

THE RUTHERFORD INSTITUTE

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August 14, 2025

Louisa County Planning Commission
and Board of Supervisors
1 Woolfolk Ave.
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Re: Proposed “Humanitarian Shelter” Amendments to Chapter 86, Land Development Regulations, of the Louisa County Code of Ordinances

Dear Members of the Planning Commission and Board of Supervisors:

In the coldest months of the year, when darkness falls early and the temperatures drop dangerously low, the difference between life and death for someone living on the streets can be as simple as a warm room and a safe place to sleep. For centuries, churches have answered this need out of a sacred calling to serve “the least of these.” These acts of charity and compassion are woven into the fabric of faith communities across our nation and are central to their mission.

When government regulations—such as the proposed amendment to the County’s land development regulations now before the Planning Commission—interfere with these life-saving ministries, they do more than create red tape: they risk closing the doors of refuge on the very people most in need.

That is why we write today, not only as a civil liberties organization committed to defending the constitutional right of churches to minister to those in need,¹ but also as fellow Virginians deeply concerned for the welfare of the most vulnerable in our communities.

In its current form, the proposed amendment to the County’s land development regulations risks jeopardizing the ability of churches to carry out this time-honored mission of offering shelter from the cold to those with nowhere else to go.²

¹ The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Virginia, defends those whose constitutional rights have been violated. For more than 40 years, The Rutherford Institute has defended the rights of individuals and organizations to practice their religion free from government influence and interference. The Institute has also sought to protect the vulnerable and those seeking to help them.

² Matthew 25:31-40 (Jesus stated, “I was a stranger and you welcomed me....” Then the righteous will answer him, saying, ‘Lord, when did we see you...a stranger and welcome you...?’ And the King will answer them, ‘Truly, I say to you, as you did it to one of the least of these my brothers, you did it to me.’”) (English Standard Version (“ESV”)); Mitchell Sasser, *Louisa Homeless Coalition advocate for clarity on county definitions*, THE CENTRAL VIRGINIAN, Apr. 16, 2025 (Pastor David McWilliams states “it’s an essential historic practice of the church to

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In short, our concern is threefold:

- First, that the proposed conditional use permit (“CUP”) process would impose unnecessary delays, costs, and procedural hurdles on churches already legally permitted to provide temporary shelter as part of their religious mission;
- Second, that such requirements risk violating both federal and Virginia constitutional protections, as well as statutory safeguards like RLUIPA and the Virginia Religious Freedom Restoration Act;
- And third, that by burdening or deterring these ministries, the County could deprive some of its most vulnerable residents of urgently needed refuge during dangerous weather, while exposing itself to costly litigation.

As explained in greater detail below, there is no sound legal, moral, or practical basis for the County to expose taxpayers to the cost of defending a policy that burdens the churches’ constitutionally protected ministry. The simplest path forward is to make clear in proposed Ordinance 86-44 that a “religious assembly” is already allowed to be used as a humanitarian shelter without a CUP.

The County’s CUP requirement fails to respect the rights of churches to minister to those in need.

Under the proposed amendment to the County’s land development regulations, property owners would be required to apply for and obtain a CUP in order to use their property as what the ordinance will define as a “humanitarian shelter”—meaning “a facility that provides temporary shelter and basic services to individuals or families, without requiring leases or occupancy agreements.”³ Moreover, the applicant for a CUP would have to meet a list of several “minimum standards” and submit details about its operations as part of its application for “consideration by the Planning Commission or Board of Supervisors to demonstrate responsible operations, minimize impacts on adjacent properties, and avoid undue burdens on County services.”⁴

We understand that some churches in the county wish to temporarily shelter homeless individuals in their church buildings on a rotating basis at night during cold weather (though not continuously throughout the day), but are being told that they will need a CUP for this to avoid a zoning violation.⁵ There is a concern that some churches will be deterred by the process and not

provide shelter”), https://www.thecentralvirginian.com/news/louisa-homeless-coalition-advocate-for-clarity-on-county-definitions/article_f04c3718-8ffb-437d-91cb-28199845869f.html.

