

ARTICLE K. Administration and Enforcement

SECTION 10-3-112. Zoning Administrator

The office of the Zoning Administrator is hereby established. The Zoning Administrator is appointed by the City Manager and has all of the responsibilities, duties, and powers set forth in Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia, as amended.

SECTION 10-3-113. Fees

- A. **Fee Schedule Established.** The Consolidated Fee Schedule, as adopted and amended by ordinance of the City Council, sets the fees for filings made and services provided under this Ordinance.
- B. **Payment Required.** A filing is not complete until the applicant has paid all required fees in full. No incomplete filing may be reviewed, scheduled for hearing, or acted upon. No permit, certificate, approval, determination, or verification may be issued while a required fee remains unpaid.
- C. **Refunds.**
 - 1. If the applicant withdraws a filing before it is accepted as complete, the full fee will be refunded.
 - 2. If the applicant withdraws a filing after acceptance but before any required public notice has been published, mailed, or posted, 50 percent of the fee will be refunded.
 - 3. In all other cases, including denial of the filing, no portion of the fee may be refunded.
- D. **Rescheduled or Readvertised Hearings.**
 - 1. The applicant must pay the rescheduling fee before a matter is readvertised where both:
 - a. The public hearing is postponed, continued, or rescheduled at the applicant's request or because of an act or omission of the applicant; and
 - b. Any required notice has already been published, mailed, or posted.
 - 2. No additional fee applies when the Planning Commission, City Council, Board of Zoning Appeals, or Zoning Administrator initiates the postponement or continuance for reasons not attributable to the applicant.
- E. **Exemptions.** No fee is required where the applicant is:

1. The City of Harrisonburg and its departments, agencies, offices, boards, commissions, and authorities; or
2. The School Board of the City of Harrisonburg and Harrisonburg City Public Schools.

SECTION 10-3-114. Zoning Determination and Verification

A. **Authority.** The Zoning Administrator has all necessary authority on behalf of the City Council to administer and enforce this Ordinance, including by making determinations and decisions on any matters arising under this Ordinance. This authority includes issuing zoning verification letters and zoning determinations as provided in this Section.

B. **Zoning Verification Letter.**

1. **Purpose.** A zoning verification letter provides a factual summary of the zoning records the City maintains for a specific property. A zoning verification letter is information only. It does not constitute a zoning determination, does not bind the City to any interpretation of this Ordinance, and does not establish vested rights.
2. **Contents.** A zoning verification letter states the following for the subject property, based on City records at the time of the request:
 - a. The applicable zoning district;
 - b. Any zoning conditions, proffers, or special exception approvals of record; and
 - c. Any pending applications or violations of record.
3. **Initiation.** Any person may apply for a zoning verification letter.

C. **Zoning Determination.**

1. **Purpose.** A zoning determination is a formal written interpretation of how this Ordinance applies to a specific property, use, or proposal. A zoning determination may establish vested rights where applicable under Virginia law.
2. **Scope.** A zoning determination may address any of the following:
 - a. Whether a specific use is permitted in a zoning district, and under what conditions;
 - b. How a proposed use must be classified under the use categories in this Ordinance;
 - c. Whether a proposed structure, site layout, or development pattern complies with the standards of this Ordinance; and

- d. Any other matter requiring interpretation of this Ordinance as applied to a specific set of facts.
- 3. **Initiation.** A zoning determination may be initiated by:
 - a. Application by any party with a demonstrated interest in the subject property or proposal; or
 - b. Action of the Zoning Administrator in the course of administering this Ordinance.
- 4. **Application Requirements.** An application for a zoning determination must:
 - a. Identify the subject property by address and tax map number, if applicable;
 - b. Describe the specific question or questions to be resolved; and
 - c. Include sufficient factual information, including a description of the proposed use or development, site conditions, and any other facts material to the question, to allow the Zoning Administrator to make a determination.
- 5. **Written Decision.** The Zoning Administrator must issue a zoning determination in writing. When initiated by application, the Zoning Administrator must issue a zoning determination within 90 days.
- 6. **Appeal.** A zoning determination is a decision of the Zoning Administrator subject to appeal to the Board of Zoning Appeals.
- 7. **Validity.** A zoning determination is based on the provisions of this Ordinance in effect at the time the determination is issued. If this Ordinance is amended after a determination is issued in a way that affects the subject matter of the determination, the determination is superseded as to any provision modified by the amendment.

SECTION 10-3-115. Enforcement

- A. **Generally.** The Zoning Administrator is authorized to enforce this Ordinance.
- B. **Responsible Parties.** A person violates this Ordinance if that person, whether acting as an owner, lessee, principal, agent, employee, tenant, occupant, or in any other capacity:
 - 1. Violates any provision of this Ordinance;
 - 2. Permits another person to violate any provision of this Ordinance;
 - 3. Fails to comply with any requirement of this Ordinance; or
 - 4. Erects, constructs, alters, uses, or occupies any building, structure, or land in violation of this Ordinance.

