

046919828

**SENATE BILL NO. 472**

Senate Amendments in [ ] — January 30, 2004

*A BILL to amend and reenact §§ 2.04.2, [ 2.06, ] 3.02, 9.12, 9.12.1 and 9.23, as amended, of Chapter 536 of the Acts of Assembly of 1950, which provided a charter for the City of Alexandria, relating to employee housing, enforcement of ordinances, compensation of the council, and zoning procedures.*

Patrons Prior to Engrossment—Senators Ticer, Puller and Saslaw; Delegates: Amundson, Ebbin, Scott, J.M. and Van Landingham

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.04.2, [ 2.06, ] 3.02, 9.12, 9.12.1 and 9.23, as amended, of Chapter 536 of the Acts of Assembly of 1950 are amended and reenacted as follows:**

§ 2.04.2. Powers Relating to Housing and Community Development.

In addition to the powers granted by other sections of this charter and any other provision of law, the city shall have the power:

(a) To acquire, by purchase, exchange, gift, lease, condemnation or otherwise, land or buildings in the city for the purpose of providing housing for low or moderate income persons or for elderly or handicapped persons, to rehabilitate and dispose of any such land and buildings by lease or sale to low or moderate income persons or elderly or handicapped persons; or to dispose of such land and buildings by lease or sale to a nonprofit or limited profit organization which has as a principal purpose the provision or development of housing for low or moderate income persons or elderly or handicapped persons; to construct residential buildings in the city for lease or sale to low or moderate income persons or elderly or handicapped persons, or for lease or sale to a nonprofit or limited profit organization which has as its principal purpose the provision or development of housing for low or moderate income persons or elderly or handicapped persons; and to make grants and loans of funds to low or moderate income persons to aid in the purchase of any land or building in the city including, but not limited to, land and buildings which have been rehabilitated by the city or by a nonprofit or limited profit organization which has as its principal purpose the development of housing for low or moderate income persons.

(b) To acquire, by purchase, exchange, gift, lease, condemnation or otherwise, real property in the city which is blighted, deteriorated, deteriorating, a blighting influence on the neighborhood, or in nonconformance with the city's zoning code or master land use plan; to clear, demolish or rehabilitate any such real property; and to dispose of any such real property by lease or sale to any person.

(c) To make grants of funds to owners of dwellings or dwelling units in the city for the purpose of subsidizing, in part, the rental payments due and owing to any such owner by a low or moderate income person; to acquire, by purchase, exchange, gift, lease, condemnation or otherwise, any dwellings or dwelling units in the city for the purpose of providing housing to low or moderate income persons, and to dispose of such dwellings or dwelling units, by sale or lease, to low or moderate income persons or to a nonprofit organization which has as its principal purpose the provision or development of housing for low or moderate income persons; and to make grants and loans of funds to low and moderate income persons to aid in the purchase of dwellings or dwelling units in the city.

(d) To issue tax-exempt bonds for the acquisition, rehabilitation and provision of housing for low or moderate income persons; provided, that prior to any action authorizing the issuance of such bonds, the city council finds affirmatively that such action is necessary to provide an adequate supply of such housing in the city.

(e) *Notwithstanding any other provision of law, general or special, the city, in order to ensure competitiveness as an employer, may by ordinance, and subject to such reasonable terms and conditions as set forth in such ordinance, provide for the use of funds, other than state funds, to provide loans or grants [ ~~for~~ to individuals who prior to receiving such funds were ] employees of the city, local school division, local constitutional officers, and local offices of state government for which employee salaries are supplemented by the city, or any of them, to purchase or rent residences within the city, for use as the employee's principal residence.*

(f) For purposes of this section, the phrase "low or moderate income persons" has the same meaning as the phrase "persons and families of low and moderate income," as in § 36-55.26 of the Code of Virginia, and shall be applied in the city using the income guidelines issued by the Virginia Housing Development Authority for use in its single family mortgage loan program authorized by § 36-55.33:1.

