

**Date:** May 8, 2013

**To:** City Manager, Mayor and Members of Council

**From:** John P. Curp, City Solicitor   
Sean Suder, Chief Counsel for Land Use and Planning

**Copies to:** David L. Holmes, Scott C. Stiles, Assistant City Managers; Charles C. Graves, III, Director, City Planning and Buildings; Amit Ghosh, P.E., Chief Building Official; Michael Cervay, Director, Community Development; Aaron Herzig, Deputy City Solicitor; Terry Nestor, Chief Counsel, Litigation

**Subject:** **FYI - *State ex rel. Phillips Supply Co., et al. v. City of Cincinnati, et al.***  
**(City Gospel Mission)**

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Today, the Supreme Court of Ohio declined jurisdiction in the City Gospel Mission case. The decision of the First District Court of Appeals of Ohio to uphold the constitutionality of Ordinance No. 223-2011 (“Notwithstanding Ordinance”) and to refuse to extend statutory taxpayer standing to the neighboring Queensgate businesses stands.

By way of background, several Queensgate businesses filed suit to challenge the constitutionality of Ordinance No. 223-2011 (“Notwithstanding Ordinance”), which provides the City Gospel Mission with the conditional right to operate a special assistance shelter on the property located at 1801-1805 Dalton Avenue in Queensgate.

The Hamilton County Court of Common Pleas and the First District Court of Appeals rejected the businesses’ arguments and upheld the constitutionality of the Notwithstanding Ordinance as a lawful exercise of City Council’s powers. The courts appropriately refused to second guess the wisdom of City Council’s legislative judgments. The Court of Appeals also held that the Queensgate businesses lack standing to pursue their taxpayer claim for injunctive relief and rejected the businesses’ spot zoning argument.

Relatedly, the City has issued building permits for the City Gospel Mission, which the Queensgate businesses have challenged before the Zoning Board of Appeals. The Zoning Board of Appeals upheld the issuance of the permits. We anticipate that the businesses will appeal that decision to the Hamilton County Court of Common Pleas.

If you have any questions, please contact me or Sean Suder at 352-3328.