

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAYMARKET DUPAGE, LLC.,)	
)	
Plaintiff,)	
)	No. 22 C 160
v.)	
)	Judge Seeger
VILLAGE OF ITASCA, <i>et al.</i> ,)	
)	
Defendants.)	

UNITED STATES’ MOTION TO INTERVENE AS PLAINTIFF

The United States of America moves to intervene as a plaintiff in this action, as of right or by permission, under Federal Rule of Civil Procedure 24(a)(2), (b), and in support states as follows:

1. Haymarket DuPage, LLC, has brought this civil rights action against the Village of Itasca, its Plan Commission, and its mayor for their alleged misconduct in reviewing and denying Haymarket’s request for zoning approval to use its property as a treatment center for people with substance-use disorders and other disabilities protected under federal law. Dkt. 81 (“Am. Compl.”). In its amended complaint, Haymarket seeks damages and declaratory and injunctive relief for alleged violations of the Fair Housing Amendments Act, 42 U.S.C. § 3602, *et seq.*; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 12101, *et seq.*; and Illinois law. *Id.*

2. In November 2021, the U.S. Department of Justice opened an investigation into the Village’s compliance with Title II of the ADA and its implementing regulations, soon after the Village had issued a final denial of Haymarket’s zoning request for its proposed treatment center earlier that month. Am. Compl. at Ex. A. The Department of Justice has since completed an extensive investigation and substantiated Haymarket’s claim that the Village violated Title II of

the ADA in reviewing and denying its zoning request.

3. The United States now moves to intervene in this action as of right or by permission under Rule 24 by filing its complaint in intervention, attached here as Exhibit A, to hold the Village to account for violating Title II of the ADA and its implementing regulations. Ex. A. As the United States alleges, the Village engaged in disparate treatment based on the disabilities of Haymarket’s prospective clients by, among other things, tainting the zoning review process with discriminatory animus, subjecting Haymarket to artificially onerous zoning requirements, and invoking pretextual concerns in denying zoning approval. *Id.* The Village also failed to comply with its obligations to provide reasonable modifications under the ADA even had its purported reasons for the zoning denial been sincere. *Id.* The United States seeks declaratory, injunctive, and monetary relief for the Village’s ADA violations. *Id.*

4. The United States moves to intervene as of right based on its core interests regarding the ADA and its implementing regulations involved in this disability discrimination action, which may be impaired or impeded if this action is disposed, and the current parties cannot adequately represent those interests. Fed. R. Civ. P. 24(a)(2).

5. The United States, including its Department of Justice, has institutional interests in ensuring that public entities comply with and are held appropriately accountable for violating the ADA and its implementing regulations. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Congress recognized those interests in enacting the ADA in intending for “the Federal Government” to play “a central role in enforcing the standards established” in the statute “on behalf of individuals with disabilities.” § 12101(b)(3). Congress also enacted the ADA to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” 42 U.S.C. § 12101(b)(1), and “clear, strong, consistent, enforceable standards

addressing discrimination against individuals with disabilities,” § 12101(b)(2).

6. The United States’ interests are also at stake here because this action concerns ADA regulations that its Department of Justice and Attorney General promulgate, administer, and enforce. Am. Compl. ¶¶ 42-54; 42 U.S.C. § 12134(a) (directing the Attorney General to promulgate ADA regulations); *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 750-51 (7th Cir. 2006) (describing the Attorney General’s role, at the instruction of Congress, in implementing Title II regulations); *Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) (reversing appellate court’s denial of state attorney general’s motion to intervene as an abuse of discretion while recognizing that the government’s “opportunity to defend its laws in federal court should not be lightly cut off.”); *Melendres v. Arpaio*, 2015 WL 11071095, at *1 (D. Az. Aug. 13, 2015) (recognizing the interests of the United States and its Department of Justice in ensuring the effective enforcement of civil rights laws in granting motion to intervene).

7. The core interests above may be impaired or impeded if this action is disposed, and the current parties cannot adequately represent those interests. Fed. R. Civ. P. 24(a)(2). Private parties do not and cannot represent the views of the federal government on the proper interpretation and application of the ADA and the Department of Justice’s implementing regulations. *Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006) (governmental interests in statutes and regulations may be impaired based on *stare decisis* considerations); *Wilson v. Amoco Corp.*, 33 F. Supp. 2d 981, 986-87 (D. Wyo. 1998) (state agency’s motion to intervene proper under Rule 24(a)(2)). The court should therefore grant the United States’ request to intervene as of right under Rule 24(a)(2).

8. Alternatively, the United States asks for permission to intervention under both grounds in Rule 24(b). Initially, the United States’ claims share common questions of law and fact

with Haymarket's main action. Fed. R. Civ. P. 24(b)(1). The United States wishes to press the common claim also at issue in Haymarket's action that the Village engaged in disparate treatment under Title II of the ADA and its implementing regulations in reviewing and denying Haymarket's zoning request. *Compare* Am. Compl., with Ex. A. Accordingly, the claims and action present common questions of law concerning the requirements Title II of the ADA and its implementing regulations imposed on the Village during the zoning review process as well as common questions of fact involving the Village's review and denial of Haymarket's zoning request. *Id.*

9. Granting permissive intervention is also proper under Rule 24(b)(2) because the United States' claims are based on the ADA and its implementing regulations, which the Department of Justice and its Attorney General administer, enforce, or promulgate. *Disability Advocates, Inc. v. Paterson*, 2009 WL 4506301, at *2 (E.D.N.Y. Nov. 23, 2009) (permitting the United States to intervene under Rule 24(b)(2) in Title II ADA action); 7C Wright & Miller, *Federal Practice & Procedure* § 1912 (2024) (collecting cases showing that "the whole thrust of the amendment" concerning permissive intervention for the government under Rule 24(b)(2) "is in the direction of allowing intervention liberally to government agencies and officers seeking to speak for the public interest," and "courts have permitted intervention accordingly."). The United States' interests in these matters are paramount for the reasons explained above.

