

THE RUTHERFORD INSTITUTE

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August 03, 2026

By email:

Louisa County Board of Supervisors
1 Woolfolk Ave., Suite 301
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Re: Proposed “Humanitarian Shelter” Amendments to Chapter 86, Land Development Regulations, of the Louisa County Code of Ordinances – Agenda item VI.1

Dear Members of the Board:

For more than 40 years, The Rutherford Institute¹ 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.

As we wrote to you and the Planning Commission last year on August 14, 2025 (see attached), The Rutherford Institute has concerns with some of the wording and terms of the proposed ordinance amendments regarding “Humanitarian Shelters,” which is on the Board’s agenda for today.²

We understand that some churches in Louisa County wish to temporarily shelter homeless individuals and others in need in their church buildings on a rotating basis such as at nights during cold weather, though not continuously for over a 24-hour period. Unhoused individuals would arrive in the evening and stay through the night, but would then leave in the morning and could return later that evening to stay again if needed. However, it was reported last year that “two churches backed out from participating in the program after a Louisa County Board of Supervisors (BoS) member called and stated potential zoning violations.”³

A claim that there are zoning violations from this activity appears to be incorrect because a church or “religious assembly” is already permitted under the ordinance to use its property as a “day care” or “day care center,” which may “provide care, protection and guidance” to “adults”

¹ The Rutherford Institute is a nonprofit civil liberties organization based in Charlottesville, Virginia, which defends those whose constitutional rights have been violated.

² Proposed Amendments, <https://louisacova.portal.civicclerk.com/event/1093/files/attachment/5180>

³ Sasser, *Louisa Homeless Coalition advocate for clarity on county definitions*, THE CENTRAL VIRGINIAN, Apr. 16, 2025.

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at any time of day or night as long as it does not provide that care continuously “for a full 24-hour period,” though the individuals may return that day or the next after a break.⁴

Because of the confusion and chilling effect created by the reported comment of a Board member calling this a zoning violation, and because temporarily sheltering homeless persons for part of a day or night appears to already be a permitted use for a “religious assembly,” the Board should at least provide a clarification in the proposed ordinance amendments that religious assemblies and others which are permitted to use their properties for day cares or day care centers do not need to obtain a conditional use permit (“CUP”) as a “humanitarian shelter” if persons are not continuously staying there for a full 24-hour period since such properties are already allowed to do this under the ordinances.

Making this clarification would not be providing any favoritism to religious assemblies since the clarification would simply acknowledge what religious assemblies—as well as any secular organizations which are also permitted for use as a day care or day care center—are already permitted to do, and would thus simply avoid confusion.

If a religious assembly or other organization permitted for use as a day care or day care center were to house individuals continuously for a full 24-hour period or longer, then they might still need to get a CUP under the amended ordinance as a “humanitarian shelter” (though we would encourage the Board to consider the possibility of an exception to that as well).

While the Board thankfully seems favorable in granting CUPs to religious assemblies, the CUP application and process is extensive and there is a concern that some religious assemblies will feel overwhelmed and be deterred from applying for a CUP, which should not even be needed for the less-than-24-hour temporary shelter which many churches wish to provide. But requiring an unnecessary and burdensome process, or denying a CUP, for a religious assembly could violate the law, resulting in liability for the County.

And even if this clarification somehow gives favoritism to religious organizations, that is what the law sometimes requires. While a religious person or group can never be treated worse than a secular one, they sometimes have to be treated more favorably, and a claim by the government that it was simply trying to treat religious groups neutrally and not violate the Establishment Clause is based on an incorrect understanding and not a viable defense.

The law gives “favored treatment” to religious practices.

The **First Amendment** to the U.S. Constitution states that the government “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” The U.S. Supreme Court has explained that a “natural reading of that sentence would seem to suggest the

⁴ Louisa Ord. § 86-13 – Definitions: *religious assembly*, *accessory use or structure*, *day care*, and *day care center*.

