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HOUSE BILL NO. 167

Offered January 12, 2022

Prefiled January 10, 2022

A BILL to amend and reenact § 15.2-2204, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to publication of notice by localities.

Patron—Ransone

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2204, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2204. (Effective until July 1, 2022) Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth ~~hereinabove~~ *in this subsection*. If a joint hearing is held, then public notice as set forth ~~above~~ *in this subsection* need be given only by the governing body. ~~The term As used in this subsection, "two successive weeks" as used in this paragraph shall mean~~ means that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. In any instance in which a locality in Planning District 23 has submitted a timely notice request to such newspaper and the newspaper fails to publish the notice, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. *In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality.* After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels ~~which~~ *that* lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text

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59 regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to
60 the advertising as required by subsection A, written notice shall be given by the local planning
61 commission, or its representative, at least five days before the hearing to the owner, owners, or their
62 agent of each parcel of land involved, provided, however, that written notice of such changes to zoning
63 ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown
64 on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.)
65 where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known
66 address of such owner as shown on the current real estate tax assessment books or current real estate tax
67 assessment records shall be deemed adequate compliance with this requirement, provided that a
68 representative of the local commission shall make affidavit that such mailings have been made and file
69 such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate
70 any subsequently adopted amendment or ordinance because of the inadvertent failure by the
71 representative of the local commission to give written notice to the owner, owners or their agent of any
72 parcel involved.

73 The governing body may provide that, in the case of a condominium or a cooperative, the written
74 notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in
75 lieu of each individual unit owner.

76 Whenever the notices required hereby are sent by an agency, department or division of the local
77 governing body, or their representative, such notices may be sent by first class mail; however, a
78 representative of such agency, department or division shall make affidavit that such mailings have been
79 made and file such affidavit with the papers in the case.

80 A party's actual notice of, or active participation in, the proceedings for which the written notice
81 provided by this section is required shall waive the right of that party to challenge the validity of the
82 proceeding due to failure of the party to receive the written notice required by this section.

83 C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map
84 classification; or an application for special exception for a change in use or to increase by greater than
85 50 percent of the bulk or height of an existing or proposed building, but not including renewals of
86 previously approved special exceptions, involves any parcel of land located within one-half mile of a
87 boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written
88 notification as required by this section, written notice shall also be given by the local commission, or its
89 representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of
90 such adjoining locality.

91 D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning
92 map classification, or (iii) an application for special exception for a change in use involves any parcel of
93 land located within 3,000 feet of a boundary of a military base, military installation, military airport,
94 excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in
95 addition to the advertising and written notification as required by this section, written notice shall also
96 be given by the local commission, or its representative, at least 30 days before the hearing to the
97 commander of the military base, military installation, military airport, or owner of such public-use
98 airport, and the notice shall advise the military commander or owner of such public-use airport of the
99 opportunity to submit comments or recommendations.

100 E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of
101 prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be
102 required by such act or by this chapter, provided a public hearing was conducted by the governing body
103 prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure
104 to advertise or give notice as may be required by this chapter shall be filed within 30 days of such
105 decision with the circuit court having jurisdiction of the land affected by the decision. However, any
106 litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

107 F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may
108 cause such notice to be published in any newspaper of general circulation in the city.

109 G. When a proposed comprehensive plan or amendment of an existing plan designates or alters
110 previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written
111 notice shall also be given by the local planning commission, or its representative, at least 10 days before
112 the hearing to each electric utility with a certificated service territory that includes all or any part of
113 such designated electric transmission corridors or routes.

114 H. When any applicant requesting a written order, requirement, decision, or determination from the
115 zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the
116 appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of
117 the real property subject to the written order, requirement, decision or determination, written notice shall
118 be given to the owner of the property within 10 days of the receipt of such request. Such written notice
119 shall be given by the zoning administrator or other administrative officer or, at the direction of the
120 administrator or officer, the requesting applicant shall be required to give the owner such notice and to

provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business.

§ 15.2-2204. (Effective July 1, 2022) Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth ~~hereinabove~~ *in this subsection*. If a joint hearing is held, then public notice as set forth ~~above~~ *in this subsection* need be given only by the governing body. ~~The term As used in this subsection, "two successive weeks" as used in this paragraph shall mean~~ *means* that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publication. *In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality.* After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels ~~which~~ *that* lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the

182 representative of the local commission to give written notice to the owner, owners or their agent of any
183 parcel involved.

184 The governing body may provide that, in the case of a condominium or a cooperative, the written
185 notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in
186 lieu of each individual unit owner.

187 Whenever the notices required hereby are sent by an agency, department or division of the local
188 governing body, or their representative, such notices may be sent by first class mail; however, a
189 representative of such agency, department or division shall make affidavit that such mailings have been
190 made and file such affidavit with the papers in the case.

191 A party's actual notice of, or active participation in, the proceedings for which the written notice
192 provided by this section is required shall waive the right of that party to challenge the validity of the
193 proceeding due to failure of the party to receive the written notice required by this section.

194 C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map
195 classification; or an application for special exception for a change in use or to increase by greater than
196 50 percent of the bulk or height of an existing or proposed building, but not including renewals of
197 previously approved special exceptions, involves any parcel of land located within one-half mile of a
198 boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written
199 notification as required by this section, written notice shall also be given by the local commission, or its
200 representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of
201 such adjoining locality.

202 D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning
203 map classification, or (iii) an application for special exception for a change in use involves any parcel of
204 land located within 3,000 feet of a boundary of a military base, military installation, military airport,
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206 addition to the advertising and written notification as required by this section, written notice shall also
207 be given by the local commission, or its representative, at least 30 days before the hearing to the
208 commander of the military base, military installation, military airport, or owner of such public-use
209 airport, and the notice shall advise the military commander or owner of such public-use airport of the
210 opportunity to submit comments or recommendations.

211 E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of
212 prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be
213 required by such act or by this chapter, provided a public hearing was conducted by the governing body
214 prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure
215 to advertise or give notice as may be required by this chapter shall be filed within 30 days of such
216 decision with the circuit court having jurisdiction of the land affected by the decision. However, any
217 litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

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221 previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written
222 notice shall also be given by the local planning commission, or its representative, at least 10 days before
223 the hearing to each electric utility with a certificated service territory that includes all or any part of
224 such designated electric transmission corridors or routes.

225 H. When any applicant requesting a written order, requirement, decision, or determination from the
226 zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the
227 appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of
228 the real property subject to the written order, requirement, decision or determination, written notice shall
229 be given to the owner of the property within 10 days of the receipt of such request. Such written notice
230 shall be given by the zoning administrator or other administrative officer or, at the direction of the
231 administrator or officer, the requesting applicant shall be required to give the owner such notice and to
232 provide satisfactory evidence to the zoning administrator or other administrative officer that the notice
233 has been given. Written notice mailed to the owner at the last known address of the owner as shown on
234 the current real estate tax assessment books or current real estate tax assessment records shall satisfy the
235 notice requirements of this subsection.

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237 employees of the locality made in the normal course of business.