³ Proposed Ord. §§ 86-13 and 86-44, <https://louisacova.portal.civicclerk.com/event/1046/files/attachment/3333>.

⁴ Proposed Ord. § 86-44, <https://louisacova.portal.civicclerk.com/event/1046/files/attachment/3333>.

⁵ Sasser, *Louisa Homeless Coalition advocate for clarity on county definitions*, THE CENTRAL VIRGINIAN, Apr. 16, 2025.

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pursue a CUP or shelter the homeless, and that other churches will not be approved for a CUP in time for this winter.

We appreciate the County wanting to provide a process to “support responsible shelter operations”⁶ and minimize impacts on other property owners, but we are concerned that this CUP process and requirement does not respect the religious rights of churches and other religious bodies or organizations to follow their calling to love their neighbors⁷ and minister to the physical needs of others⁸ by offering their buildings to provide shelter to the homeless from the cold.⁹

Churches do not have to get government approval to exercise their rights.

Whether churches can be required to apply at all is questionable since they should not need permission to do what they already have a right to. For example, a few years ago in *N.Y. State Rifle and Pistol Ass’n. v. Bruen*, the U.S. Supreme Court struck down New York’s requirement that a citizen must apply for and demonstrate a special need for self-defense in order to obtain a license to carry a handgun outside their home.¹⁰ New York’s licensing requirement was unconstitutional because people already have a right to do that, as the Court explained when stating the following:

The constitutional right to bear arms in public for self-defense is *not a second-class right, subject to an entirely different body of rules* than the other Bill of Rights guarantees. We know of no other constitutional right that an individual may exercise only after demonstrating to government officers some special need. *That is not how the First Amendment works when it comes to unpopular speech or the free exercise of religion.*¹¹

Likewise, a church’s rights to the free exercise of religion, which includes serving the poor and sheltering the homeless, is not a “second-class right” subject to the church meeting certain conditions for prior approval by the government.

Even if churches can be required or voluntarily agree to submit certain information to the Commission or Board, the County should not have any discretion to prohibit the religious

⁶ Letter from Deputy County Administrator to Planning Commission, July 30, 2025, <https://louisacova.portal.civicclerk.com/event/1046/files/attachment/3324>.

⁷ Matthew 22:35-40 (Jesus stated, “‘You shall love your neighbor as yourself.’” (ESV)).

⁸ James 2:15-17 (“If a brother or sister is poorly clothed and lacking in daily food, and one of you says to them, ‘Go in peace, be warmed and filled,’ without giving them the things needed for the body, what good is that? So also faith by itself, if it does not have works, is dead.” (ESV)).

⁹ Matthew 25:31-40, *supra*.

¹⁰ *N.Y. State Rifle and Pistol Ass’n. v. Bruen*, 597 U.S. 1, 9-11, 142 S.Ct. 2111, 2122 (2022).

¹¹ *Id.* at 70-71, 142 S.Ct. at 2156 (internal quotation marks and citations omitted; emphases added).

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activity, and the churches should not have to pay any fee,¹² incur any cost in publishing a newspaper announcement,¹³ or hold a public meeting and provide a summary to the zoning administrator¹⁴ (though the Commission or the Board can publish such announcements and hold such meetings themselves if they choose).

To place these additional costs and burdens as prerequisites to exercising their religious rights is going much further than simply requiring an application or providing information of services to the County. Beyond being unnecessary, such requirements would send the troubling message that acts of faith-based charity are a privilege granted by the County, rather than a right guaranteed by the Constitution.

Temporarily sheltering the homeless is already an approved use of a “religious assembly” without a CUP.

