



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of January 22, 2011**

DATE: January 13, 2011

SUBJECT: ZOA-10-03 Zoning Ordinance amendment to Section 37.F, *Violations and Penalties, Criminal Penalties*, to make it unlawful for a firm, corporation, owner, agent or occupant to violate Section 37.G, and also make it unlawful for a firm, corporation, owner, agent or occupant to cause or, with knowledge, permit violations of Section 37.G.

C.M. RECOMMENDATION:

Adopt the attached ordinance (ZOA-10-03) to amend, reenact, and recodify the provisions in Section 37.F, *Violations and Penalties, Criminal Penalties*, to make it unlawful for a firm, corporation, owner, agent or occupant to violate Section 37.G, and also to clarify that a firm, corporation, owner, agent or occupant causing or, with knowledge, permitting violations of Section 37.G, *Criminal Penalties*, can be cited and held criminally liable for such violations.

ISSUES: The existing penalties provision for three specific types of zoning violations, including signs posted on public property or in the public right-of-way in violation of the Zoning Ordinance, limits the scope of enforcement to persons committing the violation. The proposed amendment to the Zoning Ordinance would make it unlawful for a firm, corporation, owner, agent, or occupant to violate Section 37.G and clarify that the party responsible for causing or, with knowledge, permitting three specific types of violations as set forth in 37.G in the Zoning Ordinance can be cited and held liable for that violation. In addition to the sign provision noted above, this amendment would also apply to any land development without applicable permits, and any Zoning Ordinance violation that results in physical harm or injury to any person.

SUMMARY: Staff prepared the proposed amendment in response to questions about enforcement of ordinances regulating signs in the public rights-of-way. These signs are typically posted after business hours or on weekends when inspectors are not in the field. Staff seldom witnesses the violation and therefore has been unable to prosecute the violators as the current ordinance provides for prosecution only against a person. The emphasis has been on advising the sign owner of the violation, rather than enforcement through the legal process. Staff contacts the violator through telephone numbers and website addresses on the signs, and advises them of the regulations. While this deters many, it does not deter all, and it does not prevent others from

County Manager:

BMD/GA

County Attorney:

JAM

GAH

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Staff: Susan Bell, DCPHD

placing similar signs illegally. The proposed amendment would strengthen the enforcement process by explicitly stating that a firm, corporation, owner, agent, or occupant, (in addition to a person) may be responsible for violations and additionally makes it unlawful for the party responsible for causing or, with knowledge, to permit the three specific types of criminal violations as set forth in Section 37.G of the Zoning Ordinance and provides that the firm or corporation can be cited and held criminally liable for that violation. To the extent staff can ascertain a responsible person who caused or permitted with knowledge another person to post a sign, they could proceed against the responsible party to enforce the violation.

BACKGROUND: Staff prepared the proposed amendment in response to questions about enforcement of ordinances regulating signs in the public rights-of-way. Current regulations limit the placement of signs in the public rights-of-way to a few types of signs which are allowed for specified time periods only (Attachment 1). The majority of these signs provide information or directions, particularly real estate signs providing directions and identifying residential units for rent or sale.

The County's Sign Ordinance was amended in 2003 and again in 2005 to modify regulations pertaining to commercial, noncommercial and political signs on private and public property. The amendments provided greater flexibility for political signs on private property and modified some regulations for signs in the right-of-way. Specifically, the amendments

- clarified where real estate directional signs could be placed in the public right-of-way;
- permitted two political signs per candidate or issue in medians (previously prohibited);
- allowed signs to be placed in the public right-of-way 31 days before an election and remain there continuously during this period; and
- required removal of political signs within five days after an election.

Section 34.D.5 of the Zoning Ordinance specifically notes that signs "placed on public lands contrary to the provisions of this section are subject to immediate removal." State law requires that violations relating to signs on public property or in the public right-of-way must be pursued as criminal penalties (§15.2-2209).

