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HOUSE BILL NO. 553

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 15.2-2286, 33.1-373, 33.1-375.1, 56-265.15, and 56-265.15:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2286.2, relating to real estate signage.

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Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2286, 33.1-373, 33.1-375.1, 56-265.15, and 56-265.15:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2286.2 as follows:

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties.

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the City of Norfolk may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any

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59 person failing to comply with such subpoena shall be subject to punishment for contempt by the court
60 issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to
61 quash it.

62 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of
63 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal
64 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy
65 limitations of a residential dwelling unit, or similar short-term, recurring violations.

66 Where provided by ordinance, the zoning administrator may be authorized to grant a modification
67 from any provision contained in the zoning ordinance with respect to physical requirements on a lot or
68 parcel of land, including but not limited to size, height, location or features of or related to any building,
69 structure, or improvements, if the administrator finds in writing that: (i) the strict application of the
70 ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties
71 in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not
72 be of substantial detriment to adjacent property and the character of the zoning district will not be
73 changed by the granting of the modification. Prior to the granting of a modification, the zoning
74 administrator shall give, or require the applicant to give, all adjoining property owners written notice of
75 the request for modification, and an opportunity to respond to the request within 21 days of the date of
76 the notice. The zoning administrator shall make a decision on the application for modification and issue
77 a written decision with a copy provided to the applicant and any adjoining landowner who responded in
78 writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall
79 constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning
80 appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the
81 circuit court as provided by § 15.2-2314.

82 The zoning administrator shall respond within 90 days of a request for a decision or determination
83 on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

84 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any
85 such violation shall be a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000.
86 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or
87 remedy the violation in compliance with the zoning ordinance, within a time period established by the
88 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a
89 separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any
90 such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for
91 each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.

92 However, any conviction resulting from a violation of provisions regulating the number of unrelated
93 persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to
94 abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and
95 any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense
96 for each 10-day period punishable by a fine of up to \$7,500. However, no such fine shall accrue against
97 an owner or managing agent of a single-family residential dwelling unit during the pendency of any
98 legal action commenced by such owner or managing agent of such dwelling unit against a tenant to
99 eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55, as
100 applicable. A conviction resulting from a violation of provisions regulating the number of unrelated
101 persons in single-family residential dwellings shall not be punishable by a jail term.

102 6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of
103 notices and other expenses incident to the administration of a zoning ordinance or to the filing or
104 processing of any appeal or amendment thereto.

105 7. For the amendment of the regulations or district maps from time to time, or for their repeal.
106 Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the
107 governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or
108 classifications of property. Any such amendment may be initiated (i) by resolution of the governing
109 body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract
110 purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the
111 subject of the proposed zoning map amendment, addressed to the governing body or the local planning
112 commission, who shall forward such petition to the governing body; however, the ordinance may
113 provide for the consideration of proposed amendments only at specified intervals of time, and may
114 further provide that substantially the same petition will not be reconsidered within a specific period, not
115 exceeding one year. Any such resolution or motion by such governing body or commission proposing
116 the rezoning shall state the above public purposes therefor.

117 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for
118 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such
119 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or
120 consents to action beyond such period or unless the applicant withdraws his motion, resolution or

petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

14. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

16. *For the regulation of signs in the highway rights of way pursuant to § 15.2-2286.2.*

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

§ 15.2-2286.2. Regulation of signs in the highway rights of way.

A. *Pursuant to the provisions of this section, the governing body of any locality may adopt an ordinance in order to control signs within any highway rights of way and to enable local enforcement of § 33.1-373. Any locality adopting or amending any such signage control ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body. For purposes of this section, "highway" and "sign" shall have the same meaning as those terms are defined in § 33.1-351. This section shall provide the enabling authority for localities to regulate signs in highway rights of way.*

B. *In order to implement the provisions of this section, a local ordinance may provide that:*

1. *No sign shall be placed in the medians of any highway right of way;*

2. *No sign shall be placed on a traffic control structure or an electric or telephone or other utility structure; and*

3. *No sign shall be placed within highway rights of way adjacent to the shoulder of the pavements except as otherwise provided in subsection C.*

C. *Notwithstanding the foregoing provisions of this section, the following signs and advertising shall not be subject to enforcement pursuant to this section:*

1. *Signs and advertising supporting an individual's candidacy for elected public office or other ballot*

182 issues, provided this exception shall not include signs and advertising in place more than three days
183 after the election to which they apply;

184 2. Signs and advertising promoting or providing directions to a special event to be held at a
185 specified date stated on the sign or advertising, provided this exception shall not include special event
186 signs in place more than three days after the conclusion of the special event; and

187 3. Other signs and advertising erected for no more than three days (in any given week).

