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HOUSE BILL NO. 1473

Offered January 11, 2023

Prefiled December 30, 2022

A BILL to amend and reenact §§ 15.2-2204 and 15.2-2285 of the Code of Virginia, relating to land use plans; zoning; notice.

Patron—Fowler

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2204 and 15.2-2285 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2204. 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 identify 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 in this subsection. If a joint hearing is held, then public notice as set forth in this subsection need be given only by the governing body. As used in this subsection, "two successive weeks" 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, the advertisement shall include the street address or tax map parcel number of the parcels subject to the action and 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 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 the advertisement shall include the street address or tax map parcel number of the parcels as well as the approximate acreage subject to the action. Written notice shall be given by the local planning commission, or its representative, at least five days before

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

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

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

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

80 C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map
81 classification; or an application for special exception for a change in use or to increase by greater than
82 50 percent of the bulk or height of an existing or proposed building, but not including renewals of
83 previously approved special exceptions, involves any parcel of land located within one-half mile of a
84 boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written
85 notification as required by this section, written notice shall also be given by the local commission, or its
86 representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of
87 such adjoining locality.

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

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

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

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

111 H. When any applicant requesting a written order, requirement, decision, or determination from the
112 zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the
113 appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of
114 the real property subject to the written order, requirement, decision or determination, written notice shall
115 be given to the owner of the property within 10 days of the receipt of such request. Such written notice
116 shall be given by the zoning administrator or other administrative officer or, at the direction of the
117 administrator or officer, the requesting applicant shall be required to give the owner such notice and to
118 provide satisfactory evidence to the zoning administrator or other administrative officer that the notice
119 has been given. Written notice mailed to the owner at the last known address of the owner as shown on
120 the current real estate tax assessment books or current real estate tax assessment records shall satisfy the

121 notice requirements of this subsection.

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

124 **§ 15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto;**
125 **appeal.**

126 A. The planning commission of each locality may, and at the direction of the governing body shall,
127 prepare a proposed zoning ordinance including a map or maps showing the division of the territory into
128 districts and a text setting forth the regulations applying in each district. The commission shall hold at
129 least one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as
130 required by § 15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as
131 a result of the hearing. Upon the completion of its work, the commission shall present the proposed
132 ordinance or amendment including the district maps to the governing body together with its
133 recommendations and appropriate explanatory materials.

134 B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the
135 proposed amendment or reenactment to the local planning commission for its recommendations. Failure
136 of the commission to report 100 days after the first meeting of the commission after the proposed
137 amendment or reenactment has been referred to the commission, or such shorter period as may be
138 prescribed by the governing body, shall be deemed approval, unless the proposed amendment or
139 reenactment has been withdrawn by the applicant prior to the expiration of the time period. The
140 governing body shall hold at least one public hearing on a proposed reduction of the commission's
141 review period. The governing body shall publish a notice of the public hearing in a newspaper having
142 general circulation in the locality at least two weeks prior to the public hearing date and shall also
143 publish the notice on the locality's website, if one exists. In the event of and upon such withdrawal,
144 processing of the proposed amendment or reenactment shall cease without further action as otherwise
145 would be required by this subsection.

146 C. Before approving and adopting any zoning ordinance or amendment thereof, the governing body
147 shall hold at least one public hearing thereon, pursuant to public notice as required by § 15.2-2204, after
148 which the governing body may make appropriate changes or corrections in the ordinance or proposed
149 amendment. ~~In the case of a proposed amendment to the zoning map, the public notice shall state the~~
150 ~~general usage and density range of the proposed amendment and the general usage and density range, if~~
151 ~~any, set forth in the applicable part of the comprehensive plan. However, no land may be zoned to a~~
152 ~~more intensive use classification than was contained in the public notice without an additional public~~
153 ~~hearing after notice required by § 15.2-2204. Zoning ordinances shall be enacted in the same manner as~~
154 ~~all other ordinances.~~

155 D. Any county which has adopted an urban county executive form of government provided for under
156 Chapter 8 (§ 15.2-800 et seq.) may provide by ordinance for use of plans, profiles, elevations, and other
157 such demonstrative materials in the presentation of requests for amendments to the zoning ordinance.

158 E. The adoption or amendment prior to March 1, 1968, of any plan or ordinance under the authority
159 of prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct
160 more than one public hearing as may be required by such act or by this chapter, provided a public
161 hearing was conducted by the governing body prior to the adoption or amendment.

162 F. Every action contesting a decision of the local governing body adopting or failing to adopt a
163 proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall
164 be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected
165 by the decision. However, nothing in this subsection shall be construed to create any new right to
166 contest the action of a local governing body.