

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 613

An Act to amend and reenact § 15.1-431 of the Code of Virginia, relating to notice of proposed ordinances.

[S 543]

Approved April 5, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-431 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-431. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

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 county or municipality where copies of the proposed plans, ordinances or amendments may be examined.

The local commission shall not recommend nor the governing body adopt any plan, ordinance or amendment 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 such county or municipality; however, such notice for both the local commission and the governing body may be published concurrently. Such notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than six days nor more than twenty-one days after the second advertisement appears in such newspaper. The local commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If such joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean 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.

When a proposed amendment of the zoning ordinance involves a change in the zoning classification of twenty-five or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local 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; 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 has members owning property located within 2,000 feet of the affected property as may be required by the Commission or its agent. In any county or municipality where notice is required under the provisions of this section, notice shall also be given to the owner, his agent or the occupant, of all abutting property and property immediately across the street from the property affected which lies in an adjoining county or municipality of the Commonwealth. 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 but less than 500 parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved. 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 paragraph shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than fifty percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining county or municipality of the Commonwealth, then, in addition to the advertising and written notification as above required, written notice shall also be given by the local

commission, or its representative, at least ten days before the hearing to the chief administrative officer, or his designee, of such adjoining county or municipality.

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

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

The adoption or amendment prior to ~~January~~ July 1, ~~1974~~ 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. *Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within thirty days of such decision with the circuit court having jurisdiction of the land affected by the decision.* However, any litigation pending prior to January 1, 1976, shall not be affected by the 1974, 1975 and 1976 amendments to this section, *and any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.*

Notwithstanding any contrary provision of law, general or special, any city with a population between 200,000 and 210,000 which is required by this title or by its charter to publish a notice may cause such notice to be published in any newspaper of general circulation in the city.

After enactment of any such plan, ordinance or amendment, further publication thereof shall not be required.

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