10. Whether the court allows the United States to intervene as of right or by permission, intervention will not unduly delay or prejudice the adjudication of the original parties' rights, and this motion is timely. Fed. R. Civ. P. 24(b)(3); *see also Cameron*, 595 U.S. at 280-81; *Nat'l Ass'n for Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973)), *Paterson*, 2009 WL 4506301, at *2.

11. The United States has diligently conducted an extensive investigation, which

commenced after the Village issued a final denial of Haymarket's zoning request and was completed while this action is still at an early stage of litigation. Two months ago, Haymarket filed its amended complaint naming new parties—the Plan Commission and mayor. Am. Compl. Last month, the defendants filed an answer, and the court entered a discovery schedule. Dkts. 81-85. The parties have also been aware of and participated in the United States' investigation.

12. Intervention will also cause no delay or prejudice because the United States plans to press claims that overlap with Haymarket's ADA claims and seeks no extensions of the current discovery schedule, under which fact discovery is set to close in January 2025. *See Disability Advocates*, 2009 WL 4506301, at *2. Rather, the United States is already deeply familiar with the underlying facts and claims based on its thorough investigation and can even hasten resolution based on its expertise in the ADA and regulatory issues at the heart of this case. The United States' vital interests relating to those civil rights matters would be prejudiced were this motion denied.

13. On June 20, 2024, counsel for the United States conferred with counsel for all parties in this action about the relief requested in this motion. Haymarket urges the court to grant the United States' motion to intervene, and counsel for the defense requested time to review the motion prior to taking a position.

WHEREFORE, the United States should be granted leave to intervene as a plaintiff in this action under Federal Rule of Civil Procedure 24 by filing its attached complaint in intervention.

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAYMARKET DUPAGE, LLC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
VILLAGE OF ITASCA, <i>et al.</i> ,)	
)	
Defendants.)	No. 22 C 160
<hr/>)	
UNITED STATES OF AMERICA,)	Judge Seeger
)	
Plaintiff,)	
)	
v.)	
)	
VILLAGE OF ITASCA,)	
)	
Defendant.)	

COMPLAINT IN INTERVENTION OF THE UNITED STATES OF AMERICA

The United States of America, having moved for and been granted leave to intervene in this action, alleges as follows:

Introduction

1. The United States brings this disability rights enforcement action against the Village of Itasca, Illinois, for violating Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35. The Village engaged in unlawful disability discrimination in reviewing—and ultimately denying—a zoning request that Haymarket DuPage, LLC, (“Haymarket”) filed for authority to use its property as a treatment center for people with substance-use disorders. The United States seeks declaratory, injunctive, and monetary remedies.

2. Congress enacted the ADA in 1990 to remedy widespread discrimination against individuals with disabilities. The ADA and its implementing regulations protect these individuals, including those with substance-use disorders, from discriminatory zoning decisions by public entities, including those the Village committed here. § 12132.

3. Haymarket is an organization run by an acclaimed team of experts in substance-use disorders and related mental health disabilities who manage the largest treatment center for these conditions in the Chicagoland area. In 2019, Haymarket contracted to purchase a five-story hotel in Itasca with plans to repurpose it into a specialized treatment center offering a full continuum of healthcare services tailored to diagnose, treat, and care for patients with substance-use disorders. But public outrage erupted immediately after residents learned about the proposal and intensified after Haymarket applied to the Village for zoning approval.

4. The Village engaged in disparate treatment by employing a host of unprecedented and highly anomalous tactics to frustrate Haymarket's treatment center proposal. As one primary tactic, Village officials—especially Mayor Jeffrey Pruyn—legitimized, endorsed, and fanned the flames of residents' fears by issuing scores of public statements disparaging Haymarket and its supporters while urging residents to voice their fears and concerns at zoning hearings. Just as the officials intended, the discriminatory opposition movement swelled, seeped into the hearings, and persisted until it ultimately tainted the decision-making process.

5. Village officials also concocted a pretextual narrative that the treatment center would impose severe economic harms on the region and its taxing bodies. To accomplish this, before the zoning hearings began, the Village: (1) misclassified the treatment center as a planned development instead of a "health center" special use; (2) waged a public campaign against Haymarket that focused the public discourse on its pretextual economic concerns while amplifying

residents' fears; and (3) drew the Itasca Fire Protection District ("Fire District") and Itasca School District 10 ("School District") into the zoning process as "interested parties" to oppose Haymarket.

6. The misclassification imposed onerous zoning requirements on Haymarket, most notably by requiring it to prove, with assistance from experts and attorneys, that the center would impose no economic harms on the region. The public campaign disseminated pretextual economic talking points to Haymarket's opponents and further fomented opposition. And the "interested party" designations allowed the Fire and School Districts to leverage nearly trial-like due process rights to help the Village bury Haymarket's proposal under baseless economic concerns.

7. Collectively, these improper tactics aimed at defeating Haymarket's proposal by refocusing the zoning hearings on manufactured economic impact concerns, and away from the discriminatory concerns mounting amongst residents and public officials. The tactics prejudiced Haymarket by galvanizing the discriminatory opposition movement around made-up economic impact claims and converting what should have been a routine special-use zoning proceeding into an unprecedented and openly hostile zoning process involving 35 hearings lasting over two years, with heavy participation from attorneys and experts, and imposing staggering costs for Haymarket.

8. After the hearings concluded, the Village denied zoning approval based on pretextual economic impact concerns that (1) the Village would lose desperately needed tax revenue if a nonprofit rather than a hotel operated at the site; (2) Haymarket's patients would require costly emergency medical services from the Fire District; and (3) Haymarket patients or their children would overwhelm the local K-8 School District. During the hearings, Haymarket had offered overwhelming proof that these purported concerns were unlawfully considered and baseless, and it made extraordinary concessions to resolve them anyway. But these efforts fell on deaf ears because they spoke only to concerns that were pretext for discrimination.

9. Lastly, the Village failed to fulfill its accommodation obligations under the ADA prior to denying Haymarket's zoning request. First, the Village failed to accommodate Haymarket's reasonable request to use its special-use process. And second, the Village conducted a fake accommodations analysis after deliberately breaking down and failing to conduct any meaningful interactive process that might have revealed solutions to its purported concerns.

