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SENATE BILL NO. 59

Offered January 8, 2014

Prefiled December 18, 2013

A *BILL to amend and reenact §§ 3.2-3942, 3.2-6568, 10.1-610, 15.2-2286, 19.2-394, 19.2-395, 27-32.2, 27-37.1, 27-98.2, 27-98.3, 27-98.5, 36-105, 40.1-49.9, 40.1-49.10, 40.1-49.12, and 63.2-1718 of the Code of Virginia, relating to maintenance of executed administrative search warrants, investigation warrants, and inspection warrants.*

Patron—Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3942, 3.2-6568, 10.1-610, 15.2-2286, 19.2-394, 19.2-395, 27-32.2, 27-37.1, 27-98.2, 27-98.3, 27-98.5, 36-105, 40.1-49.9, 40.1-49.10, 40.1-49.12, and 63.2-1718 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3942. Right of entry; warrant requirements; procedure.

A. The Commissioner may enter any public or private premises operating as a pesticide business at reasonable times, with the consent of the owner or tenant thereof, and upon presentation of appropriate credentials for carrying out the purposes of this chapter.

B. If the Commissioner is denied access, he may apply for an administrative search warrant from a judge with authority to issue criminal warrants or a magistrate whose jurisdiction encompasses the premises.

1. No warrant shall be issued except upon probable cause and supported by an affidavit particularly describing: (i) the place, things, or persons to be inspected or tested; and (ii) the purpose for which the inspection, testing, or collection of samples is to be made.

2. Probable cause shall exist if either: (i) reasonable legislative or administrative standards for conducting inspection, testing, or collection of samples are satisfied with respect to the particular place, thing, or person; or (ii) there is cause to believe that a condition, object, activity, or circumstance legally justifies the inspection, testing, or collection of samples.

3. The supporting affidavit shall contain either: (i) a statement that consent to inspect, test, or collect samples has been sought and refused; or (ii) facts or circumstances reasonably justifying the failure to seek consent. If probable cause is based upon legislative or administrative standards for selecting places of business for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the court that the inspection program is based on reasonable standards and that the standards are being applied to a particular place of business in a neutral and fair manner. *After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54.*

C. Any administrative search warrant shall be effective for a period of not more than 15 days unless extended or renewed by the judicial officer who issued the original warrant. The warrant shall be executed and returned to the ~~issuing officer~~ *clerk of the circuit court of the city or county wherein the search was made* within the time specified or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. The warrant shall be void after the expiration of time unless executed or renewed.

D. No warrant shall be executed in the absence of the owner, tenant, operator, or custodian of the premises unless the issuing judicial officer specifically authorizes that such authority is reasonably necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be made forcibly. The issuing officer may authorize a forcible entry where the facts: (i) create a reasonable suspicion of an immediate threat to the health and safety of persons or to the environment; or (ii) establish that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer who shall accompany the Commissioner during the execution of the warrant.

E. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the ~~issuing judicial officer~~, except as a defense in a contempt proceeding or if the owner or custodian of the place to be inspected submits a substantial preliminary showing by affidavit and accompanied by proof that: (i) a statement included by the affiant in his affidavit for the administrative search warrant was false and made knowingly and intentionally or with reckless disregard for the truth; and (ii) the false statement was necessary to the finding of probable cause. The court may conduct in camera review as appropriate.

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59 F. After the warrant has been executed and returned to the issuing judicial officer, the validity of the
60 warrant may be reviewed either as a defense to any Notice of Violation or by declaratory judgment
61 action brought in a circuit court. The review shall be confined to the face of the warrant, affidavits, and
62 supporting materials presented to the issuing judicial officer. If the owner or custodian of the place
63 inspected submits a substantial showing by affidavit and accompanied by proof that: (i) a statement
64 included in the warrant was false and made knowingly and intentionally or with reckless disregard for
65 the truth; and (ii) the false statement was necessary to the finding of probable cause, the reviewing
66 court shall limit its inquiry to whether there is substantial evidence in the record supporting the issuance
67 of the warrant and shall not conduct a de novo determination of probable cause.

68 **§ 3.2-6568. Power of search for violations of statutes against cruelty to animals.**

69 When a sworn complaint an affidavit is made to any proper authority under oath before a magistrate
70 or court of competent jurisdiction by any animal control officer, humane investigator, law-enforcement
71 officer, or State Veterinarian's representative that the complainant believes and has reasonable cause to
72 believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in
73 any particular building or place, such authority magistrate or judge, if satisfied that there is reasonable
74 cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff, or police officer, to
75 search the building or place. After issuing a warrant under this section, the magistrate or judge shall
76 file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the animal control
77 officer, humane investigator, law enforcement officer, or State Veterinarian's representative shall return
78 the warrant to the clerk of the circuit court of the city or county wherein the search was made.