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Clauses have ‘complementary’ purposes, not warring ones.”⁵ This means that the purpose of prohibiting the government from establishing a religion is to not interfere with the free exercise of another religion—not for the government to disfavor religion or to treat religious rights no better than secular ones. The protection of the free exercise of religion arose from “the framers’ distrust of government attempts to regulate religion.”⁶ Therefore, “in no world may a government entity’s concerns about phantom constitutional violations [of the Establishment Clause] justify actual violations of an individual’s First Amendment rights [under the Free Exercise Clause].”⁷

Thus, governmental laws and practices which accommodate and provide favoritism to religious exercise in general do not violate the Establishment Clause, and are what the Free Exercise Clause and other laws sometimes require. For example, Title VII of the Civil Rights Act of 1964 requires employers to provide certain accommodations to enable an employee to practice his religious beliefs and convictions, even though another non-religious employee might not receive similar accommodations.⁸ The U.S. Supreme Court has explained that

Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices. Rather, it gives them *favored treatment*, affirmatively obligating employers not to fail or refuse to hire or discharge any individual because of such individual’s religious observance and practice. Title VII requires otherwise-neutral policies to give way to the need for an accommodation.⁹

Other laws similarly protect the free exercise of religion beyond the protections provided under the First Amendment, including specifically with zoning and land use regulations. One of those laws is the federal **Religious Land Use and Institutionalized Persons Act (“RLUIPA”)**, which provides that

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

⁵ *Kennedy v. Bremerton Sch. Distr.*, 142 S.Ct. 2407, 2426 (2022).

⁶ *Id.* at 2421 (citing *A Memorial and Remonstrance Against Religious Assessments*, in *Selected Writings of James Madison* 21, 25 (R. Ketcham ed. 2006)).

⁷ *Id.* at 2432.

⁸ 42 U.S.C. § 2000e-2(a)(1).

⁹ *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015) (emphasis added) (cleaned up) (stating that “An employer is surely entitled to have, for example, a no-headwear policy as an ordinary matter. But when an applicant requires an accommodation as an ‘aspect of religious practice,’ it is no response that the subsequent ‘failure to hire’ was due to an otherwise-neutral policy.”); see also *Groff v. DeJoy*, 143 S.Ct. 2279, 2290 n.9 (2023) (quoting *Abercrombie*, 575 U.S. at 775).

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furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.¹⁰

The term “government” applies to and includes “a State, county, municipality, or other governmental entity created under the authority of a State.”¹¹ 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.”¹²

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 rarely able to demonstrate that it used the least restrictive means of furthering a compelling interest, which is the strictest standard of judicial scrutiny for government actions. A violation of RLUIPA could result in the payment of attorneys’ fees as a consequence.¹³

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.”¹⁴

The Virginia Supreme Court has explained 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.”¹⁵ “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.”¹⁶ Thus, “the provisions in the Constitution of Virginia have ‘a vitality independent of the Federal Constitution’” and provide greater religious protections.¹⁷

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

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

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

¹¹ 42 U.S.C. § 2000cc-5(4)(A)(i).

¹² 42 U.S.C. § 2000cc-3(g) (emphasis added).

¹³ 42 U.S.C. § 1988(b).

¹⁴ Va. Const. art. I, § 16.

¹⁵ *Vlaming v. West Point Sch. Bd.*, 895 S.E.2d 705, 716, 302 Va. 504 (Va. 2023).

¹⁶ *Id.* at 729 (emphasis added).

¹⁷ *Id.* at 716.

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a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.¹⁸

Like RLUIPA, a violation of VRFRA could result in having to pay attorneys’ fees as a consequence.¹⁹

Here, since churches and other religious assemblies are already allowed to have large gatherings of people for extended periods of time and to operate day cares and day care centers, it is improbable that the County could somehow justify restricting churches from temporarily housing the homeless. If a church were to have a youth group “lock-in” or sleepover, or an overnight prayer vigil, the church should not have to get a CUP with neighbors’ input for that. The County cannot justify requiring a CUP just because of the type of people (i.e., homeless) who come to the church. It becomes very concerning when government officials start regulating the types of guests whom property owners may have visit them. Certainly the County could not require a CUP for the same homeless persons who would stay overnight to attend a church’s worship service, even though those persons would be around the same neighboring properties.

