

**COUNTY ADMINISTRATOR'S OFFICE
P. O. BOX 111
ORANGE, VIRGINIA 22960**

At a regular meeting of the Orange County Board of Supervisors held on Tuesday, December 3, 2019, the following action was taken:

191203 – PH1

RE: PUBLIC HEARING #1: ZTA 19-03; AMENDMENT TO THE ZONING ORDINANCE REGARDING CIVIL PENALTIES AND CRIMINAL PENALTIES FOR VIOLATIONS

On the motion of Mr. Frame, seconded by Mr. Crozier, which carried by a vote of 5-0, the Board adopted the following ordinance, as presented:

ORDINANCE APPROVING AMENDMENTS TO ARTICLE II (ADMINISTRATION), SECTION 70 (ZONING), OF THE ORANGE COUNTY CODE OF ORDINANCES CONCERNING CIVIL AND CRIMINAL PENALTIES FOR ZONING VIOLATIONS

WHEREAS, staff previously initiated Planning Commission action on amendments to Article II (Administration), Section 70 (Zoning), of the Orange County Code of Ordinances concerning civil and criminal penalties for zoning violations; and

WHEREAS, staff prepared recommended language for the text amendments, which was presented to the Planning Commission for consideration; and

WHEREAS, the Planning Commission advertised and held a Public Hearing on the proposed text amendments on November 7, 2019; and

WHEREAS, after discussing the proposed text amendments, the Planning Commission recommended approval of the proposed text amendments to the Board of Supervisors, as presented during its meeting; and

WHEREAS, the Board of Supervisors conducted a duly-advertised Public Hearing on December 3, 2019, to receive public comment; and

WHEREAS, following discussion at the Public Hearing, the Board of Supervisors hereby supports the proposed text amendments, as presented during its meeting; and

WHEREAS, public necessity, convenience, general welfare, and/or good zoning practice also support approval of the proposed text amendments;

NOW, THEREFORE, BE IT ORDAINED, on this 3rd day of December, 2019, that the Orange County Board of Supervisors hereby approves the proposed amendments to Article II (Administration), Section 70 (Zoning), of the Orange County Code of Ordinances concerning civil and criminal penalties for zoning violations, as presented and attached; and

BE IT FURTHER ORDAINED, that the Board of Supervisors establishes the implementation date for said ordinance as July 1, 2020.

Ayes: Johnson, White, Goodwin, Crozier, Frame. Nays: None.

MOTION APPROVED



R. Bryan David
County Administrator

cc: Glenda Bradley, Assistant County Administrator for Management Services
Connie Clark, Accountant
Thomas Lacheney, County Attorney
File: Board Actions 2019

Attachment: Adopted Amendments to the Orange County Code of Ordinances

Amendments to the Orange County Code of Ordinances

As adopted in Ord. No. 191203 – PH1
by the Orange County Board of Supervisors
on December 3, 2019

Chapter 70 - Zoning

Article II - Administration

~~Sec. 70-38 – Penalties.~~

~~Any person, whether as principal, agent, employee or otherwise, violating, causing or permitting the violation of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine of not less than \$10 nor more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not less than \$100 nor more than \$1,500.~~

~~(Ord. of 5-14-2013, — Ord. # 130514-PH2)~~

Note: All text below is proposed as new text.

Sec. 70-38 - Violation of provision of Zoning Ordinance; notice of violation.

A. Any person, whether the owner, lessee, principal, agent, employee, or otherwise, who violates or fails to comply with any of the provisions or requirements of this zoning chapter, including, but not limited to, provisions of the district regulations, proffers accepted by the board, or conditions of approval imposed by the board, or the improvement, development, or alteration of any site in violation of any plan approved pursuant to this article, shall be subject to the following:

- (1) A civil penalty, as provided for in Section 70-38.1; and/or
- (2) Criminal penalties, as provided for in Section 70-38.2.

B. The amendment of this Section on December 3, 2019, shall not affect any criminal prosecution under this Section commenced prior to said amendment.

