



Date of Council Meeting: March 29, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Town Code Amendments to Regulate Excessive Noise from Religious Services

Staff Contact: Barbara Notar, Town Attorney

Council Action Requested: Initiate amendments to the Town Code to regulate excessive noise generated by religious services and events.

Staff Recommendation: Town Council should initiate the amendments.

Commission Recommendation: Not applicable.

Fiscal Impact: None.

Work Plan Impact: Minimal.

Executive Summary: Town staff has received complaints from residents who live near a church that is leasing a church site in the historic district. Town residents complain that church services are very loud and extend into the late night and early morning hours. Despite Town staff's efforts to speak to church officials—both with the church who is causing the excessive noise and the church that has leased the space, noise complaints continue to occur. Currently, the Town's noise ordinance provides an exception for, "religious services, religious events, or religious activities or expressions". This total exception is not constitutionally mandated and several other Virginia localities (i.e., Fairfax County) have legally and constitutionally prohibited excessive noise from religious services.

Background: Town Code § 24-182(4)(g) includes a blanket exception from the noise ordinance for:

"Religious services, religious events or religious activities or expressions, including, but not limited to music, singing, bells, chime, and organs which are part of such service, event, activity or expression."

A church organization renting space from the Elijah Gate's property in the historic district often conducts church services with indoor amplification for speaking and music that lasts late into the night and, sometimes, into the early morning hours. Despite town staff's diligent efforts to ask church officials to lower the sound levels emanating from

the building, the services continue to cause distress to the surrounding neighborhood from the loud speaking and music.

Other localities in Virginia have removed the exception for religious services from their noise ordinances. Regulations affecting religious services can be constitutionally valid if they do not unreasonably infringe upon and cause a substantial burden upon an individual's religious freedom and expression. A three-prong test, set out by the United States Supreme Court in Sherbert v. Verner, 374 U.S. 398 (1963), is used to determine whether a government has violated an individual's constitutionally-protected right to the free exercise of religion:

- The first prong asks whether the government has burdened the individual's free exercise of religion. If the government has not burdened the individual's free exercise of religion, then the government may still constitutionally impose the burden if the government can show:
- It (the government) possesses some compelling state interest that justifies the infringement; and
- No alternative form of regulation can avoid the infringement and still achieve the state's end. In other words, the government must use the least restrictive means of furthering that compelling governmental interest.

This test is codified in Va. Code § 57-2.02 (Religious freedom preserved; definitions; applicability; construction; remedies). Subsection (E) of § 57-2.02 states that “[n]othing in this section prevents any governmental institution or facility from maintaining health, safety, security or discipline.”

Attachment:

- 1) Resolution

PRESENTED: March 29, 2016

RESOLUTION NO. _____

ADOPTED _____

A RESOLUTION: INITIATING AMENDMENTS TO THE TOWN CODE'S NOISE ORDINANCE TO REGULATE EXCESSIVE NOISE FROM RELIGIOUS SERVICES AND EVENTS

WHEREAS, the Town Code's Noise Ordinance, § 24-182(4)(g) currently provides an exception for excessive noise created by "religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity or expression"; and

WHEREAS, several residents of the Town have complained to the Leesburg Police Department that excessive noise is being created by religious services taking place in a church located adjacent to residential properties; and

WHEREAS, rather than reduce the volume of its religious services, church officials have cited the Town's Noise Ordinance exception for religious services; and

WHEREAS, the excessive noise emanating from the church often extends late into the night and into the early morning hours.

THEREFORE, RESOLVED, the Council of the Town of Leesburg in Virginia directs the Town Attorney to prepare an amendment to the Town Code's Noise Ordinance (§ 24-182) to regulate excessive noise caused by religious services and events that complies with Sherbert v. Verner, 374 U.S. 398 (1963) and Section 57-2.02 of the 1950 Code of Virginia, as amended.

PASSED this _____ day of _____, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council