Jurisdiction and Venue

10. The court has subject matter jurisdiction over this ADA action under 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. § 3614(a). The court may grant the relief the United States requests in this action under 42 U.S.C. § 12133, 29 U.S.C. § 794a, and 28 U.S.C. §§ 2201, 2202.

11. Venue lies in the Northern District of Illinois under 28 U.S.C. § 1391(b). The Village resides in this district, and the events or omissions giving rise to the claims occurred here.

Parties

12. The plaintiff is the United States of America, which is authorized to enforce the ADA under 42 U.S.C. § 12188(b)(1)(B) through the United States Department of Justice.

13. The defendant is the Village of Itasca, a non-home-rule Illinois municipality in DuPage County, organized under the laws of the State of Illinois, including the Illinois Constitution and Illinois Municipal Code. Ill. Const. art. 7, § 1; 65 Ill. Comp. Stat. § 5/1-1-1, *et seq.* The Village is a public entity under the ADA. 42 U.S.C. § 12131(1)(A)-(B).

Title II of the ADA and Implementing Regulations

14. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. This protects individuals with disabilities, including those with substance-use

disorders, from discriminatory zoning decisions by public entities, 28 C.F.R. § 35.131, which include “any State or local government,” 42 U.S.C. § 12131(1)(A)-(B).

15. Federal regulations implementing the ADA in 28 C.F.R. § 35.130 further spell out Title II protections, including by imposing specific prohibitions and obligations on public entities, such as the obligation to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability. § 35.130(b)(7)(i).

Factual Background

I. Haymarket Center and Its Effort to Expand into DuPage County

16. Haymarket Center is a nonprofit healthcare provider formed in 1972 that has distinguished itself as one of Chicagoland’s leading actors in diagnosing, treating, and caring for patients with substance-use disorders and related mental health disabilities. The nonprofit operates an existing treatment center for these conditions in the area that serves about 12,000 people annually, regardless of their ability to pay.

17. Haymarket Center’s main treatment center is in Chicago’s West Loop neighborhood and offers a broad range of services, such as detoxification support, inpatient and outpatient treatment programs, primary medical and pediatric care, and a program allowing mothers in treatment to remain with their children.

18. Treatment centers devoted to caring for patients with substance-use disorders are urgently needed. The latest National Survey on Drug Use and Health, a survey conducted annually by the Substance Abuse and Mental Health Services Administration, found that in 2022, “48.7 million people aged 12 or older” had “a substance use disorder,” including “29.5 million who had

an alcohol use disorder, 27.2 million who had a drug use disorder, and 8.0 million people who had both an alcohol use disorder and a drug use disorder.”¹

19. For years, Haymarket Center has sought to expand into Chicago’s western suburbs of DuPage County due to the urgent need for treatment centers there. DuPage County is the second most populous county in Illinois, home to about a million people, and has been hit hard by the opioid crisis, a rapid spread in the overuse of opioid medications that has destroyed countless lives.

20. In 2019, Haymarket learned that a vacant, five-story, 168-room Holiday Inn at 860 West Irving Park Road (the “Property”) was for sale in the Village of Itasca, a suburb in DuPage County roughly 25 miles northwest of Chicago. The Property offered a highly favorable buildout opportunity together with an ideal location for a new treatment center. It was isolated in a business zoning district that was separated from the nearest residences, parks, schools, or daycares by over half a mile and a highway, as depicted in attached Exhibit A.

21. Haymarket contracted to acquire the property in April 2019. Then, after extensive planning, Haymarket developed a proposal to repurpose the hotel into a specialized treatment center for patients with substance-use disorders and mental health disabilities. The treatment center would provide four treatment options—detox, inpatient treatment, outpatient treatment, and recovery homes—that are used in different combinations based on a patient’s individualized assessment to successfully treat substance-use disorders. Haymarket would admit patients into the center without regard to their ability to pay and only after conducting background checks to prevent admission of violent criminals or sex offenders.

¹ Substance Abuse and Mental Health Admin., HHS Publication No. PEP23-07-01-006, NSDUH Series H-58, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health (2023)*, at <https://www.samhsa.gov/data/report/2022-nsduh-annual-national-report> (last visited Feb. 22, 2024).

22. Haymarket garnered support before applying for zoning approval to operate the center. Endorsements flowed in from more than 60 elected officials, community groups, and others due to its team's sterling reputation and the urgent need for the center. Still, local legislators and the regional newspaper's editorial board anticipated opposition from Itasca residents.

II. Residents Formed an Unprecedented Discriminatory Opposition Movement.

23. As predicted, Itasca residents began meeting to oppose the Haymarket treatment center immediately after learning about the proposal. Residents met with Village Mayor Jeffrey Pruyn as early as April 2019 and later attended a Village Board meeting to voice fears that Haymarket's patients would pose safety threats. Thereafter, many coalesced into an active community group called the "Concerned Citizens of Itasca," which stoked discriminatory fears.

24. In July, the Concerned Citizens issued an open letter to elected officials protesting that the treatment center would be "unacceptably close to public facilities geared towards children, such as our public library and waterpark, and youth-focused businesses." The letter also claimed that the center would lead to an increase in "drug-related crimes in the immediate area."

25. The group also fueled opposition by distributing a flyer, titled "The Truth About Haymarket," which falsely stated that the center would house criminals by offering "alternative to incarceration programs," and imperil children. The flyer further warned that the center would be "near many children-based businesses and schools, including the pool, library, and nature center."

26. Residents also created the "No Haymarket Itasca" Facebook page, which amassed over 1,400 members, as well as an opposition website, *NoItascaHaymarket.com*. An avalanche of social media posts stated, among other things, that Haymarket sought to bring a "crack house" to the community, turn Itasca into a "ghetto," and draw patients that would endanger children.

27. Residents also directly conveyed discriminatory fears to the press. The Chicago Tribune reported that an owner of a business across from the Haymarket site said that Haymarket

patients “are going to wander here, they’re going to shoplift because they’re just going to be looking for money or drugs. They don’t care what they take.” ABC7 Chicago reported that a resident said the center would be “too close to schools, to libraries, to the pool and to the train.” Media articles were awash with such statements leading up to the first substantive zoning hearing.