(g) In addition to being able to exercise the above-mentioned powers with city funds, the city is

ENGROSSED

SB472E

58 authorized to participate in any state or federal program related thereto and use state, federal or private  
59 funds in the exercise of such powers.

60 (h) The exercise of any of the powers granted in this section is hereby declared to be a public  
61 purpose and public use.

62 [ § 2.06. Enforcement of regulations.

63 (a) When, by the provisions of this charter or the constitution and general laws of the  
64 Commonwealth, the city is authorized to pass ordinances on any subject, the council, by ordinance, may  
65 provide suitable penalties, civil or criminal misdemeanor, for the violation of any such ordinances,  
66 including ordinances effective outside the city as provided in this charter. Designation of such a  
67 violation for a civil penalty under the authority of any ordinance enacted pursuant to this charter  
68 provision shall be in lieu of criminal sanctions. Further, except for any violation resulting in personal  
69 injury to or death of any person or persons, such designation shall preclude the prosecution of such a  
70 violation as a criminal misdemeanor.

71 (b) No penalty provided pursuant to subsection (a) shall exceed a fine of \$2,500 or imprisonment for  
72 twelve months or both. Upon conviction for violation of any ordinance, the court trying the case may  
73 require bond of the person so convicted with proper security in the penalty of not more than \$2,500,  
74 conditioned to keep the peace and be of good behavior and especially for the period of not more than  
75 twelve months not to violate the ordinance for the breach of which he has been convicted. From any  
76 criminal misdemeanor fine or imprisonment imposed, an appeal shall lie as in other cases of  
77 misdemeanor.

78 (c) Unless otherwise authorized by this charter, no civil penalty provided pursuant to subsection (a)  
79 shall exceed the sum of \$5,000. Any person summoned for a civil violation may make appearance,  
80 either in person before or in writing by mail, to the treasurer of the city prior to the date fixed for trial  
81 in court. Any persons so appearing may enter a waiver of trial, admit liability and pay the civil penalty  
82 established for the offense charged. Any persons so summoned shall be informed of their right to  
83 request an administrative hearing, if one is provided by ordinance, or stand trial and that their admission  
84 of liability or a finding of their liability in an administrative hearing will have the same force and effect  
85 as a judgment in court. If a person charged with a civil violation does not elect to enter a waiver of trial  
86 and admit liability or request an administrative hearing, if one is provided by ordinance, the violation  
87 shall be tried in the general district court or circuit court in the same manner and with the same right of  
88 appeal as provided for in general law. In any administrative hearing or trial for a civil violation  
89 authorized by this section, it shall be the burden of the city to show the liability of the violator by a  
90 preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal  
91 conviction for any purpose. The council, by ordinance, may provide suitable procedures, generally  
92 consistent with the provisions of Article 3 (§ 9-6.14:15 et seq.) of the Administrative Process Act of the  
93 Code of Virginia, for the conduct of administrative hearings under this subsection.

94 (d) The court may issue a writ of fieri facias directed to the sheriff of the city for the collection of  
95 the fine or civil penalty due, returnable within sixty days from its issuance.

96 (e) The city is hereby expressly authorized and empowered to institute and maintain a suit or suits to  
97 restrain by injunction the violation of any ordinance legally adopted by it, notwithstanding such  
98 ordinance may provide civil or criminal penalties for its violation.

99 (f) *When by the provisions of this charter or the Constitution and general laws of the*  
100 *Commonwealth, the city is authorized to pass ordinances to safeguard the human rights of individuals*  
101 *from unlawful discriminatory acts or practices occurring in the city, the council, by ordinance, may*  
102 *provide that any person who suffers personal injury or property damage proximately caused by the*  
103 *violation of any such ordinance may bring an action in a court of competent jurisdiction against the*  
104 *alleged violator for damages, equitable relief or both. No such ordinance shall create, nor shall it be*  
105 *construed to create, an independent or private cause of action to enforce its provisions, except as*  
106 *specifically provided by such ordinance. Any such ordinance may provide that no action thereunder*  
107 *shall be maintained until administrative remedies, if any, have been exhausted, and for the recovery of*  
108 *such reasonable attorneys fees by a prevailing party as may be awarded by the court. ]*

109 § 3.02. Compensation of the Council.