It is our understanding that the churches which seek to shelter the homeless are classified under Louisa County Ordinances as “religious assemblies.” A “religious assembly” use is defined by the County Ordinance as follows:

A use located in a permanent building and providing regular organized religious worship and related incidental activities. Primary or secondary schools are not included in this definition as a related incidental activity. *Day care and day care centers, as defined, are permittable as an accessory use to a religious assembly when operated directly by a religious organization.*¹⁵

The Ordinance states that “[a]ccessory uses are allowable uses in all zoning districts,”¹⁶ and defines a “day care” and “day care center” as follows:

Any facility *providing care, protection and guidance* to ten or more individuals [or to less than ten individuals for a “day care”] *during only part of a 24-hour day*. This term includes nursery schools, preschools, and day care centers for individuals *including adults*, and other similar uses but excludes public and

¹² Ord. §§ 86-43(f) and 86-48; *but see* Ord. Appendix A – Schedule of Fees n.* (possibly indicating exemption from a CUP fee because “[s]tructures or projects to be used by religious organizations” are “exempt from planning division fees”).

¹³ Ord. § 86-47(2) and Appendix A – Schedule of Fees n.* (providing no exemptions from the “cost for all publicly noticed items in the newspaper” or “a \$25.00 fee charged per adjacent/adjoining property owner for notification and advertisement”).

¹⁴ Ord. § 86-47.

¹⁵ Ord. § 86-13 – Definitions: *Religious assembly* (emphasis added).

¹⁶ Ord. § 86-13 – Definitions: *Accessory use or structure*.

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private educational facilities or any facility offering care to individuals for a full 24-hour period.¹⁷

It is important to note that “day” in “day care” and “day care center” does not refer to “daylight” or to any specific time of day—rather, “day” simply means a “full 24-hour period,” and there are no restrictions on operating hours.

Thus, churches or “religious assemblies” are already permitted in all zoning districts under the County Ordinance to “provide care, protection and guidance” to “adults” at any time of day or night as long as they do not provide that care continuously “for a full 24-hour period” or longer, though the individuals may return again later after there has been a break in service. Our understanding of how churches in Louisa County seek to provide shelter for the homeless is that unhoused individuals arrive in the evening and stay through the night, but then leave in the morning and can return again later that evening. Therefore, doing this should not require any CUP or constitute any zoning violation, such as under Ord. §§ 86-11 or 86-11.1.

Any attempt by the Commission or Board at this point to remove or restrict this permitted use for religious assemblies would be seen as targeted and hostile toward churches and religious organizations, and would thus fall under the strictest judicial scrutiny for violating their First Amendment right to the free exercise of religion.

Since temporarily sheltering the homeless at night is already a permitted use for a “religious assembly,” the Commission and Board should at least provide a clarification in proposed County Ordinance 86-44 that religious assemblies need not obtain a CUP for use as a “humanitarian shelter.”

Any burdensome or costly process, denial of CUP, delay, or alleged zoning violation placed upon a church seeking to house the homeless could lead to costly litigation for the County.

There are not likely any grounds upon which the County could deny a church its right to house the homeless which would be upheld by a court, as several laws protect the rights of religious groups to practice their beliefs even beyond the protections provided under the First Amendment to the U.S. Constitution. These laws would also protect churches from having to go through any burdensome, costly, or lengthy process to exercise those rights.

One of those laws is the federal **Religious Land Use and Institutionalized Persons Act (“RLUIPA”)**, which provides that

¹⁷ Ord. § 86-13 – Definitions: *Day care center* (emphases added) (the only difference between a “day care” and a “day care center” is whether the facility provides services “to less than ten individuals” (a “day care”) or “to ten or more individuals” (a “day care center”)).

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*No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.*¹⁸

The term “government” applies to and includes “a State, county, municipality, or other governmental entity created under the authority of a State.”¹⁹ And Congress explicitly noted within the law itself that the law is to “be construed in favor of a *broad protection* of religious exercise, *to the maximum extent* permitted by the terms of this chapter and the Constitution.”²⁰

Applying land use regulations to restrict or penalize churches from following their calling and conviction to love their neighbors as themselves by using their properties to provide shelter to the homeless is clearly a substantial burden on their religious exercise. A government is very rarely able to demonstrate to a court that it used the least restrictive means of furthering a compelling interest, which is the strictest standard of judicial scrutiny for government actions.