28. The community’s panic reached a climax on September 18, 2019, the date scheduled for the first substantive zoning hearing. Summarizing the tense atmosphere leading up to the hearing, a member of the Chicago Tribune Editorial Board opined that the opposition was indicative of a “NIMBY, or not in my backyard, attitude,” adding that there was “no question members of the [Village] board will be under rigorous pressure to reject” Haymarket’s proposal. Roughly 1,500 residents marched against Haymarket—a whopping 18% of the Village’s population. The Concerned Citizens of Itasca distributed 1,300 campaign-like “No Haymarket” signs in the area, and residents wore “small town proud” T-shirts. Crowds arrived in such force that the Village canceled the hearing when the forum exceeded capacity.

III. The Village Tainted the Zoning Process Prior to the First Hearing.

29. Residents’ discriminatory and unprecedented opposition did not occur in a vacuum. Rather, Village officials—themselves personally opposed to the treatment center at the outset—strategically fostered the opposition and engaged in a host of other highly anomalous efforts to taint the atmosphere leading up to the first zoning hearing.

A. The Village Misclassified Haymarket’s Proposed Treatment Center.

30. First, Village officials sought to thwart the treatment center proposal by unlawfully requiring Haymarket to secure zoning approval under its demanding *planned-development* zoning process rather than the *special-use* process that actually applied.

31. Haymarket’s proposed treatment center Property is situated in the Village’s B-2 business zoning district, which allows for an array of special uses, such as “healthcare centers, including clinics and hospitals.” Itasca Zoning Ordinance (“IZO”) § 8.04(2)(m).

32. Under well-established Illinois law, the Village’s enactment of legislation designating “health centers” as a “special use” in the B-2 zoning district amounts to a legislative determination that the use is compatible with, belongs in, and serves the public welfare in that district. But owners must still apply for special-use approval to use property as a “health center” there, since the Village retains the authority to evaluate limited matters like whether the proposed use, based on its “unique character,” will adversely impact neighboring property, such as by reducing property values. § 14.11(1) (special-use definition), (4) (special-use approval standards).

33. In April 2019, Haymarket informed Village officials that it planned to apply for “health center” special-use approval. Under the Itasca Zoning Ordinance, a place qualifies as a “hospital” (and thus a “health center”) if it is primarily devoted to operating and maintaining facilities to diagnose and treat or care for patients seeking medical care. § 3.02 (“health center” definition). Accordingly, Haymarket’s treatment center, which would be primarily devoted to diagnosing, treating, and caring for patients with substance-use disorders, easily satisfied the definition of a “hospital” (and thus a “health center,” too).

34. Despite this, the Village prohibited Haymarket from applying for “health center” special-use approval, claiming that the treatment center consisted of two wholly distinct uses—a “medical” (*i.e.*, “health center”) use and a “residential use”—rather than just a “health center” use. The Village isolated the treatment center’s “recovery home portion” as the distinct “residential” use on the purported basis that the recovery homes would offer patients beds and allow for long-

term stays lasting up to a year, unlike the rest of the center. The Village then required Haymarket to apply for planned-development approval instead of “health center” special-use approval.

35. The Village’s decision had multiple obvious flaws and ran counter to its own zoning code. Initially, the Village wholly ignored that recovery homes serve *medical* purposes; they *treat* patients diagnosed with and *recovering from* substance-use disorders by offering a structured, sober group setting supervised by professionals specifically trained in providing substance abuse treatment. The recovery home setting, among other things, helps patients who choose that modality of care to avoid relapse and recover by relying on others undergoing similar experiences.

36. The Village also glaringly overlooked that the ordinance definition of a “hospital” unambiguously states two times that patients’ potential length of stay is wholly irrelevant to whether a place qualifies as a “hospital.” The definition states that a place should qualify as a “hospital” whether patients stay “overnight or longer” and “without regard to length of stay.” *Id.*

37. Still further, the definition explicitly identifies as examples of “hospitals” multiple types of medical facilities that offer beds or homes for long-term stays, including maternity homes, lying-in-homes, homes for unwed mothers in which aid is given during delivery, sanitarium, and mental hospitals. *Id.* But the Village stated that Haymarket’s recovery homes could not qualify as being part of a “hospital” because they offered beds for long-term stays.

38. Despite these and other obvious flaws, the Village stood on its decision to misclassify the treatment center, aiming to frustrate Haymarket’s zoning request and disguise the discriminatory opposition mounting amongst residents and public officials.

39. The misclassification decision severely prejudiced Haymarket. The planned-development process is far more costly, lengthy, and complex than the “health center” special-use process. Because the planned-development process generally applies to ambitious development

projects seeking to convert vacant plots into combined-use real estate that deviates from ordinary zoning requirements, it involves more public hearings, scores of application filings, heavy attorney and expert involvement, and consideration of a wide array of substantive approval factors. § 14.12.

40. The process also dramatically broadens the scope of permissible zoning considerations, most notably by allowing the Village to assess whether the proposed use would be economically advantageous for the region and its taxing bodies. The Village exploited this aspect of the process soon after misclassifying the treatment center by requiring Haymarket to submit an economic impact statement (“EIS”), which requires “a tax impact study detailing the impact which the planned development will have upon all taxing bodies.” § 14.12(4)(a)(5)(c)(3).

41. Even standing alone, the EIS submission and economic study supporting it imposed substantial costs on Haymarket and delayed the start of the zoning hearings by over a month. But costs and delay exponentially increased as Haymarket then had to defend itself during zoning hearings against wholly baseless economic impact concerns pertaining to Itasca’s taxing bodies that public officials and residents raised to rout the proposal. The broadened economic scope of the planned-development process greatly contributed to causing Haymarket to progress through an unprecedented and adversarial zoning process lasting over two years and involving 35 hearings and heavy expert, attorney, and fact witness involvement.

