

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL:** [kmajewski@hamtramckcity.com](mailto:kmajewski@hamtramckcity.com)

Mayor Karen Majewski  
Hamtramck City Council  
3401 Evaline St.  
Hamtramck, MI 48212

Re: Unconstitutional Sound Ordinance

Dear Mayor Majewski and Councilmembers:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Hamtramck. We were contacted by a concerned Hamtramck citizen. FFRF is a national nonprofit organization with 23,000 members across the country, including over 600 members in Michigan. We protect the constitutional separation between state and church and educate the public about matters of nontheism.

The Hamtramck noise control ordinance, § 130.052 states:

It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any unreasonably loud, disturbing, unusual, or unnecessary noise which annoys, disturbs, injures, or endangers the comfort, repose, health, peace of safety of others within the limits of the city.

It also provides explicit decibel level limits in order to ensure that Hamtramck citizens are not being regularly annoyed, disturbed, or even injured by loud unwelcomed noise. § 130.054. In a residential neighborhood, sounds reaching the property line cannot exceed 61 dB(A) between the 7:00 a.m. to 10 p.m. or 55 dB(A) between the hours of 10:00 p.m. to 7:00 a.m. In a commercial neighborhood, sounds created cannot exceed 71 dB(A) outside of the property between 7:00 a.m. to 10:00 p.m. or 61 dB(A) between 10:00pm to 7:00 a.m. These maximum levels represent the rules that everyone must follow in order to keep the city free from noise pollution.

The Code includes some reasonable limited exemptions to these maximum sound levels to allow the use of power tools, construction equipment, and musical instruments between 7:00 a.m. and 10:00 p.m. Most of these exemptions are fair and are applied generally to all citizens of Hamtramck, except one.

We understand that in 2004, the City Council created an exemption for churches and mosques:

“call[s] to prayer,” “church bells” and other reasonable means of announcing religious meetings to be amplified between the hours of 6:00 a.m. and 10:00 p.m. for duration not to exceed five minutes.”

Our complainant reports that she wakes up to an unwelcomed call to prayer every morning. This exemption from the city’s noise control ordinance, which is codified in § 130.055(H), allows places of religious worship to blast their religious messages starting at 6 a.m. Beginning tomorrow, February 24, until September 19, the first call to prayer is before 6 a.m. in Hamtramck.<sup>1</sup> It can be as early as 4:10 a.m. near the summer solstice. This exemption impermissibly favors religion over non-religion, at the expense of citizens well-being.

This exemption violates the Constitution in several ways. **First**, the noise ordinance is a reasonable restriction meant to foster a peaceful, quiet community with a well-rested population. It is a neutral and generally applicable statute. Religious announcements, calls to prayer, or church bells should not be exempt.

The Establishment Clause of the First Amendment prohibits government from privileging religious messages. The Supreme Court has said time and again that the “First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005); *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947).

For seven months each year, this exemption does not allow for sunrise prayer announcements because the sun rises before 6 a.m. And yet the mosques are surviving. If worshippers can manage to pray on their own without the exemption during those seven months, they don’t need the exemption at all. Since it is not needed, the exemption is simply an unconstitutional codification of religious privilege.

And of course it is unnecessary. In this modern time, it is passing absurd to believe that people must be called to prayer. Between wristwatches, cell phones, alarm clocks, text messaging, Facebook, Twitter, and every other means of quickly communicating, there is simply no need to blanket an entire community with calls to prayer that only a portion of the community heed. There are plenty of websites worshippers can use to determine prayer times. In other words, Mosques and churches can communicate directly with their congregation in hundreds of ways that do not disturb the peace, tranquility, and sleep of every other citizen.

It is a churlish double standard to use amplification technology to broadcast religious messages at an intrusive volume, yet refuse technology that would deliver the religious message to specific worshippers.

**Second**, even if an exemption for religion were necessary, this exemption is unlimited. Other exemptions to the noise control ordinance specify a maximum volume:

Power equipment cannot exceed 90 dB(A). § 130.055(A)

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<sup>1</sup> See IslamicFinder.org for Hamtramck: [bit.ly/1L94hf2](http://bit.ly/1L94hf2).

<sup>2</sup> <http://www.thehamtramckreview.com/residents-complain-that-call-to-prayer-is-too-loud/>

Construction work cannot exceed 105 dB(A). § 130.055(B).  
Musical instruments cannot exceed 67 dB(A). § 130.055(G).

By not providing a specific maximum level for mosques and churches, the city is unconstitutionally favoring religion.

**Third**, we understand that the city has received many complaints about the religious messages in the last ten years. Ord. § 130.055(H)(2) requires that:

All complaints regarding alleged violations of this section shall be filed with the City Clerk and placed on the agenda of the next regular meeting of the City Council. The City Council shall take all appropriate action it deems necessary to alleviate the complaints, with the action to include, but not be limited to, an order to terminate use of amplification.

Apparently, the complaints about the extreme noise level of these exempted religious messages are not finding their way to the City Clerk and into regular meetings of the City Council. We understand that instead, former Police Chief Max Garbarino asked the mosque leaders to turn down the volume.<sup>2</sup> This special treatment is also problematic for the reasons stated above.

We are only aware of a single complaint making it to the agenda in the last three years: a September 2013 complaint against the Ideal Islamic Center for broadcasting a call to prayer at 3:27 a.m.. Neither the agenda nor minutes detail what, if any, council action was taken.

Religious announcements, music, and other religious noises should be held to the same standards as other sound and not be given special preference. The city ought to repeal this unwarranted exemption and treat religion neutrally, without favoritism or hostility.

At the very least this council must investigate these calls to prayer and church bells by monitoring their noise level. Calls to prayer and church bells should be monitored to ensure that they are not (1) being broadcast before 7a.m. and (2) not surpassing the level set for musical instruments, 67 dB(A). If calls to prayer or church bells are being broadcast too loudly then they should be made to stop amplifying as § 130.055(H)(2) allows. And any future complaints must be placed on this council's agenda, as the law requires.

Please inform us in writing of the steps you are taking to resolve this matter. Thank you for your time and attention to this matter.

Sincerely,



Andrew L. Seidel  
Staff Attorney  
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<sup>2</sup> <http://www.thehamtramckreview.com/residents-complain-that-call-to-prayer-is-too-loud/>