110 (a) Members of the council shall receive in full compensation for their services the sum of four  
111 hundred dollars per month; provided, however, that the mayor shall receive in full compensation for his  
112 services the sum of four hundred and fifty dollars per month; provided, further, that the rate of  
113 compensation for the members of the council and the mayor may be changed by ordinance, except that  
114 no such rate of compensation shall be increased to become effective during the term of office of the  
115 members of council and the mayor in which the vote to increase the compensation is cast.

116 (b) *Notwithstanding any contrary provision of law, general or special, any ordinance setting the rate*  
117 *of compensation for the members of council and the mayor may provide that such rate of compensation*  
118 *may be increased in each fiscal year by the same cost of living increase, if any, provided for city*  
119 *employees generally in the general budget adopted pursuant to Chapter 6 of this charter.*

§ 9.12. Adoption and Amendment of Regulations and Restrictions and Determination of Zone Boundaries; notice of public hearings.

A. Subject to the other provisions of this chapter, the council shall have power by ordinance to adopt the regulations and restrictions herein before described and determine the boundaries of the zones in which they shall apply, provide for their enforcement, and from time to time amend, supplement or repeal the same. The council shall also have authority to provide for the collection of fees to cover costs involved in the consideration of any application for amendment of any such determination of boundaries, to be paid to the Director of Finance by the applicant upon filing such request. No ordinance to adopt the regulations and restrictions herein before described or to determine the boundaries of zones or to provide for their enforcement, and no ordinance to amend, supplement or repeal the same shall be enacted until the application or motion for such change has been considered by the city planning commission and until after a public hearing in relation thereto has been held by the commission. The commission may recommend approval or disapproval of the matter by the city council, or the commission may request that the council refer the matter back to the commission for further study. The commission shall vote on the application or motion at the public hearing; provided, that the commission may defer a vote for a period not to exceed ninety days upon a recorded vote of a majority of the members of the commission that good cause exists for such deferral.

B. A public hearing on the application or motion shall be held by the council, at which time the parties in interest shall have an opportunity to be heard. Council may, by ordinance, provide for the consideration of applications or motions or both by the commission or council only at specified intervals of time, not exceeding ninety days. The council may approve or disapprove recommendations of the planning commission on the matter, subject to the provisions of § 9.06 of this charter. It may also refer back the matter to the commission for further study.

C. The commission shall act on any matter referred back from the council for further study within twenty-five calendar days of the date of the council referral and shall resubmit its reviewed recommendations to council. Such commission action shall follow a public hearing on the matter which shall be preceded by at least ten days' notice thereof published in a newspaper of general circulation in the city. If two-thirds of the entire membership of the commission votes to recommend disapproval of any matter referred back to the commission by the council for further study, such recommendation may be overruled only by a recorded affirmative vote of three-fourths of all the members of the council. If the commission fails to act on such a referral back within twenty-five days of the date of the council referral or fails to recommend disapproval of the matter referred back or by a two-thirds vote of its entire membership, the council may adopt said application or motion for change by a simple majority. An additional public hearing shall be held by the council, preceded by at least ten days' notice thereof published in a newspaper of general circulation in the city, on any matter referred by council to the planning commission for further study forty-five days from the date on which the matter was referred back to the planning commission by the council; provided, that the council may extend such forty-five-day period for an additional period not to exceed forty-five days upon a recorded vote of the majority of all the members of council that good cause exists for such extension.

D. Should the council approve the application or motion, seventy-five days may be taken to follow the proper procedure for the passage of an ordinance implementing the approval.

E. The time constraints and limitations listed and described above in this section shall not apply to any motion, or to any ordinance, to adopt, amend, supplement or repeal the regulations and restrictions herein before described, or to provide for their enforcement. In addition, notwithstanding any of the procedural requirements set forth in this chapter or by other law, ordinances adopting or amending zoning regulations and restrictions or determining zone boundaries may be enacted under the emergency ordinance provisions of this charter without compliance with such requirements.