42. Had the Village correctly classified the treatment center as a “health center” special use—a use that the Village determined to be compatible with, belong in, and serve the public welfare in the B-2 district by designating it as a special use there—, the Village’s analysis would have been limited to routine considerations such as whether there is a need for the treatment center and whether the treatment center would adversely affect nearby properties. Haymarket’s treatment center proposal easily satisfied the special-use standards that should have been applied to it.

B. The Village's Mayor Publicly Campaigned Against Haymarket.

43. As the Village defended the misclassification decision, Village Mayor Jeff Pruyn leveraged the economic impact feature unique to the planned-development process to publicly advance a pretextual narrative that Haymarket would impose disastrous economic harms on the region and all its taxing bodies—even before gathering evidence about these purported concerns. He also publicly accused Haymarket of lacking transparency, disparaged its supporters, and amplified residents' fears while encouraging those who harbored them to attend hearings.

44. On June 21, 2019, weeks before Haymarket had even filed a zoning application, Pruyn released his first public statement opposing Haymarket on the Village's website. There, he promised to keep an open mind and engage in an evenhanded and transparent zoning process. But in the same breath, he announced that Itasca's taxing bodies, including the Village and Fire and School Districts, would lose desperately needed tax revenue if Haymarket secured zoning approval. He stated that the taxing bodies annually received about \$225,000 in taxes from the hotel the treatment center would replace, which would "be permanently lost if the property is converted to a nonprofit use and removed from the tax rolls." He then went on to publicly disparage the more-than-60 elected officials who had endorsed Haymarket's proposal.

45. Two days later, on June 23, 2019, the Daily Herald (a regional newspaper) published a letter Pruyn had submitted, wherein he castigated the paper for reporting that no tax dollars would be involved if the Village approved Haymarket's zoning request and continued disparaging Haymarket's supporters.

46. Four days afterwards, on June 27, the Village hired a public relations firm, Strategia Consulting, LLC, to assist the mayor in his public campaign against Haymarket. Strategia describes itself as "a hard-hitting, high-performance communications, crisis management and government affairs team of award-winning strategists, thought leaders and communications

experts.” The firm helped the mayor prepare public statements and strategize throughout the zoning process. The Village had never retained a firm like Strategia for any other zoning matter.

47. Later, on July 3, Haymarket filed its zoning applications, and two weeks afterwards on July 16, Pruyn issued another public letter, criticizing Haymarket for failing to submit an EIS with its application. He stressed: “The economic impact statement is incredibly important. Without these, we have no way of knowing what, if any, impact Haymarket’s petition will have for the Village, our resources, or the resources of other government services.” He also announced that residents had expressed “frustrations and fears” about the proposal and urged residents to voice their concerns at the first zoning hearing scheduled for September 2019.

48. In mid-July, Pruyn began meeting with public officials and residents opposed to Haymarket, including members of the Concerned Citizens of Itasca. He compiled questions from these opponents into a formal questionnaire, which he had published on the Village’s website on July 22. He later submitted the questionnaire for publication to the Daily Herald. The questionnaire posed security-related questions implying that Haymarket’s patients would pose serious public safety threats. They asked, for example, “Are you asking to put a fence around the property?” “Are people using your facility allowed to leave?” “Do you expect law enforcement to assist in recovering an AWOL resident?”

49. Pruyn then went further by repeatedly deriding Haymarket in the public sphere for failing to fully respond (to his liking) to the questionnaire—including the security questions. In August, for example, the mayor publicly stated: “I have been extremely disappointed by Haymarket’s lack of transparency and responsiveness throughout this process. Since day one, Haymarket’s plans have been cloaked in secrecy.” He added that he was “shocked to learn” that Haymarket had “secretly lobbied political heavyweights throughout the country.”

50. The mayor had issued the questionnaire to mine bad information and amplify baseless and discriminatory concerns about Haymarket’s proposal—not to learn answers. The security questions were especially discriminatory, as they assumed, without any supporting evidence, that Haymarket’s patients would pose safety threats. Still, Haymarket responded to the questionnaire in August and supplemented its responses in September. Haymarket’s CEO also gave the mayor a private tour of Haymarket’s Chicago facility and answered all his questions.

51. In the meantime, Pruyn continued releasing a torrent of statements posing purported economic harms on the region all the way up to the first zoning hearing. On July 23, 2019, Pruyn said to the Daily Herald, “From the potential increase in the utilization of our village resources and the unknown change in tax revenue, there are concerns that need to be explored.” On August 9, the Daily Herald reported that Pruyn stated that “most of the residents he’s hearing from are concerned about the impact Haymarket’s plan would have on the village.”

52. On August 23, Pruyn issued a statement asserting that the “number one thing” Village staff wanted to convey “was how concerned we were about our Village’s resources, and the potential strain our Village would encounter.” And in September 2019, Pruyn sent a letter to the Chicago Tribune where he mocked a Tribune Editorial Board member who supported Haymarket and said that Itasca would lose “\$250,000 in tax revenue” if “a nonprofit moves here.” He added that the first hearing had to be postponed after “18% of our village” sought to attend, adding, “When that many people show up for a public hearing, it means something.”

53. The mayor’s derisive public statements and personal antagonism towards Haymarket engineered and fomented the discriminatory opposition movement amongst residents summarized above. Soon enough, the residents began repeating the same baseless and discriminatory concerns that the mayor had legitimized, disseminated, or amplified. They

complained, for example, that Haymarket patients would pose dangers to the community; that Haymarket's treatment center would cause severe economic burdens on the region, residents' pocketbooks, and municipal services; and that Haymarket was secretive and untrustworthy.

54. Some residents conveyed their opposition directly to the mayor by text. One resident referred to the treatment center as a "crackhouse" in a text to the mayor. Another texted the mayor to ask how he could present a "math-based argument" against Haymarket at the first zoning hearing. He sought to support the mayor's position that the Village would be unable to afford hiring fire and police staff to service Haymarket patients but lacked data to support the argument, so he asked the mayor for the data, stating, "Thanks for the leadership on this."

C. The Village Improperly Granted "Interested Party" Status to Public Entities.

55. The Village's third tactic to taint the zoning hearings before they began was to draw the Fire and School Districts into the zoning hearings and confer nearly trial-like due process rights on them so they could assist the Village with its pretextual economic attack against Haymarket. This further fomented opposition and exponentially increased the costs and length of the hearings.