188 D. If the locality authorizes volunteers to enforce the provisions of a local ordinance adopted
189 pursuant to this section or § 33.1-373, the locality shall require each such volunteer to comply with the
190 provisions of this section. If a volunteer or local government employee violates the provisions of a local
191 ordinance or § 33.1-373, such volunteer or local government employee shall be personally liable to the
192 owner of the signs for any damage to the signs resulting from such violation, including being liable for
193 destruction of private property of the sign owner. If a sign is confiscated by the locality or a volunteer
194 authorized by the locality, the sign owner shall have the right to request that such sign be returned to
195 the sign owner, provided the request is made in writing within 10 business days of the date of
196 confiscation.

197 E. In addition to the collection of the penalties and costs pursuant to § 33.1-373, the locality may
198 treat a violation of its sign control ordinance as a zoning violation and impose a penalty not to exceed
199 \$250 per violation under the zoning ordinance.

200 § 33.1-373. Advertising on rocks, poles, etc., within limits of highway; civil penalty.

201 Any person who in any manner (i) paints, prints, places, puts or affixes any advertisement upon or to
202 any rock, stone, tree, fence, stump, pole, mile-board, milestone, danger-sign, guide-sign, guidepost,
203 highway sign, historical marker, building or other object lawfully within the limits of any highway or
204 (ii) erects, paints, prints, places, puts, or affixes any advertisement within the limits of any highway shall
205 be assessed a civil penalty of ~~\$100~~ \$250. Each occurrence shall be subject to a separate penalty. ~~All~~
206 ~~Unless the Commissioner has entered into an agreement with a local government for enforcement of this~~
207 ~~section, all~~ civil penalties collected under this section shall be paid into the Highway Maintenance and
208 Operating Fund. Advertisements placed within the limits of the highway are hereby declared a public
209 and private nuisance and may be forthwith removed, obliterated, or abated by the Commonwealth
210 Transportation Commissioner or his representatives without notice. The Commonwealth Transportation
211 Commissioner may collect the cost of such removal, obliteration, or abatement from the person erecting,
212 painting, printing, placing, putting, affixing or using such advertisement. When no one is observed
213 erecting, painting, printing, placing, putting, or affixing such sign or advertisement, the person, firm or
214 corporation being advertised shall be presumed to have placed the sign or advertisement and shall be
215 punished accordingly. Such presumption, however, shall be rebuttable by competent evidence. In
216 addition, the Commissioner or his representative may seek to enjoin any recurring violator of this
217 section.

218 The provisions of this section shall not apply to signs or other outdoor advertising regulated under
219 Chapter 7 (§ 33.1-351 et seq.) of this title.

220 § 33.1-375.1. Commissioner may enter into certain agreements; penalties.

221 A. The Commonwealth Transportation Commissioner may enter into agreements with ~~the any~~ local
222 governing body of ~~Fairfax County~~ authorizing local law-enforcement agencies or other local
223 governmental entities to act as agents of the Commissioner for the purpose of ~~(i) enforcing local~~
224 ~~enforcement of the provisions of § 33.1-373 and (ii) collecting the penalties and costs provided for in~~
225 ~~that section pursuant to § 15.2-2286.2.~~ However, no local governing body shall enter into any such
226 agreement until it has held a public hearing ~~thereon~~ *adopted an ordinance in accordance with*
227 *§ 15.2-2286.2.*

228 ~~B. Notwithstanding~~ *The agreement shall provide that the local governing body retains the penalties*
229 *and costs provided in accordance with the provisions of § 33.1-373; one-half of the penalties and costs*
230 *collected under this section shall be paid to the affected locality, and the remainder shall be remitted to*
231 *the Commissioner and paid into the Highway Maintenance and Operating Fund.*

232 C. Notwithstanding the foregoing provisions of this section, the following signs and advertising shall
233 not be subject to the agreements provided for in subsection A of this section:

234 1. Signs and advertising supporting an individual's candidacy for elected public office or other ballot
235 issues, provided this exception shall not include signs and advertising in place more than three days after
236 the election to which they apply.

237 2. Signs and advertising promoting and/or providing directions to a special event to be held at a
238 specified date stated on the sign or advertising, provided this exception shall not include special event
239 signs in place more than three days after the conclusion of the special event.

240 3. Other signs and advertising erected for no more than three days.

