, “rational basis” standard of review in Belle Terre and Village of Euclid, a clear-thinking court will nevertheless likely find that the City’s enforcement was arbitrary and capricious. This is because the record clearly shows that if the City were to physically remove four non-blood relatives from an eight person household with over 6000 square feet of well kept, idyllic living space, then the Kyles could relatively quickly move 21blood-related Kyle family members into the house and not be in violation of the single family provision. Presumably, this would only exacerbate all of the new neighbor’s purely private grievances. We believe that this fact should move the City in the direction of solving this problem by amending its occupancy Code to accommodate the problem its predecessors created by allowing a 6000-plus square foot house to be built in Robbinsdale. The suggestion proposed by the engineer couple that testified seems to make the most sense—amend the Code to limit occupancy by a formula of people per square feet or number of people per bedroom. A formula of 1 person per 300 square feet or 2 people per bedroom would be consistent with the present limitations and would at the same time accommodate the Kyles. As we see it, a reviewing Court will see this solution clearly.

In sum, because there is no evidence of any public or community harm in the present case, the City cannot enforce its single family ordinance against the Kyles without violating section 425.07. Any enforcement will also violate the Kyles’ First Amendment rights to use their property to freely exercise their faith and will trigger a strict scrutiny, compelling governmental interest standard of review. Finally, if the City moves or threatens to remove a single, Native American mother and her two children, the mother herself may also have a claim under the Minnesota Human Rights Act.