56. Over Haymarket's objections, the Village designated each District as "interested parties" to the zoning hearings under its internal rules. This designation confers robust procedural rights to introduce evidence, present and cross-examine witnesses, propose findings of fact, and make opening and closing statements. By contrast, the Village grants those without this status only a single opportunity to offer statements or pose questions.

57. No constitutional, statutory, or other authority conferred such expansive procedural rights on the Districts. Rather, it is extraordinarily anomalous for public entities to seek or receive such far-reaching procedural rights during an Illinois municipal zoning process.

58. Indeed, neither District had ever asked for or been granted such wide-ranging hearing rights during prior zoning hearings. Instead, each had participated, if at all, merely by

sending a representative to express concerns about a proposed use before the Plan Commission. They had also cooperated with zoning applicants to resolve their concerns outside of the hearings.

59. But in the case of Haymarket, the Districts exploited their “interested party” designations to convert what should have been a routine special-use proceeding into an exorbitantly expensive and lengthy adversarial process. They hired attorneys who attended all the zoning hearings and opposed Haymarket by introducing evidence, presenting fact and expert witnesses, cross-examining and discrediting Haymarket’s witnesses, making objections, submitting proposed findings of fact, and making opening and closing statements.

60. Having misclassified the treatment center as a planned development, waged a campaign against Haymarket, and designated the Fire and School Districts as “interested parties,” the Village laid the groundwork to quash Haymarket’s proposal during the substantive hearings.

IV. The Village Conducted Anomalous and Discriminatory Zoning Hearings.

61. After two cancellations due to the volume of people who wished to attend, the Plan Commission held its first substantive hearing on October 16, 2019, at Lake Park High School in nearby Roselle, Illinois. Over 1,000 people attended, nearly all of whom opposed Haymarket. During the hearings, the Plan Commission ultimately needed to decide whether to recommend that the Village Board approve Haymarket’s planned-development and class I site-plan-review zoning applications. IZO §§ 14.12 (planned-development process), 14.13 (site-plan-review process).

62. The hearings were unprecedented for the Village in terms of length and scope. There were 35 hearings over a two-year period that involved testimony and cross examinations from 23 witnesses (13 fact witnesses and 10 experts) as well as heavy participation from residents, attorneys, and public officials. The Village’s tactics before these hearings enabled residents to express patently discriminatory concerns and pretextual economic claims.

A. Residents and Officials Continued Voicing Discriminatory Concerns.

63. Initially, residents took up Village officials' many urgings to raise their concerns about the treatment center during the hearings—including patently discriminatory fears. The record is replete with discriminatory concerns expressed by members of the Concerned Citizens of Itasca; administrators of the “No Itasca Haymarket” Facebook page; and other residents. They said, among other things, that the center would cause crime to skyrocket, pose dangers to children, and be too close to essential Village infrastructure.

64. Village officials, in turn, failed to ensure that residents' prejudices did not taint its decision-making process. Rather, they acquiesced to, legitimized, and amplified residents' prejudices and repeatedly urged residents voice those concerns during the zoning hearings.

65. The opposition strongly influenced voting members of the Plan Commission and Board, who were appointed by the mayor or elected by the residents. They watched the mayor's campaign play out in the public sphere as throngs of misinformed residents opposed Haymarket through social media, direct communication, community meetings, public hearings, emails, letters, and marches—including one that involved about 18% of Itasca's voting residents.

66. Village Plan Commission members themselves made discriminatory statements during the hearings. They asked, for example, whether patients would be allowed to take the train from their home and then walk from the station to the treatment center; expressed fears that patients could abruptly leave the center if they no longer wanted treatment; and assumed that Haymarket would call the police if a patient left the building, even if the patient had done nothing wrong.

67. Residents echoed the officials' bias. At an early procedural hearing, two members of the Concerned Citizens of Itasca repeated many of the mayor's talking points during public comment, and one of them expressed fright that Haymarket's treatment center would be near “four

primary schools, a water park, three children-based stores,” and public facilities as essential as the library. After she thanked “Village officials,” especially the mayor, who “have risen to the occasion and listened to their residents,” the crowd in attendance erupted in cheers.

B. Itaca Entities Opposed Haymarket with Pretextual Economic Impact Concerns.

68. Consistent with Village officials’ efforts to improperly expand the scope of the hearings to camouflage mounting discriminatory opposition, the Village and Fire and School Districts focused their opposition during the hearings on purported economic consequences that Haymarket would inflict on the Village and its residents. These claims were baseless and pretextual and ignored Haymarket’s repeated and specific offers to resolve them.

i. Fire District’s Pretextual EMS Concerns

69. The Fire District is an independent taxing body that, at the time of the hearings, employed about 20 firefighters and operated three vehicles, including a fire engine, ambulance, and a truck. The District used its ambulance to respond to “911” EMS calls, which kept the ambulance busy for about 2.5 hours a day.

70. During the hearings, the District claimed that the treatment center would generate 379 more EMS calls annually, which would overwhelm its EMS capacity and require it to buy a second ambulance for \$300,000 and staff it for \$700,000 annually. But the District’s own fire expert, Frank Moeller, contradicted these claims by testifying that the Fire District could handle at least 379 additional calls from the treatment center using just the ambulance it already owned.

71. Haymarket concluded that its treatment center would add only 150 annual EMS calls, well within the District’s current capacity. Nevertheless, as a condition for zoning approval, Haymarket agreed at the hearing to contract with Elite Ambulance, the second largest private ambulance company in Illinois, to provide EMS for the treatment center. Elite would handle all

basic life support EMS needs for Haymarket so that the Fire District would only need to respond to EMS calls for *advanced life support*, which relate to more critical health emergencies.

72. This meant that even under the Fire District's inflated EMS projections, the District would only need to service about 100 annual EMS calls from Haymarket (or about two per week). The Fire District's expert had already admitted that the District could handle at least 379 EMS calls with one ambulance; accordingly, the District could easily handle 100 additional EMS calls.