79 **§ 10.1-610. Right of entry.**

80 A. The Board and its agents and employees shall have the right to enter any property at reasonable
81 times and under reasonable circumstances to perform such inspections and tests or to take such other
82 actions it deems necessary to fulfill its responsibilities under this article, including the inspection of
83 dams that may be subject to this article, provided that the Board or its agents or employees make a
84 reasonable effort to obtain the consent of the owner of the land prior to entry.

85 B. If entry is denied, the Board or its designated agents or employees may apply to make an affidavit
86 under oath before any magistrate whose territorial jurisdiction encompasses the property to be inspected
87 or entered for a warrant authorizing such investigation, tests or other actions. Such warrant shall issue if
88 the magistrate finds probable cause to believe that there is a dam on such property which is not known
89 to be safe. After issuing a warrant under this section, the magistrate shall file the affidavit in the
90 manner prescribed by § 19.2-54. After executing the warrant, the Board or its designated agents or
91 employees shall return the warrant to the clerk of the circuit court of the city or county wherein the
92 investigation was made.

93 **§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay**
94 **delinquent taxes; penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or

processing of any appeal or amendment thereto.

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

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or 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 make an affidavit under oath before a~~ magistrate or court of competent jurisdiction and, if such ~~sworn testimony affidavit~~ 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. *After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made.* 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.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, 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, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid.

§ 19.2-394. Issuance of warrant.

An inspection warrant may be issued for any inspection, testing or collection of samples for testing or for any administrative search authorized by state or local law or regulation in connection with the presence, manufacturing or emitting of toxic substances, whether or not such warrant be constitutionally required. Nothing in this chapter shall be construed to require issuance of an inspection warrant where a warrant is not constitutionally required or to exclude any other lawful means of search, inspection, testing or collection of samples for testing, whether without warrant or pursuant to a search warrant issued under any other provision of the Code of Virginia. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, things or persons to be inspected or tested and the purpose for which the inspection, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting such inspection, testing or collection of samples for testing are satisfied with respect to the particular place, things or persons or there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection, testing or collection of samples for testing. The supporting affidavit shall contain either a statement that consent to inspect, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the state or local law or regulation which authorizes such inspection, testing or collection of samples for testing. The issuing judge may examine the affiant under oath or affirmation to verify the accuracy of any matter indicated by the statement in the affidavit. *After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54.*

§ 19.2-395. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the ~~judicial officer by whom it was issued~~ *clerk of the circuit court of the city or county wherein the inspection was made* within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed shall be void.

§ 27-32.2. Issuance of fire investigation warrant.

A. If, in undertaking such an investigation, the fire marshal or investigator appointed pursuant to § 27-56 makes an affidavit under oath that the origin or cause of any fire or explosion on any land, building, or vessel, or of any object is undetermined and that he has been refused admittance thereto, or is unable to gain permission to enter such land, building, or vessel, or to examine such object, within 15 days after the extinguishing of such, any magistrate serving the city or county where the land, building, vessel, or object is located may issue a fire investigation warrant to the fire marshal or investigator appointed pursuant to § 27-56 authorizing him to enter such land, building, vessel, or the premises upon which the object is located for the purpose of determining the origin and source of such fire or explosion. *After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the fire marshal, or investigator appointed pursuant to § 27-56, shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.*

B. If the fire marshal or investigator appointed pursuant to § 27-56, after gaining access to any land, building, vessel, or other premises pursuant to such a fire investigation warrant, has probable cause to believe that the burning or explosion was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained pursuant to § 27-32.1, or consent to conduct the search has otherwise been given.

§ 27-37.1. Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances.

A. The fire marshal shall have the right, if authorized by the governing body of the county, city, or town appointing the fire marshal, to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in § 10.1-1400 or 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water or soils of the county, city or town in order to investigate the extent and cause of any such release.

B. If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he has been refused admittance to the

property, or is unable to gain permission to enter the property, any magistrate serving the city or county where the property is located may issue an investigation warrant to the fire marshal authorizing him to enter such property for the purpose of determining the origin and source of the release. *After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the fire marshal shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.*

C. If the fire marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

§ 27-98.2. Issuance of warrant.

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. *After issuing the warrant, the judge or magistrate shall file the affidavit in the manner prescribed by § 19.2-54.*

§ 27-98.3. Duration of warrant.

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the ~~judicial officer by whom it was issued~~ *within the time specified in the warrant or within the extended or renewed time clerk of the circuit court of the city or county wherein the inspection was made.* The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

§ 27-98.5. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the ~~issuing judge or magistrate~~ *clerk of the circuit court of the city or county wherein the inspection was made* except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.

B. After the warrant has been executed and returned to the ~~issuing judge~~ *clerk of the circuit court of the city or county wherein the inspection was made*, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine

whether there is substantial evidence in the record supporting the decision to issue the warrant.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits.