- C. **Conditions and Approvals.** No person may violate:
 - 1. A condition of a special exception, variance, or other approval granted under this Ordinance;
 - 2. A proffered condition accepted by City Council; or
 - 3. An approved site plan.
- D. **False Statements.** No person may knowingly make a false statement, representation, or certification in a record, report, or other document filed or requested under this Ordinance.
- E. **Effect of a Violation.** A use, structure, or lot established in violation of this Ordinance does not become lawful through the passage of time and does not acquire status as a nonconformity, except as Virginia Code § 15.2-2307 provides.

SECTION 10-3-116. Inspection Warrants

- A. **Application for Warrant.** The Zoning Administrator may present an affidavit under oath to a magistrate or court of competent jurisdiction to obtain an inspection warrant. Where the affidavit establishes probable cause, the Zoning Administrator may request that the magistrate or court grant an inspection warrant to enable entry into the subject dwelling for the purpose of determining whether violations of this Ordinance exist.
- B. **Prerequisite.** Before seeking the issuance of an inspection warrant, the Zoning Administrator must make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling.

SECTION 10-3-117. Notice of Violation

- A. **Issuing Notice of Violation.** If the Zoning Administrator determines that a violation of this Ordinance exists, the Zoning Administrator may issue a notice of violation.
- B. **Appeal Period.** The appeal period for a notice of violation is 30 days, except that a notice of violation involving any of the following has an appeal period of 10 days:
 - 1. A temporary or seasonal commercial use; or
 - 2. The maximum occupancy of a residential dwelling unit.
- C. **Contents.** A notice of violation must state:
 - 1. The provision of this Ordinance violated;
 - 2. The property and the conduct or condition that constitutes the violation;

3. The date by which the recipient must correct the violation;
 4. That the recipient may have a right to appeal the notice to the Board of Zoning Appeals under Virginia Code § 15.2-2311, and the number of days in the appeal period;
 5. That the notice becomes final and unappealable if the recipient does not appeal within the appeal period;
 6. The fee for filing an appeal; and
 7. Where the recipient may obtain more information about filing an appeal.
- D. **Recipients.** The Zoning Administrator must send a notice of violation to the owner of the property. The Zoning Administrator may also send the notice to the person committing or permitting the violation and to any occupant or operator of the property.
- E. **Delivery.** The Zoning Administrator must send a notice of violation by registered or certified mail with proof of delivery to, or post it at, the last known address or usual place of abode of the owner or the owner's registered agent.
- F. **Beginning of the Appeal Period.** The appeal period begins on the date the Zoning Administrator mails or posts the notice of violation.

SECTION 10-3-118. Withholding of Approvals

The Zoning Administrator may withhold a zoning permit or other approval for any property on which a violation of this Ordinance exists, where the permit or approval would perpetuate or expand the violation.

SECTION 10-3-119. Criminal Penalties

- A. **Generally.** A violation of this Ordinance is a misdemeanor punishable by a fine of not more than \$1,000.
- B. **Abatement on Conviction.** If the violation is uncorrected at the time of conviction, the court must order the violator to abate or remedy the violation within a time period the court establishes.
- C. **Failure to Abate.** A violator who does not abate or remedy the violation within the time period the court establishes commits a separate misdemeanor offense punishable by a fine of not more than \$1,000.

SECTION 10-3-120. Civil Penalties

- A. **Designated Violations.** The following violations of this Ordinance are subject to civil penalties:
1. Operating a homestay or short-term rental in violation of Section 10-3-36;
 2. Erecting a sign without a zoning permit, or otherwise violating Article F;
 3. Storing or displaying materials or goods outdoors in violation of Section 10-3-62 or Section 10-3-63; or
 4. Operating a home-based business in violation of Section 10-3-30.
- B. **Schedule.** A violation designated in this Section is punishable by a civil penalty of:
1. \$100 for a first offense;
 2. \$200 for a second offense; and
 3. \$500 for each subsequent offense arising from the same set of operative facts.
- C. **Separate Offenses.** Each day a violation exists is a separate offense. A violation arising from the same set of operative facts may not be charged more frequently than once in any 10-day period. Civil penalties for a series of violations arising from the same set of operative facts may not exceed \$5,000 in total.
- D. **Criminal Prosecution.** Designating a violation for a civil penalty precludes prosecution of the violation as a criminal misdemeanor, unless civil penalties for the violation total \$5,000 or more.
- E. **Civil Summons.** The Zoning Administrator may issue a civil summons for a violation designated in this Section.
- F. **Admission of Liability.** A person issued a civil summons may appear in person, or in writing by mail to the Treasurer, before the date fixed for trial. A person who appears may waive trial, admit liability, and pay the civil penalty for the offense charged. The Zoning Administrator must inform the person of the right to stand trial and that a signature admitting liability has the same force and effect as a judgment of court.
- G. **Abatement.** A person who waives trial and admits liability must abate or remedy the violation within 30 days. The Zoning Administrator is authorized to allow a longer period, not to exceed 24 months, where correcting the violation requires a permit, construction, or the removal of a structure.

SECTION 10-3-121. Other Remedies

The Zoning Administrator may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, correct, or remove a violation or attempted violation of this Ordinance.

SECTION 10-3-122. Remedies Cumulative

The remedies this Ordinance provides are cumulative. The Zoning Administrator may pursue one or more remedies for the same violation, and pursuing one remedy does not waive any other. The civil penalty provisions of this Article limit the prosecution of designated violations as criminal misdemeanors.