73. When the Fire District hired Moeller, it directed him to ignore the reduced EMS burden that Elite Ambulance would have on the Fire District. Moeller therefore rendered his opinions subject to the absurd assumption that a private ambulance service would result in no reduction to the EMS calls that Haymarket's patients would generate for the Fire District.

74. Haymarket also agreed as another condition for zoning approval that it would hire additional full-time medical staff (at least a nurse or emergency medical technician) to further reduce the EMS burden that the treatment center's patients would impose on the Fire District. Haymarket represented that such medical staff would be available every day and night to provide medical services in-house and to triage patients needing EMS to determine whether to call Elite ambulance for basic life support services or the Fire District for advanced life support services.

75. Moeller generally agreed that the additional medical provider would alleviate the EMS burden Haymarket patients would impose on the Fire District. But again, he did not consider this factor in estimating Haymarket's potential EMS burden on the Fire District.

76. Even assuming that the Fire District needed to buy and staff an extra ambulance to provide EMS for Haymarket's patients, the District ignored obvious revenues and offers by Haymarket. As for the \$300,000 ambulance cost, Haymarket offered to purchase a second ambulance for the District as a condition of zoning approval, but the Village rejected the offer.

77. And with respect to the \$700,000 annual staffing cost for the second ambulance, Haymarket established at the hearing that the Fire District receives revenue each time it responds to an EMS call. The District charged \$5,390 for every EMS call, and it would keep half this amount each time it responded to an EMS call for a Haymarket patient. Thus, the District could potentially receive over \$1 million each year if Haymarket patients generated 379 EMS calls ($\$2,695 \times 379$). The Fire District, however, never accounted for this new revenue stream, which could have more than offset even its own projected staffing costs for a second ambulance.

78. Although Haymarket had shown these EMS concerns were baseless, the District continued to fiercely oppose the treatment center. As a result, Haymarket repeatedly offered to interact with District officials outside the zoning hearings to explore additional resolutions to its purported EMS concerns and clarify necessary financing if a second ambulance were needed. However, the District refused to meet throughout the two-year zoning process and insisted on presenting its claims publicly before the Plan Commission instead.

79. This refusal to interact sharply contrasted with District officials' ordinary practice in other zoning hearings, during which they had negotiated with the applicants outside the hearings to resolve the District's concerns. And Village decision-makers knew that Haymarket repeatedly sought to interact but made no effort to leverage their power as decision-makers to facilitate and manage negotiations to resolve the purported economic EMS concerns.

ii. School District's Pretextual Education Concerns

80. The School District is an independent taxing body that serves about 1,000 children in three K-8 elementary schools. During the hearings, the School District claimed that Haymarket's treatment center would overwhelm school resources, even though the patients would be too old to attend its schools and their children would not reside at the treatment center.

81. The School District initially argued that Haymarket would burden its schools by allowing preschool-aged children (0-5) to stay with mothers receiving treatment through its Mother and Child Program. Although these infants and toddlers would not attend school, the District claimed that it *might* need to offer them early childhood services if they had special needs under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA), including Child Find, evaluation, and Individualized Education Plan (IEP) services.

82. Haymarket responded that its Mother and Child Program in Itasca would mirror the one offered at the Chicago treatment center, which did not use local school district special education services for infants in the Program. Haymarket explained that it conducted its own evaluations for such children and provided special education services for those who need it. But instead of resolving this concern, the School District continued opposing Haymarket on the basis that it nevertheless *might* be burdened because it would still be legally obligated to offer these services under IDEA if Haymarket sought them.

83. Haymarket considered the School District's claims to be pretextual but voluntarily eliminated its Mother and Child Program in hopes of fully resolving them. But despite this, School District Superintendent Craig Benes testified that the District still faced a preschool special education burden because Haymarket *might* offer the Mother and Child Program *in the future*.

84. Benes also pivoted by raising two new purported economic concerns. First, he claimed the District might be burdened if mothers treated at Haymarket established residency in Itasca and enrolled their children in District schools, even though the children would reside outside Itasca. Second, he claimed that 18- to 22-year-old mothers with learning disabilities might seek special education services under IDEA's transition program obligations. 34 C.F.R. § 300, *et seq.*

85. Haymarket responded that neither scenario had ever occurred throughout the 45 years its Chicago treatment center had operated. Haymarket added that the scenarios were farfetched, since the children at issue would be residing outside of Itasca, and even if there were mothers in treatment who were 18 to 22 years old and had IEPs, any burden concerning the *high school* transition program would not impact the District, which did not serve high school students.

86. These points still did not assuage Benes or the District. In fact, Benes responded by escalating the grammar-School District's already improper opposition by issuing a press release and sending a letter to school parents describing his purported economic concerns. In both statements, Benes claimed that children with special needs at the treatment center could cost the District as much as \$28,000 per year, which would bring about increased property taxes and decreased educational quality for existing students. Benes further tried to alarm parents by stating that Haymarket would delay Fire District emergency safety support to the District's schools and reduce educational programming that the Fire District provided.

87. Haymarket, again, disagreed with these pretextual claims but attempted on at least four occasions during the zoning process to meet with the School District outside the hearings to discuss ways to resolve the concerns. On each occasion, the District refused to meet with Haymarket and insisted instead on presenting its claims publicly before the Plan Commission.

88. Village officials were aware of Haymarket's requests to interact but made no effort to facilitate and manage negotiations to resolve the District's purported economic concerns.

89. This course of action by the School District and Village starkly differed from their conduct in prior zoning hearings. Although the District had occasionally presented concerns at Village zoning hearings, it had never opposed a development (inside or outside a zoning hearing) due to the possibility that it would draw children who might economically impact the District. Nor

had the District opposed a development solely because it might be required to provide federally mandated special education services under IDEA. Rather, the District had routinely negotiated with zoning applicants outside the zoning process to resolve potential school-impact concerns.

iii. The Village's Pretextual Tax Revenue Concerns

90. The Village also directly opposed Haymarket during the hearings by presenting an expert, Sarah Ketchum, to raise a third economic impact concern. Ketchum opined that Itasca public entities would lose about \$225,000 in annual tax revenue if Haymarket claimed a non-profit tax exemption and operated at the site instead of a hotel. She also stated that taxing bodies like the Village and Districts critically depended on the property tax revenue generated at the hotel site.

