

Ordinance 15-11

Civil Penalties for Zoning Violations

- Request for authority to advertise a public hearing before the Planning Commission
- Proposed amendment to the Zoning Ordinance that would largely replace the current enforcement mechanism (criminal penalties) with the use of civil penalties for zoning violations
- Ordinance amendment is being requested by both the County Attorney's Office and the Planning Department

Current enforcement framework

- Current enforcement policy
 - Complaint driven
 - Primary focus is on compliance
 - Additional enforcement mechanisms if compliance cannot be reached within a reasonable time
- Section 15.2-2286 (a)(5) of the Code of Virginia
 - Violations of zoning ordinance may be punished as a criminal misdemeanor with a fine of between \$10 and \$1,000
 - Court shall order any violations to be abated within a specific time
 - Provisions for subsequent penalties
- Hanover County Zoning Ordinance treats almost all violations as criminal matters

Use of civil penalties for zoning violations

- Section 15.2-2209 of the Code of Virginia
 - localities may provide for civil penalties for violations of a local zoning ordinance
 - schedule of penalties adopted by local governing body
 - not available for
 - zoning violations which results in an injury to any person
 - activities related to land development, or
 - violations of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way
 - Permissible penalty
 - Initial summons – no more than \$200
 - Subsequent summonses – no more than \$500
- Use of civil penalties precludes criminal prosecution unless individual has accumulated \$5,000 in penalties for a violation (11 violations)

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- **Similarities of current system and proposed system**

- Notice of Violation informing individual of the violation and discussion of how to correct it
- Individual has right to appeal the issuance of the Notice of Violation with the Board of Zoning Appeal (and all the appeal rights connected with that proceeding)
- Notice of date of trial, opportunity to be heard by the Judge, and ability to present evidence in defense
- If found to have violated the Zoning Ordinance, the Court has the ability to order compliance
- Failure to comply with the Court's Order can be brought back before the Court
- After initial violation, may be charged once per ten days

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- **Benefits of the new system**

- Reduce duplication – appeals to the BZA now have relevance in subsequent enforcement proceedings
- Eliminate the perceived stigma of a criminal penalty (except for those that state Code has carved out, and for repeat violators)
- Allow for more targeted enforcement (e.g. cite and seek penalties from tenants or other responsible party rather than being limited to property owner)
- Increase efficiency of process
 - No longer need to go to magistrate to swear out warrant
 - Summons can be issued by Sheriff's Office or by private process server
 - Goal – those cited will be more willing to work with Planning Department knowing that they are only subject to a civil penalty
- Match enforcement mechanisms used in other matters (e.g. violations of Erosion and Sediment Control)

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- July 25, 2015 meeting of Community Development Committee
 - Committee recommended that the request to authorize advertisement of a public hearing before the Planning Commission on Ordinance 15-11 be added to an upcoming agenda of the Board of Supervisors.

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- Recommended motion
 - Motion to advertise a Public Hearing on Ord. 15-11 (civil penalties for zoning violations) before the Planning Commission