The Establishment Clause does not provide a defense.

An argument that giving some kind of perceived favoritism to religious groups in general would violate the Establishment Clause is similar to what the Bremerton School District argued to justify its efforts to silence and remove high school football coach Joseph Kennedy for silently praying on the field after games. However, in *Kennedy v. Bremerton School District*, the U.S. Supreme Court ruled that the School District had violated Coach Kennedy’s First Amendment rights.²⁰ Afterwards, the School District agreed to settle the amount of Coach Kennedy’s attorneys’ fees by paying over \$1.75 million.²¹

The School District erroneously believed that it “could not allow Mr. Kennedy to ‘engage in a public religious display’” without violating the Establishment Clause.²² Therefore, the School District told Coach Kennedy, incorrectly, that “an employee’s free exercise rights ‘must yield so far as necessary to avoid school endorsement of religious activities.’”²³ The Supreme Court noted that this “rested on a mistaken view”²⁴ under which “the District effectively created

¹⁸ Va. Code § 57-2.02(B) (emphasis added).

¹⁹ Va. Code § 57-2.02(D).

²⁰ *Kennedy*, 142 S.Ct. at 2415-16, 2433.

²¹ *Bremerton school board reaches nearly \$2M settlement with praying football coach Joe Kennedy*, FOX 13 Seattle (Mar. 17, 2023), <https://www.fox13seattle.com/news/bremerton-school-board-reaches-nearly-2m-settlement-with-praying-football-coach-joe-kennedy>.

²² *Kennedy*, 142 S.Ct. at 2419.

²³ *Id.* at 2417.

²⁴ *Id.* at 2433.

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its own vise between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other.”²⁵

The Court further explained that the School District had created “a false choice premised on a misconstruction of the Establishment Clause. And in no world may a government entity’s concerns about phantom constitutional violations justify actual violations of an individual’s First Amendment rights.”²⁶

Conclusion

Because the Board would not likely be able to lawfully deny a permit for a church or religious assembly, or hold it in violation, for use of its property to temporarily shelter the homeless for less than 24-hour periods if religious assemblies are already permitted to use their facilities as day cares and day care centers, the Board should at least provide a clarification in the proposed ordinance amendments that religious assemblies and others which are permitted to use their properties for day cares or day care centers do not need to obtain a CUP as a “humanitarian shelter” if persons are not continuously staying there for a full 24-hour period since such properties are already allowed to do this under the ordinances.

This would simply be a clarification of what the County’s ordinances already provide. It would not give favorable treatment to religious assemblies as it is already allowed and would apply to secular day cares and day care centers as well. But insofar as it does give favored treatment to religious assemblies, that is what the law requires.

For freedom,



John W. Whitehead
President, The Rutherford Institute



William Winters
Senior Staff Attorney

Encl.: Previous letter to Planning Commission and Board, Aug. 14, 2025

²⁵ *Id.* at 2427 (internal quotation marks omitted).

²⁶ *Id.* at 2432 (internal citation omitted).

ATTACHMENT

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August 14, 2025

Louisa County Planning Commission
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1 Woolfolk Ave.
Louisa, Virginia 23093
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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).

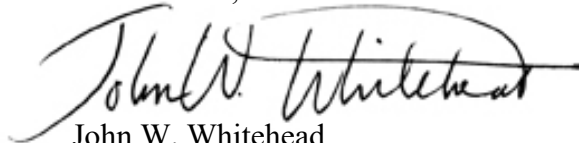
THE RUTHERFORD INSTITUTE

Louisa County Planning Commission and Board of Supervisors
Re: Proposed "Humanitarian Shelter" Amendments to Chapter 86
August 14, 2025
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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 extending to the right.

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