18101405D

HOUSE BILL NO. 594

Offered January 10, 2018

Prefiled January 8, 2018

A BILL to amend and reenact §§ 15.2-907 and 36-105 of the Code of Virginia, relating to localities; authority to require abatement of criminal blight on real property.

Patrons—Carr, Bourne and McQuinn

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-907 and 36-105 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-907. Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use or other criminal activity.

A. As used in this section:

"Affidavit" means the affidavit *sworn to under oath* prepared by a locality in accordance with subdivision B 1 a ~~hereof~~.

"Commercial Sex Acts" means any specific activities that would constitute a criminal act under Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

"Controlled substance" means illegally obtained controlled substances or marijuana, as defined in § 54.1-3401.

"Corrective action" means ~~the~~ *(i)* taking ~~which of steps~~ *specific actions with respect to the buildings or structures on property that* are reasonably expected ~~to be effective~~ to abate ~~drug~~ *criminal* blight on *such* real property, ~~such as~~ *including the* removal, repair, or securing of any building, wall, or other structure*, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. A local law-enforcement official shall prepare an affidavit on behalf of the locality that states specific actions to be taken on the part of the property owner that the locality determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue financial burden on the owner*.

"~~Drug~~ *Criminal* blight" means a condition existing on real property ~~which tends to endanger~~ *that endangers* the public health or safety of residents of a locality and is caused by *(i)* the regular presence on the property of persons under the influence of controlled substances ~~or~~*; (ii)* the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances*; or (iii) the regular use of the property for the purpose of engaging in commercial sex acts.*

"Law-enforcement official" means an official designated to enforce criminal laws, including commercial sex acts, within a locality, or an agent of such law-enforcement official. The law-enforcement official shall coordinate with the building or fire code official of the locality as otherwise provided under applicable laws and regulations.

"Owner" means the record owner of real property.

"Property" means real property.

B. Any locality may, by ordinance, provide that:

1. The locality may *require the owner of real property to* undertake corrective action*, or the locality may undertake corrective action,* with respect to *such* property in accordance with the procedures described herein:

a. The locality shall execute an affidavit, citing this section, to the effect that (i) ~~drug~~ *criminal* blight exists on the property and in the manner described therein; (ii) the locality has used diligence without effect to abate the ~~drug~~ *criminal* blight; and (iii) the ~~drug~~ *criminal* blight constitutes a present threat to the public's health, safety, or welfare.

b. The locality shall then send a notice to the owner of the property, to be sent by ~~regular~~ *(i) certified* mail*, return receipt requested; (ii) hand delivery; or (iii) overnight delivery by a commercial service or the United States Postal Service,* to the last address listed for the owner on the locality's assessment records for the property, together with a copy of such affidavit, advising that ~~(i)~~ *(a)* the owner has up to 30 days from the date thereof to undertake corrective action to abate the ~~drug~~ *criminal* blight described in such affidavit and ~~(ii)~~ *(b)* the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the ~~drug~~ *criminal* blight described in such affidavit. *If the owner notifies the locality in writing within the 30-day period that additional time to complete the corrective action is needed, the locality shall allow such owner an extension for an additional 30-day period to take such corrective action.*

c. If no corrective action is undertaken during such 30-day period, *or during the extension if such extension is granted by the locality,* the locality shall send by ~~regular~~ *certified* mail, *return receipt requested,* an additional notice to the owner of the property, at the address stated in ~~the~~ ~~preceding~~ subdivision *b,* stating *(i)* the date on which the locality may commence corrective action to abate the ~~drug~~ *criminal* blight on the property *or (ii) the date on which the locality may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property,* which date shall be no earlier than 15 days after the date of mailing of the notice. Such additional notice shall also reasonably describe the corrective action contemplated to be taken by the locality. Upon receipt of such notice, the owner shall have a right, upon reasonable notice to the locality, to seek ~~equitable~~ *judicial* relief, and the locality shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.

2. *If (i) the owner of the real property subject to this section is operated as a hotel or motel, or other transient lodging for less than 90 days, as referenced in § 55-248.3:1; (ii) such property has been declared by the locality to be in a state of criminal blight; and (iii) such owner declines a written request of the locality to provide a copy of the guest registry, the locality may request an inspection warrant for such records under § 36-105.*

3. If the locality undertakes corrective action with respect to the property after complying with the provisions of subdivision ~~B~~ 1, the costs and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected.

~~3.~~ *4.* Every charge authorized by this section with which the owner of any such property has been assessed and ~~which~~ *that* remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local real estate taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1.

5. A criminal blight proceeding pursuant to this section shall be a civil proceeding in a court of competent jurisdiction in the Commonwealth.

C. If the owner of ~~such~~ *real* property takes timely corrective action pursuant to ~~such~~ *the provisions of a local* ordinance, the locality shall deem the ~~drug~~ *criminal* blight abated, shall close the proceeding without any charge or cost to the owner, and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the locality from initiating a subsequent proceeding if the ~~drug~~ *criminal* blight recurs.

D. Nothing in this section shall be construed to abridge, *diminish, limit,* or waive any rights or remedies of an owner of property at law ~~or~~ ~~in~~ ~~equity~~*, or any permits or nonconforming rights the owner may have under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, or under a local ordinance. If an owner in good faith takes corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the locality persists, such owner shall be deemed in compliance with this section. Further, if a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the owner in good faith initiates legal action and pursues the same requesting a final order by a court of competent jurisdiction, as otherwise authorized by this Code, against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be deemed in compliance with this section.*

§ 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.

a. 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 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.

b. If the owner of a hotel or motel, or other transient lodging for less than 90 days, as referenced in § 55-248.3:1, has failed to take corrective action under a local ordinance to abate criminal blight as authorized under § 15.2-907, a local law-enforcement official may make an affidavit under oath before a magistrate or court of competent jurisdiction and request that the magistrate or court grant the local law-enforcement official an inspection warrant to enable the local law-enforcement official to obtain a copy of the guest registry. 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 law-enforcement official shall return the warrant to the clerk of the circuit court of the county or city wherein the inspection was made. The local law-enforcement official shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the 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, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

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

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement

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

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