Sec. 70-38.1 - Civil penalties.

A. Except as otherwise provided in §§ 70-38 through 70-38.2, any person who violates or fails to comply with any of the provisions or requirements of the Zoning Ordinance shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons or ticket, and a civil penalty of five hundred dollars (\$500.00) for each additional summons or ticket arising from the same set of operative facts.

B. Each day during which any violation exists shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten-day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties that exceed a total of five thousand dollars (\$5,000.00).

- C. Proceedings seeking civil penalties for all violations of the Zoning Ordinance shall commence either by the filing of a civil summons in the general district court or by issuance of a ticket by the zoning administrator or his designee. A ticket shall only be issued by the zoning administrator or his designee when, in the judgment of the zoning administrator or his designee, the violation can be corrected without significant delay and the violator has failed to do so after being given a reasonable opportunity to do so.
- D. The summons or ticket shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance, in person or in writing by mail, to the county treasurer's office at least seventy-two (72) hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court; however, an admission shall not be deemed a criminal conviction for any purpose.
- E. A civil summons or ticket issued shall contain the following information:
- (1) the name and address of the person charged;
 - (2) the nature of the violation and the section provision(s) being violated;
 - (3) the location and date that the infraction occurred or was observed;
 - (4) the amount of the civil penalty assessed for the violation;
 - (5) the manner, location, and time in which the civil penalty may be paid to the county; and
 - (6) the right of the recipient of a civil summons to elect to stand trial for the violation, and either the date scheduled for such trial or the date for scheduling of such trial by the court.
- F. If a person charged with a 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 by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
- G. The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under Section 70-38.2.
- H. 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 chapter. 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 (6) 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.
- I. Designation of a particular violation of Chapter 70 for a civil penalty pursuant to this Section shall be in lieu of criminal sanctions; and 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.
- J. This section shall not be construed to allow the imposition of civil penalties for (1) activities related to land development, (2) the violation of any provision of Chapter 70 of the Orange County Code of Ordinances relating to the posting of signs on public property or public rights-of-way, or (3) any zoning violation resulting in injury to any persons.

- K. The existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A(4) of § 15.2-2286 of the Code of Virginia or action by the Board of Supervisors under § 15.2-2208 of the Code of Virginia.

Sec. 70-38.2 - Criminal penalties.

- A. A person shall be guilty of a misdemeanor offense if he commits any of the following violations of Chapter 70 of the Orange County Code of Ordinances:
- (1) any violation of the provisions of Chapter 70 that results in physical harm or injury to any person;
 - (2) any violation or failure to comply that occurs after the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in § 70-38.1 has been reached;
 - (3) any sign posted on public property or in public rights-of-way in contravention of this zoning ordinance;
 - (4) any land development activity without applicable permit;
 - (5) any violation for which a prosecution under Section 70-38 had already commenced prior to the amendment of that section on December 3, 2019; or
 - (6) any violation of the provisions of this chapter or failure to comply with any of its requirements related to the number of unrelated persons in a single-family residential dwelling. Any such violation shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period, punishable by a fine of up to \$7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling during the pendency of any legal action commenced by such owner or managing agent against a tenant to eliminate an overcrowding condition in accordance with Chapter 13.2 of Title 55 of the Code of Virginia, as applicable. A conviction from a violation of provisions regulating the number of unrelated persons in a single-family residential dwelling shall not be punishable by a jail term.
- B. Except as provided in paragraph 6 of subsection A, misdemeanor offenses described in this Section shall be punishable by a fine of not more than \$1,000. If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not more than one thousand dollars (\$1,000.00); any such failure during a succeeding ten (10) day period shall constitute a separate misdemeanor offense punishable by a fine of not more than one thousand five hundred dollars (\$1,500.00); and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not more than \$2,000.
- C. The pursuit of criminal penalties for a violation shall not preclude the zoning administrator from pursuing injunctive action.