

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 15.2-2286 of the Code of Virginia, relating to zoning; penalties.*

3 [H 709]

4 Approved

5 **Be it enacted by the General Assembly of Virginia:**6 **1. That § 15.2-2286 of the Code of Virginia is amended and reenacted as follows:**7 **§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay**  
8 **delinquent taxes; penalties.**9 A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to  
10 any or all of the following matters:11 1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any  
12 district.13 2. For the temporary application of the ordinance to any property coming into the territorial  
14 jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning  
15 ordinance, and pending the orderly amendment of the ordinance.16 3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding  
17 any other provisions of this article, the governing body of any locality may reserve unto itself the right  
18 to issue such special exceptions. Conditions imposed in connection with residential special use permits,  
19 wherein the applicant proposes affordable housing, shall be consistent with the objective of providing  
20 affordable housing. When imposing conditions on residential projects specifying materials and methods  
21 of construction or specific design features, the approving body shall consider the impact of the  
22 conditions upon the affordability of housing.23 The governing body or the board of zoning appeals of the City of Norfolk may impose a condition  
24 upon any special exception relating to retail alcoholic beverage control licensees which provides that  
25 such special exception will automatically expire upon a change of ownership of the property, a change  
26 in possession, a change in the operation or management of a facility or upon the passage of a specific  
27 period of time.28 The governing body of the City of Richmond may impose a condition upon any special use permit  
29 issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special  
30 use permit shall be subject to an automatic review by the governing body upon a change in possession,  
31 a change in the owner of the business, or a transfer of majority control of the business entity. Upon  
32 review by the governing body, it may either amend or revoke the special use permit after notice and a  
33 public hearing as required by § 15.2-2206.34 4. For the administration and enforcement of the ordinance including the appointment or designation  
35 of a zoning administrator who may also hold another office in the locality. The zoning administrator  
36 shall have all necessary authority on behalf of the governing body to administer and enforce the zoning  
37 ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in  
38 violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including  
39 injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to  
40 § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for  
41 the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or  
42 subsection C of § 15.2-2311.43 Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or  
44 is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit,  
45 which is subject to a civil penalty that may be imposed in accordance with the provisions of  
46 § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information  
47 necessary to determine whether a violation has occurred, has been unable to obtain such information, he  
48 may request that the attorney for the locality petition the judge of the general district court for his  
49 jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or  
50 information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any  
51 person failing to comply with such subpoena shall be subject to punishment for contempt by the court  
52 issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to  
53 quash it.54 Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of  
55 less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal  
56 commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy

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57 limitations of a residential dwelling unit, or similar short-term, recurring violations.

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

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

76 5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any  
 77 such violation shall be a misdemeanor punishable by a fine of not ~~less than \$10~~ nor more than \$1,000.  
 78 If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or  
 79 remedy the violation in compliance with the zoning ordinance, within a time period established by the  
 80 court. Failure to remove or abate a zoning violation within the specified time period shall constitute a  
 81 separate misdemeanor offense punishable by a fine of not ~~less than \$10~~ nor more than \$1,000; and; any  
 82 such failure during ~~any a~~ succeeding 10-day period shall constitute a separate misdemeanor offense ~~for~~  
 83 ~~each 10-day period~~ punishable by a fine of not ~~less than \$100~~ nor more than \$1,500; *and any such*  
 84 *failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each*  
 85 *10-day period punishable by a fine of not more than \$2,000.*

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

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

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

111 In any county having adopted such zoning ordinance, all motions, resolutions or petitions for  
 112 amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such  
 113 reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or  
 114 consents to action beyond such period or unless the applicant withdraws his motion, resolution or  
 115 petition for amendment to the zoning ordinance or map, or both. In the event of and upon such  
 116 withdrawal, processing of the motion, resolution or petition shall cease without further action as  
 117 otherwise would be required by this subdivision.

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

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

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

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

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

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

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

145 15. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The  
146 zoning administrator or his agent may make an affidavit under oath before a magistrate or court of  
147 competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation  
148 has occurred, request that the magistrate or court grant the zoning administrator or his agent an  
149 inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the  
150 purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under  
151 this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After  
152 executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the  
153 circuit court of the city or county wherein the inspection was made. The zoning administrator or his  
154 agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling  
155 prior to seeking the issuance of an inspection warrant under this section.

156 B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or  
157 any entity in which the owner holds an ownership interest greater than 50 percent, for a special  
158 exception, special use permit, variance, rezoning or other land disturbing permit, including building  
159 permits and erosion and sediment control permits, or prior to the issuance of final approval, the  
160 authorizing body may require the applicant to produce satisfactory evidence that any delinquent real  
161 estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute  
162 a lien on the subject property, that are owed to the locality and have been properly assessed against the  
163 subject property, have been paid, unless otherwise authorized by the treasurer.