

**ALBEMARLE COUNTY CODE**

**CHAPTER 18**

**ZONING**

**SECTION 36**

**VIOLATIONS**

**Sections:**

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**36.1 VIOLATIONS**

The following are violations of this chapter and are declared to be unlawful:

- a. *Uses.* Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.
- b. *Structures or improvements.* Any structure or improvement and, within the flood hazard overlay district, any development as that term is defined in section 30.3.5, that is established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any county approval under this chapter, or without any required permit, certificate or other required approval under this chapter.
- c. *Structures without building permits.* Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.
- d. *Use of structure or site without certificate of occupancy.* Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.
- e. *Requirements and standards.* The failure to comply with any other requirement or standard of this chapter.

(§ 36.1, 12-10-80, 12-20-80; Subsection c: § 31.2.1, 12-10-80; Ord. 01-18(6), 10-3-01; subsection d: § 31.2.3.1, 12-10-80, 6-2-82, 9-9-92; Ord. 01-18(6), 10-3-01; Ord. 09-18(3), 7-1-09; Ord. 14-18(1), 3-5-14; Ord. 15-18(5), 7-8-15)

**State law reference** – Va. Code § 15.2-2286.

**36.2 ENFORCEMENT**

The zoning administrator is authorized to enforce this chapter as follows:

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- a. *Investigation.* Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.
- b. *Inspection warrants and search warrants.* The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.
- c. *Subpoenas duces tecum (court order to produce records).* Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the office of the county attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).
- d. *Notice of violation; exception.* If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing or permitting the violation, or both, if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket under section 36.3(a).
  1. *Contents of notice.* The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within the applicable appeal period provided in section 34.3 and that the decision shall be final and unappealable if it is not timely appealed; (iv) the applicable appeal fee; (v) a reference to where additional information may be obtained regarding filing an appeal; and (vi) the time within which the violation shall be abated.
  2. *Delivery of notice.* The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.
- e. *Remedies.* In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 36.3, 36.4 and 36.5 are cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

(§36.2, 12-10-80; §36.3, 12-10-80; § 36.4, 12-10-80; Ord. 09-18(3), 7-1-09; Ord. 15-18(5), 7-8-15)

**State law reference** – Va. Code § 15.2-2204, 15.2-2286(A)(4), 15.2-2311.

### 36.3 CIVIL PENALTIES

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 36.2, shall be subject to the following:

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- a. *Procedure.* Proceedings seeking civil penalties for all violations of this chapter under this section 36.3 shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket.
- b. *Minimum elements of a civil summons or ticket.* A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the county; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.
- c. *Amount of civil penalty.* Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.
- d. *Maximum aggregate civil penalty.* 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 36.4.
- e. *Each day a separate offense; single offense in 10-day period; stay.* Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period.
- f. *Option to prepay civil penalty and waive trial.* Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. 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. 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. *Civil penalties are in lieu of criminal penalties.* A violation enforced under section 36.3 shall be in lieu of any criminal penalty except as provided in section 36.3(d) and section 36.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.
- h. *Violations excluded.* Section 36.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term “land development” means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project’s compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.
- i. *Assessment of civil penalties during appeal period.* No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided under section 34.3(b).

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(§ 37.2; Ord. 00-18(5), 6-14-00; Ord. 02-18(3), 2-13-02; Ord. 05-18(3), 3-16-05; Ord. 06-18(1), 7-05-06; Ord. 15-18(5), 7-8-15)

**State law reference** – Va. Code § 15.2-2209.

**36.4 CRIMINAL PENALTIES**

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter that results in injury to any person, or to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in section 36.3(c) has been reached and who continues to violate any provision of this chapter as provided in chapter 36.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act continues to violate this chapter as provided in section 36.2, shall be subject to the following:

- a. The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).
- b. 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 less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).
- c. Notwithstanding sections 36.4(a) and (b), any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of up to seven thousand five hundred dollars (\$7,500.00). However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of the dwelling unit against a tenant to eliminate an overcrowding condition in accordance with chapters 13 or 13.2 of title 55 of the Virginia Code, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall not be punishable by a jail term.

(§ 37.1; Ord. 00-18(5), 6-14-00)

**State law reference** – Va. Code § 15.2-2286(A)(5).

**36.5 INJUNCTIVE RELIEF AND OTHER REMEDIES**

Any violation of this chapter may be restrained, corrected, or abated as the case may be in an action by the board of supervisors seeking injunctive or other appropriate relief.

(§ 37.3; Ord. 00-18(5), 6-14-00; Ord. 15-18(5), 7-8-15)

**State law reference** – Va. Code § 15.2-2208.