241 D. Notwithstanding the foregoing provisions of this section, the Commissioner may enter into
242 agreements with the local governing bodies of localities to which the foregoing provisions of this section
243 do not apply to authorize those governing bodies to act as agents of the Commissioner and the

Department in enforcing the provisions of ~~§ 33.1-373~~. The limitations applicable to agreements entered into under subsections A through C of this section shall not apply to agreements entered into under this subsection. *If the locality authorizes volunteers to enforce the provisions of a local ordinance adopted pursuant to this section or § 33.1-373, the locality shall require each such volunteer to comply with the provisions of this section. If a volunteer or local government employee violates the provisions of a local ordinance or § 33.1-373, such volunteer or local government employee shall be personally liable to the owner of the signs for any damage to the signs resulting from such violation including being liable for destruction of private property of the sign owner. If a sign is confiscated by the locality or a volunteer authorized by the locality, the sign owner shall have the right to request that such sign be returned to the sign owner, provided the request is made in writing within 10 business days of the date of confiscation.*

§ 56-265.15. Definitions; calculation of time periods.

A. As used in this chapter:

"Abandoned" means no longer in service and physically disconnected from a portion of the underground utility line that is in use for storage or conveyance of service.

"Commission" means the State Corporation Commission.

"Contract locator" means any person contracted by an operator specifically to determine the approximate horizontal location of the operator's utility lines that may exist within the area specified by a notice served on a notification center.

"Damage" means any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of such facility.

"Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives which could damage underground utility lines.

"Designer" means any licensed professional designated by the project owner who designs government projects, commercial projects, residential projects consisting of ~~twenty-five~~ 25 or more units, or industrial projects, which projects require the approval of governmental or regulatory authorities having jurisdiction over the project area.

"Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material. *"Excavate" or "excavation" shall not include installation of a sign that is installed by pushing metal, plastic, or wooden poles in the ground without grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material.*

"Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other natural disasters.

"Hand digging" means any excavation involving nonmechanized tools or equipment. Hand digging includes, but is not limited to, digging with shovels, picks, and manual post hole diggers, vacuum excavation or soft digging.

"Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

"Notify," "notice" or "notification" means the completed delivery of information to the person to be notified, and the receipt of same by such person in accordance with this chapter. The delivery of information includes, but is not limited to, the use of any electronic or technological means of data transfer.

"Operator" means any person who owns, furnishes or transports materials or services by means of a utility line.

"Person" means any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and includes any trustee, receiver, assignee, or personal representative thereof.

"Soft digging" means any excavation using tools or equipment that utilize air or water pressure as the

305 direct means to break up soil or earth for removal by vacuum excavation.

306 "Special project notice" means a valid notice to the notification center by an excavator covering a
307 specific, unique or long-term project.

308 "Utility line" means any item of public or private property which is buried or placed below ground
309 or submerged for use in connection with the storage or conveyance of water, sewage,
310 telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances,
311 and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits,
312 cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. The term
313 "sewage" as used herein does not include any gravity storm drainage systems. Except for any publicly
314 owned gravity sewer system within a county which has adopted the urban county executive form of
315 government, the term "utility line" does not include any gravity sewer system or any combination
316 gravity storm/sanitary sewer system within any counties, cities, towns or political subdivisions
317 constructed or replaced prior to January 1, 1995. No excavator shall be held liable for the cost to repair
318 damage to any such systems constructed or replaced prior to January 1, 1995, unless such systems are
319 located in accordance with § 56-265.19.

320 "Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse, as
321 distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

322 "Working day" means every day, except Saturdays, Sundays, and legal state and national holidays.

323 B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the time
324 of the original notification to the notification center as provided in § 56-265.17. In addition, all time
325 periods exclude Saturdays, Sundays, and legal state and national holidays.

326 § 56-265.15:1. Exemptions; routine maintenance.

327 Nothing in this chapter shall apply to:

328 1. Any hand digging performed by an owner or occupant of a property.

329 2. The tilling of soil for agricultural purposes.

330 3. Any excavation done by a railroad when the excavation is made entirely on the land which the
331 railroad owns and on which the railroad operates, provided there is no encroachment on any operator's
332 rights-of-way or easements.

333 4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all
334 reasonable precaution has been taken to protect the underground utility lines.

335 In the case of the state highway systems or streets and roads maintained by political subdivisions,
336 officials of the Department of Transportation or the political subdivision where the use of such
337 highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the
338 necessity of repair beginning immediately after the occurrence.

339 5. Any excavation for routine pavement maintenance, including patch type paving or the milling of
340 pavement surfaces, upon the paved portion of any street, road, or highway of the Commonwealth
341 provided that any such excavation does not exceed a depth of ~~twelve~~ 12 inches (0.3 meter).

342 6. Any excavation for the purpose of mining pursuant to and in accordance with the requirements of
343 a permit issued by the Department of Mines, Minerals and Energy.

344 7. Any hand digging performed by an operator to locate the operator's utility lines in response to a
345 notice of excavation from the notification center, provided all reasonable precaution has been taken to
346 protect the underground utility lines.

8. Any installation of a sign that does not involve excavation as defined in § 56-265.15.