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SENATE BILL NO. 171

Senate Amendments in [ ] - January 25, 2024

A BILL to amend and reenact § 15.2-2209 of the Code of Virginia, relating to zoning; civil penalties; commercial uses.

Patrons Prior to Engrossment—Senators Craig and Williams Graves

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2209 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2209. Civil penalties for violations of zoning ordinance.

Notwithstanding subdivision A 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$200 for the initial summons and not more than \$500 for each additional summons. However, for any violation involving nonpermitted commercial uses, the penalty shall be not more than (i) [ \$500 \$200 ] for the initial violation, (ii) \$1,000 for a second violation, and (iii) \$1,500 for a third or subsequent violation, not to exceed \$4,500 within a 12-month period. [ For purposes of this section, "nonpermitted commercial uses" means any use devoted to usual and customary business purposes for the sale of goods and services, including retail operations, hotels, motels, and offices, when such use is not authorized or permitted under the locality's adopted zoning ordinance. ] Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and, for violations that do not involve nonpermitted commercial uses, a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. [ For Notwithstanding a court's authority to order the abatement or remedy of a zoning violation, for ] any violation involving nonpermitted commercial uses, any person who admits liability shall be required to abate or remedy the nonpermitted commercial use violation within a period of time specified by the locality that is no less than 30 days but no more than 24 months from the date of admission of liability.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.

ENGROSSED

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