F. The council, in determining the boundaries of zones, may approve an application or motion for, and may adopt an ordinance for, a zone change to a more restrictive zone than that originally applied for or moved; provided, in cases where the zone change procedure is initiated by other than the planning commission or the council on its own motion: (1) that the planning commission recommends in favor of such more restrictive zone change at a public hearing held to consider the application for a zone change amendment; (2) that the applicant agrees to the more restrictive zone change at or before the said planning commission hearing; and (3) that at least ten days' notice of the more restrictive zone change and of the time and place of the public hearing before council required by this section shall be given by publication thereof in a newspaper of general circulation in the city. A protest under § 9.13 of this charter against a less restrictive zone change shall not be effective against a more restrictive change. This shall not, however, preclude the filing of an effective new protest against a more restrictive zone change under § 9.13, nor shall it preclude the effectiveness of a protest filed against both a less restrictive and a more restrictive zone change.

G. Whenever a public hearing is required or provided under the provisions of this chapter or any

181 related provision of general law, or under any local ordinance adopted pursuant to this chapter or such  
182 general law, at least ten days' notice of the time and place of such hearing, together with a general  
183 description of the matter being heard, shall be published in a newspaper of general circulation in the  
184 city. The council may, by ordinance, prescribe additional newspaper notice requirements for particular  
185 hearings or classes of hearings. This subsection shall preempt all other newspaper notice requirements of  
186 general or special law.

187 H. Any ordinance adopted, or other action taken, under the authority of this chapter or any related  
188 provision of general law prior to April 1, 1995~~2004~~, shall not be declared to be invalid by reason of a  
189 failure to advertise or give notice as required by general law, so long as advertisement and notice of  
190 such adoption or action was given in compliance with the then applicable local law; however, this  
191 subsection shall not affect any litigation concluded before, or pending on, April 1, 1995~~2004~~.

192 *I. Whenever written notice of a public hearing is required to be given to an owner of property*  
193 *affected by the adoption or amendment of regulations or restrictions or zone boundaries under the*  
194 *provisions of this chapter or any related provision of general law, such notice shall be given for the*  
195 *public hearing on the application or motion for such adoption or amendment, as provided in subsection*  
196 *A or subsection B of this section, and not for the public hearing on the ordinance implementing the*  
197 *approval, as provided in subsection D of this section.*

198 § 9.12.1. Parties to Applications and Motions for Amendments, Supplements or Repeal of  
199 Regulations and Restrictions and Determination of Boundaries.

200 Applications ~~or motions~~ for changes in zone boundaries shall be accepted only from parties having a  
201 legal interest in the property, from the duly authorized representative of any such party or from persons  
202 exhibiting the consent of parties having a legal interest in the property. The planning commission may  
203 initiate on its own motion the *adoption*, amendment, supplement or repeal of any regulation, restriction  
204 or determination of boundaries of zones. The council may initiate on its own motion the *adoption*,  
205 amendment, supplement or repeal of any regulation, restriction or determination of boundaries of zones.  
206 All such applications and motions shall be subject to the procedures set forth in this chapter. *This*  
207 *section shall preempt all provisions of general law applicable to the initiation by the planning*  
208 *commission or city council of the adoption, amendment, supplement or repeal of any regulation,*  
209 *restriction or determination of boundaries of zones.*

210 § 9.23. Penalties for Violation of Zoning Ordinance.

211 The council may in the zoning ordinance provide that penalties, civil or criminal, as provided in  
212 § 2.06 of this charter shall be imposed for violations of the ordinance by owners of land, buildings or  
213 structures, their agents having possession or control of such property, lessees, tenants, architects,  
214 builders, contractors or any other persons, firms or corporations who take part in or assist in any such  
215 violations or who maintain any land, building or structure in which such violations exist. *This section*  
216 *shall preempt all provisions of general law authorizing the establishment of penalties for the violation of*  
217 *the zoning ordinance.*

218 **2. That an emergency exists and this act is in force from its passage.**