

A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

READING FILE

July 23, 2013

FOR YOUR INFORMATION

1. Clean Copy of Ordinance

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ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 4, BUILDING REGULATIONS, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING ARTICLE V, VIOLATIONS AND PENALTIES, SECTION 4-37, PENALTIES; SANCTIONS, INJUNCTIVE RELIEF, FINES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 4, Building Regulations, is hereby amended and reordained by amending Section 4-37, Penalties; sanctions, injunctive relief fines.

Chapter 4, Article 5 of the James City County Building Code

Sec. 4-37. Penalties; sanctions, injunctive relief, fines.

(a) It shall be unlawful for any person to violate any provision of the Virginia Uniform Statewide Building Code (“VUSBC”) or fail to comply with any of the requirements thereof or erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official or in violation of a permit or certificate issued under the VUSBC, and shall be punishable pursuant to section 36-106 of the Code of Virginia by the following:

(1) *Criminal sanctions.* Upon conviction, any owner or any other person, firm or corporation shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$2,500.00. Any person convicted of a second offense committed within less than five years after a first offense shall be punished by a fine of not less than \$1,000.00 nor more than \$2,500.00. Any person convicted of a second offense committed within a period of five to ten years of a first offense shall be punished by a fine of not less than \$500.00 nor more than \$2,500.00. Any person convicted of a third or subsequent offense involving the same property committed within ten years of an offense shall be punished by confinement in jail for not more than ten days and a fine of not less than \$2,500.00 nor more than \$5,000.00, either or both. No portion of the fine imposed for such third or subsequent offense committed within ten years shall be suspended. Provisions requiring a minimum fine shall apply only to convictions for building code violations which cause a building or structure to be unsafe or unfit for human habitation.

(2) *Civil fines:*

(a) Any person who violates any provision of the building code and who fails to abate or remedy the violation promptly upon receipt of notice of the violation from the local enforcement officer shall be assessed a civil penalty in accordance with the following schedule:

1. Failure to obtain a building permit before work begins:
 - a. ... First offense \$100.00 per day
 - b. Subsequent offenses for same violation \$350.00 per day
2. Failure to obtain a certificate of occupancy before commencement of occupancy:

- a. First offense..... \$100.00 per day
- b. Subsequent offenses for same violation \$350.00 per day
- 3. Failure to obtain any required inspection:
 - a. First offense..... \$100.00 per day
 - b. Subsequent offenses for same violation \$350.00 per day
- 4. Violation of any other provision of Volume I of the VUSBC:
 - a. First offense..... \$100.00 per day
 - b. Subsequent offenses for same violation \$350.00 per day

Each day during which a violation is found to exist shall be a separate offense. However, in no event shall specified violations arising from the same set of operative facts be charged more frequently than once in a ten-day period and in no event shall a series of such violations result in civil penalties of more than \$4,000.00.

Designation of a particular Code of Virginia 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 misdemeanor.

(b) Any person summoned for a scheduled violation may make an appearance in person or in writing by mail to the county treasurer 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 offenses 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. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the locality shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

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. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

(c) No provisions herein shall be construed to allow the imposition of civil penalties for:

- 1. Activities related to land development;
- 2. Violations of any provisions of the local zoning ordinance relating to the posting of signs on public property or public right-of-ways; or
- 3. Violations resulting in the injury to any person or persons.

(d) Injunctive relief. Except as otherwise provided by the court for good cause shown, any violation or attempted violation of this chapter shall be abated or remedied within six months of the date of the assessment of the conviction. If the violation concerns a residential unit and if the violation remains uncorrected at the time of the conviction, the court shall order that the violation be abated or remedied, or otherwise remedy through hazard control, in order to comply with the Code of Virginia. If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code of Virginia. Injunctive relief shall be in addition to any criminal or civil penalty imposed by the court. Civil or criminal action may be brought in conjunction with a separate action for injunctive relief. However, the offenses designated for civil penalties above shall be in lieu of criminal enforcement.