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may ~~present sworn testimony to~~ *make an affidavit under oath before* a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. *After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made.* The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing,

428 demolition or moving thereof is approved by the review board, or, on appeal, by the governing body
429 after consultation with the review board unless the local maintenance code official consistent with the
430 Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that
431 it shall be razed, demolished or moved.

432 For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to
433 or is consistent with the historic or architectural qualities, historic associations, or values for which the
434 district was established pursuant to § 15.2-2306, because it (i) was present during the period of
435 significance, (ii) relates to the documented significance of the district, and (iii) possesses historic
436 integrity or is capable of yielding important information about the period.

437 7. Fees may be levied by the local governing body in order to defray the cost of such enforcement
438 and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs
439 incurred for such enforcement during normal business hours, but shall not include overtime costs unless
440 conducted outside of the normal working hours established by the locality. A schedule of such costs
441 shall be adopted by the local governing body in a local ordinance. A locality shall not charge an
442 overtime rate for inspections conducted during the normal business hours established by the locality.
443 Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided
444 the private entity has been approved to perform such inspections in accordance with the written policy
445 of the maintenance code official for the locality.

446 D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a
447 building permit as otherwise provided under this chapter, however, notwithstanding any provision of
448 law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on
449 the owner's property, such applicant shall not be denied a permit under the Building Code solely upon
450 the basis that the property owner has financial obligations to the locality that constitute a lien on such
451 property in favor of the locality. If such applicant is the property owner, in addition to payment of the
452 fees for issuance of a building permit, the locality may require full payment of any and all financial
453 obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For
454 purposes of this subsection, "property owner" means the owner of such property as reflected in the land
455 records of the circuit court clerk where the property is located, the owner's agent, or any entity in which
456 the owner holds an ownership interest greater than 50 percent.

457 **§ 40.1-49.9. Issuance of warrant.**

458 Administrative search warrants for inspections of workplaces, based upon a petition demonstrating
459 probable cause and supported by an affidavit, may be issued by any judge having authority to issue
460 criminal warrants whose territorial jurisdiction encompasses the workplace to be inspected or entered, if
461 he is satisfied from the petition and affidavit that there is reasonable and probable cause for the issuance
462 of an administrative search warrant. No administrative search warrant shall be issued pursuant to this
463 chapter except upon probable cause, supported by affidavit, particularly describing the place, things or
464 persons to be inspected or tested and the purpose for which the inspection, testing or collection of
465 samples for testing is to be made. Probable cause shall be deemed to exist if either (i) reasonable
466 legislative or administrative standards for conducting such inspection, testing or collection of samples for
467 testing are satisfied with respect to the particular place, thing, or person, or (ii) there is cause to believe
468 that there is a condition, object, activity, or circumstance which legally justifies such inspection, testing
469 or collection of samples for testing. The supporting affidavit shall contain either a statement that consent
470 to inspect, test or collect samples for testing has been sought and refused or facts or circumstances
471 reasonably justifying the failure to seek such consent in order to enforce effectively the occupational
472 safety and health laws, regulations or standards of the Commonwealth which authorize such inspection,
473 testing or collection of samples for testing. In the case of an administrative search warrant based on
474 legislative or administrative standards for selecting workplaces for inspection, the affidavit shall contain
475 factual allegations sufficient to justify an independent determination by the judge that the inspection
476 program is based on reasonable standards and that the standards are being applied to a particular
477 workplace in a neutral and fair manner. For example, if a selection is based on a particular industry's
478 high hazard ranking, the affidavit shall disclose the method used to establish that ranking, the numerical
479 basis for that ranking, and the relevant inspection history of the workplace to be inspected and the status
480 of all other workplaces within the same territorial region which are subject to inspection pursuant to the
481 legislative or administrative standards used by the Commissioner. The affidavit shall not be required to
482 disclose the actual schedule for inspections or the underlying data on which the statistics were based,
483 provided that such statistics are derived from reliable, neutral third parties. The issuing judge may
484 examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit. *After*
485 *issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by*
486 *§ 19.2-54.*

487 **§ 40.1-49.10. Duration of warrant.**

488 Any administrative search warrant issued shall be effective for the time specified therein, but not for
489 a period of more than fifteen days, unless extended or renewed by the judicial officer who signed and

issued the original warrant. The warrant shall be executed and shall be returned to the judicial officer by whom it was issued clerk of the circuit court of the city or county wherein the inspection was made within the time specified in the warrant or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

§ 40.1-49.12. Review by courts.

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judge, except as a defense in a contempt proceeding, unless the owner or custodian of the place to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera review as the court may deem appropriate.

B. After the warrant has been executed and returned to the issuing judge, the validity of the warrant may be reviewed either as a defense to any citation issued by the Commissioner or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the employer whose workplace has been inspected makes by affidavit a substantial showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The reviewing court shall not conduct a de novo determination of probable cause, but only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant.

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate, or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. After issuing a warrant under this section, the judge shall file the affidavit in the manner prescribed by § 19.2-54. Such warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the inspection was made.