91. Haymarket responded that Ketchum's projected figure amounted to only about 0.3% of all property taxes collected from Itasca properties, and that the portion allotted to the Village and Fire and School Districts accounted for less than 0.5% of their budgets and revenues.

92. Any property tax loss could also have been offset by state and county funding. At the outset of the hearings in October 2019, Illinois State Representative Deborah Conroy, who chaired the congressional mental health committee, offered to secure \$500,000 in grant funds to offset the tax revenue the Village said it would lose. But tellingly, Mayor Pruyn sidelined the offer by sending a letter directing Representative Conroy to hold off on securing state funding until Village staff had sufficient time to analyze data that would be presented during the hearings to determine the total financial impact to Itasca taxpayers.

93. Village officials never circled back with the legislator, made any effort to firm up the offer, or organized any interactive process involving her and Haymarket. Nor did they seek other private or public funding to offset the tax revenue the Village claimed it would lose.

94. The Village was also prohibited from even considering Haymarket's right to claim a tax exemption as a reason to deny zoning approval. Illinois law outright prohibits municipalities

from conditioning planned-development approval (or any zoning approval) on an applicant waiving its right to claim a tax exemption; and from denying zoning approval based on concern that the applicant's right to claim a tax exemption may be burdensome.

95. Moreover, had the Village properly classified Haymarket's treatment center as a "hospital" special use, considering Haymarket's nonprofit status would have been prohibited for an additional reason. The Village's zoning code explicitly designates "hospitals" as special uses in the B-2 zoning district, "*whether organized for profit, or not.*" IZO § 3.2 (emphasis added). Under established Illinois zoning principles, this amounts to a legislative determination that nonprofit "hospitals" belong in, are compatible with, and serve the public welfare in the B-2 zoning district, and the Village could not backtrack on its legislative determination by denying "hospital" special-use approval for the treatment center based on Haymarket's nonprofit status.

96. Consideration of an entity's right to claim a tax exemption as a reason for denying zoning approval, in addition to being unlawful, is a highly anomalous Illinois zoning practice. The Village had never denied a zoning application on that basis before. Instead, Itasca's public entities had previously treated tax and zoning matters separately.

V. The Village Denied Haymarket's Zoning Application Based on Pretextual Concerns.

97. Throughout the zoning process, Haymarket had offered overwhelming proof that its treatment center proposal satisfied the approval standards that applied to its zoning applications. Haymarket had also made extraordinary concessions to address the concerns raised against its proposal, even though they were shown to be baseless.

98. But during its September 22, 2021 hearing, the Plan Commission unanimously recommended that the Board deny Haymarket's zoning applications. All commissioners agreed that there was a clear need in DuPage County for a treatment center for people with substance-use

disorders and mental health disabilities. But they stated that Haymarket would adversely affect the Fire District's ability to provide EMS and negatively affect the School District. One commissioner added that Haymarket would adversely affect tax revenue by claiming a tax exemption. All three reasons were pretextual.

99. The Plan Commission briefly discussed the Village's accommodation obligations under the ADA by discussing whether purchasing and staffing a new ambulance was a reasonable accommodation. They concluded that it was not on the purported bases that it required the purchase of a new ambulance for \$300,000 and \$700,000 in annual expenditures to fully staff it.

100. As for the \$300,000 figure, the members never mentioned that Haymarket had offered to purchase the ambulance itself. And with respect to the \$700,000 figure, the members offered no discussion at all on matters such as (1) whether or when the Fire District would even need a second ambulance; (2) how Haymarket's offers to contract with Elite Ambulance and hire additional medical professionals might lessen projected costs; or (3) the extent to which costs would be lowered by the additional revenue the Fire District would collect responding to EMS calls. The Plan Commission also never made any effort to engage in or organize any interactive process involving Haymarket to find other solutions to its purported EMS economic concerns.

101. On November 2, 2021, the Board voted 6-0 to deny Haymarket's zoning applications. Mayor Pruyn could only vote to break a tie as the Board's President. Even so, prior to the vote, he delivered a lengthy speech repeating pretextual economic concerns he had raised before the zoning hearings began, and before the Village had even collected evidence about them.

Claims for Relief

**Count I
Americans with Disabilities Act
(Disparate Treatment)**

102. The United States incorporates herein by reference paragraphs 1 to 101 above.

103. The Village engaged in disparate treatment against Haymarket and its prospective patients with disabilities in reviewing and denying Haymarket's request for zoning approval for its treatment center for patients with substance-use disorders. The Village, among other things, denied Haymarket's zoning application and prohibited Haymarket from applying for special-use zoning approval by reason of disability discrimination.

104. As a result, the Village violated Title II of the ADA, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35.

**Count II
Americans with Disabilities Act
(Failures to Provide Reasonable Accommodations)**

105. The United States incorporates herein by reference paragraphs 1 to 101 above.

106. The Village refused Haymarket's reasonable accommodation request to apply for special-use approval to operate its treatment center as a "health center" special use and by denying Haymarket's planned-development application.

107. The Village also conducted a pretextual accommodations analysis that involved no meaningful interactive process after summarily rejecting, and at times quashing, extraordinary concessions Haymarket had offered to address its purported concerns. The Village deliberately broke down and failed to organize or partake in any meaningful interactive processes that might have revealed additional reasonable solutions to its purported economic concerns.

108. As a result, the Village failed to comply with its accommodations obligations in violation of Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulations, 28 C.F.R. Part 35.

Prayer for Relief

WHEREFORE, the United States prays that the court grant the following relief:

- A. Enter judgment in favor of the United States and declare that defendant Village of Itasca violated Title II of the ADA, as amended, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35;
- B. Enter an injunction requiring the Village to remedy the deficiencies described above;
- C. Award compensatory damages in an appropriate amount for injuries suffered as a result of the Village's noncompliance with the ADA and implementing regulations; and
- D. Award such other relief as the court deems appropriate.

Respectfully submitted,

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EXHIBIT A