Sign Removal Practices

For many years, CPHD inspectors routinely removed illegal signs from the public right-of-way and other public property on Mondays, or on Tuesdays following a Monday holiday. Staff removes signs from County as well as State and Federal right-of-way, a common practice for many years. The inspectors remove several hundred signs per month on average with the emphasis on removal rather than criminal enforcement since they seldom, if ever, witness the illegal signs being placed in the right-of-way, which makes it very difficult to pursue enforcement through the legal process. In lieu of witnessing who places the sign, the inspectors contact the business named on the sign and advise them of County sign regulations. Although staff does not track how many times they have taken this approach, this usually gets the attention of the business although it doesn't preclude others from doing the same thing.

Removed signs are taken to the Trade Center and recycled/disposed of at the facility there. In addition to CPHD inspectors, inspectors and field staff from other departments (as well as

contractors) remove or move signs in the right-of-way if they create a traffic hazard, impair sight distances, or impede mowing, repairs or other maintenance activities.

Recognizing that sign installers had become aware of the Monday sign removal practice, inspectors now remove signs throughout the work week, for approximately half a day per inspector.

DISCUSSION: In reviewing existing regulations, staff noted that one of the challenges with sign enforcement in the right-of-way is that the violation is seldom witnessed as it is occurring, thereby making it virtually impossible to prove beyond a reasonable doubt who committed the violation and to cite them. The proposed Zoning Ordinance amendment will strengthen the enforcement tools available to inspectors by explicitly stating that the firm, corporation, owner, agent or occupant causing or, with knowledge, permitting violations of Section 37.G, *Criminal Penalties*, can be cited and held liable for such violations. This will not always be possible, as the staff will have to produce evidence that the “firm, corporation, owner, agent or occupant” caused or knowingly permitted the violation, and obtaining evidence of a state of mind is not always easy. The amendment will, however, give staff the opportunity to make such a case when it can gather the evidence.

Community Process:

Staff discussed this proposal with several citizens interested in the issue of signs in the public right-of-way and with the Zoning Committee of the Planning Commission.

Zoning Ordinance Committee of the Planning Commission (ZOCO): This item was heard by ZOCO on December 7, 2010. The members had a number of comments/questions, and also received comments from the co-chair of the Arlington Civic Federation’s Planning and Zoning Committee. The primary concern was that those responsible for posting signs in the right-of-way related to school, civic and community activities, such as neighborhood meetings, PTA fundraisers and blood drives, would be subject to the same penalties as a for-profit business. This is true today under existing provisions as these types of signs are not permitted in the public right-of-way. Meeting participants supported the proposed amendment and expressed interest in a provision that would establish different regulations for business and civic signs. Staff will include this in the comprehensive re-write of the sign provisions.

Additional comments/questions included the following:

- The term “occupant” seems redundant in the list of entities that might be cited. Staff indicated that the list is intended to provide flexibility regarding who could be held liable.
- How would staff determine if a sign was placed “with knowledge”? Staff commented that the enforcement process typically begins with education about applicable regulations; a business would be informed of the regulations at the first occurrence. Subsequent signs in the right-of-way would thus be placed “with knowledge.”

Planning Commission: The Planning Commission heard this item at their January 10, 2011 meeting. The Commission supported the proposed amendment 8 – 2 - 1, but raised a number of questions about the impact of amendment on civic and community organizations that currently post signs on public property and in the right-of-way; sign enforcement priority and equity; possible future modifications to the sign ordinance to address civic and community organization signs; and the timing of this amendment relative to the updating of the sign ordinance provisions. One speaker commented on the item and expressed the view that the “with knowledge” provision should be removed from the proposed language as it would hinder enforcement.

In response to Planning Commission concerns, staff noted that there are several provisions in the existing sign ordinance that could be amended or modified to facilitate civic and community organization announcements and information. Among the existing provisions that could be considered are the neighborhood identification signs permitted under Section 34.F.1 (“name of a neighborhood established as a distinctive area...”) and the bulletin board provision (Section 34.F.3) that allows signs for “...any church, school, library, or other housing for a charitable or benevolent or other noncommercial activity open to the public...in “S-3A” districts or for nonresidential uses in “R” districts.” New provisions specifically designed to meet short-term, noncommercial information-sharing purposes also could be devised as part of the sign ordinance review that staff is undertaking.