Here, since churches are already allowed to have large gatherings of people for extended periods of time and to operate day care centers, it is improbable that the County could somehow justify restricting churches from temporarily housing the homeless. A violation of RLUIPA could result in the County having to pay the churches’ attorneys’ fees as a consequence.²¹

And being in Virginia, there are additional rights of churches. One protection comes from **Article I, Section 16 of the Virginia Constitution**, which provides in part that “all men are equally entitled to the free exercise of religion, according to the dictates of conscience.”²² The Virginia Supreme Court has stated that the “constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed.”²³ “Given the clarity and resoluteness of these words” in the Virginia Constitution, the Court held “that religious liberties in this Commonwealth do not vanish simply because a purely secular law says so — no matter its impartiality toward specific religions or its impassivity toward religion generally.”²⁴ Thus, “the provisions in the Constitution of Virginia have ‘a vitality independent of the Federal Constitution’” and provide greater religious protections.²⁵

¹⁸ 42 U.S.C. § 2000cc(a)(1) (emphasis added).

¹⁹ 42 U.S.C. § 2000cc-5(4)(A)(i).

²⁰ 42 U.S.C. § 2000cc-3(g).

²¹ 42 U.S.C. § 1988(b).

²² Va. Const. art. I, § 16.

²³ *Vlaming v. West Point Sch. Bd.*, 895 S.E.2d 705, 716, 302 Va. 504 (Va. 2023).

²⁴ *Id.* at 729.

²⁵ *Id.* at 716.

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Another protection is provided by the **Virginia Religious Freedom Restoration Act (“VRFRA”)**, which provides:

No government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.²⁶

These provisions are similar to, but broader than the federal RLUIPA; and, like RLUIPA, a violation of VRFRA could result in the County having to pay the churches’ attorneys’ fees as a consequence.²⁷

Conclusion

Because the Commission and Board would not likely be able to deny or even delay issuance of a permit for a church or religious assembly to use its property to temporarily shelter the homeless without violating the law and facing costly litigation, and because churches are already permitted under the County Ordinance to use their facilities for this, the County should consider making a clear provision in proposed Ordinance 86-44 that a “religious assembly” is already approved for “humanitarian shelter” use and does not need a CUP.

These churches seek to provide a valuable service for all people of Louisa County by sheltering the homeless, who might otherwise require County services. There seems to be no compelling interest served by the County obstructing the good work of these churches for the community. If problems do arise, then it should be easy enough to find a contact for the church or other organization to address it.

There is no justification—legal, moral, or practical—for the County to risk costly litigation at the expense of its taxpayers by burdening the churches’ free exercise of religion.

At stake here is more than a zoning regulation. At stake is the freedom of faith communities to live out their beliefs, and the right of the most vulnerable among us to find compassion instead of cold bureaucracy.

These churches in Louisa County are simply seeking to open their doors on the coldest nights so that no man, woman, or child has to sleep outside and risk harm or death.

²⁶ Va. Code § 57-2.02(B).

²⁷ Va. Code § 57-2.02(D).

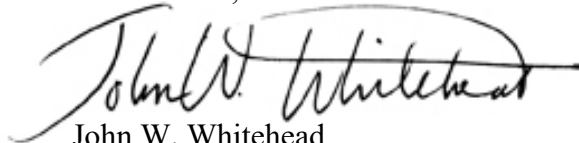
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This is the work of neighbors caring for neighbors. It reduces strain on emergency services, it fosters public safety, and it honors the deeply rooted constitutional and moral principles that make our communities strong.

As you consider these issues and your service to the people of Louisa County, which includes these churches, their members, and the homeless, we urge you to ensure that nothing in the County's ordinances chills or delays this essential work. Let these churches do what they have always done best: meet need with love, and answer suffering with shelter.

For freedom,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Whitehead
President

A handwritten signature in black ink, reading "William Winters". The signature is cursive and somewhat stylized, with a large initial "W".

William Winters
Senior Staff Attorney

The Rutherford Institute

CC: Louisa County Attorney,
Legal@louisacounty.gov