CONCLUSION: The proposed amendment strengthens the zoning enforcement process by explicitly stating that a form, corporation, owner, agent, or occupant, in addition to a person, may be held responsible for three specific types of violations, including signs placed illegally on public property or in the public right-of-way. Therefore, staff recommends that the County Board adopt the attached ordinance to amend, reenact and recodify Section 37.F, Violations and Penalties, Criminal Penalties, of the Arlington County Zoning Ordinance.

Attachment #1

Signs Permitted in the Public Right-Of-Way

What types of signs are permitted on County property and State property? *Zoning Ordinance provisions pertaining to signs are paraphrased and for illustrative purposes only.*

County Property – Unless otherwise permitted by the Zoning Ordinance, signs are permitted *only* on private property and may not be placed on public property or in a public easement area. The Zoning Ordinance specifically notes that signs “placed on public lands contrary to the provisions of this section are subject to immediate removal.” (Section 34.D.5).

Signs that may be placed on public property include informational or directional signs or historic markers, erected by any authorized County or State official; permanent directional signs giving “directions and distances to buildings whose principal uses require an occupancy permit to house meeting rooms, such as community buildings, lodges, and places of worship.” (Section 34.E.8.); unlighted real estate directional signs from sundown on Friday to sundown on Sunday; political campaign signs at polling places and in median strips; neighborhood identification signs. (Section 34.E and F).

State Property – Per the Code of Virginia (§33.1-373), signs are not permitted within the limits of any highway, including the median, unless a permit is granted by the Virginia Department of Transportation or the sign is specifically allowed under State law. Violations are punishable by civil penalty. A local governing body may enter into an agreement with the Commonwealth Transportation Commissioner to act as an agent of the Commissioner for the purpose of enforcing sign prohibitions within VDOT right-of-way. A public hearing must be held before entering into the agreement (Arlington County has not entered into such agreement).

AN ORDINANCE TO AMEND, REENACT AND RECODIFY SECTION 37. “VIOLATIONS AND PENALTIES” OF THE ARLINGTON COUNTY ZONING ORDINANCE TO MAKE IT UNLAWFUL FOR A FIRM, CORPORATION, OWNER, AGENT OR OCCUPANT TO VIOLATE SECTION 37.G, CRIMINAL PENALTIES, AND TO CLARIFY THAT A FIRM, CORPORATION, OWNER, AGENT OR OCCUPANT CAUSING OR, WITH KNOWLEDGE, PERMITTING VIOLATIONS OF SECTION 37.G CAN BE CITED AND HELD CRIMINALLY LIABLE FOR SUCH VIOLATIONS IN ORDER TO FACILITATE THE CREATION OF A CONVENIENT, ATTRACTIVE AND HARMONIOUS COMMUNITY AND FOR OTHER REASONS REQUIRED BY THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE AND GOOD ZONING PRACTICE.

Be it ordained that the County Board of Arlington County hereby resolves to amend, reenact and recodify Section 37.F, Violations and Penalties, of the Arlington County Zoning Ordinance. This amendment would amend, reenact and recodify the proposed zoning ordinance provisions in order to make it unlawful for a firm, corporation, owner, agent or occupant to violate section 37.G, criminal penalties, and to clarify that a firm, corporation, owner, agent or occupant causing or, with knowledge, permitting violations of Section 37.G can be cited and held criminally liable for such violations in order to facilitate the creation of a convenient, attractive and harmonious community and for other reasons required by the public necessity, convenience and general welfare and good zoning practice.

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SECTION 37. VIOLATIONS AND PENALTIES

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- F. *Criminal Penalties.* It shall be unlawful and constitute a misdemeanor for any person, firm, corporation, owner, agent or occupant to violate any of the provisions of this ordinance, referenced in subsection 37.G below. It shall furthermore, be unlawful for any person, firm, or corporation to cause or, with knowledge, permit such action to be taken upon such person’s, firm’s or corporation’s behalf. Any person, firm, corporation, owner, agent or occupant who is convicted of a violation of any of the provisions of this ordinance shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00). If the violation is uncorrected at the time of 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 ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), 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 one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500).

(Ord. No. 97-16, 7-19-97; Ord. No. 98-12, 4-18-98; Ord. No. 99-23, 11-13-99; Ord. No. 09-02, 2-21-09)