



Town of Dumfries
Council Meeting

Meeting Date: December 11, 2012

Agenda Item# XIII - B

AGENDA ITEM FORM

TYPE OF AGENDA ITEM:

- CONSENT AGENDA
- PRESENTATION
- ACTION ITEM
- TOWN MANAGER & STAFF COMMENTS
- PUBLIC HEARING
 - Duly Advertised

PURPOSE OF ITEM:

- INFORMATION ONLY
- DISCUSSION ONLY
- DISCUSSION AND/OR DECISION
 - Introduction Resolution
 - Ordinance Grant/MOU
 - By Motion Bylaws
 - Certificate

PRESENTER: Morgan Brim

PRESENTER TITLE: Town Planner/Zoning Administrator

AGENDA ITEM:

BACKGROUND / SUMMARY:

The Town Council directed the Planning Commission to prepare a draft ordinance for their review and consideration for the following items:

- ZTA-12-003 Criminal Violations and Penalties, amending Section 70-2 by adding Section 70-2.1 and Section 70-2.2
- ZTA-12-004 Temporary Signs, amending Section 70-14 to add Subsection 70-14(h)(1)(h) related to religious and nonprofit institutions ability to display temporary signs

The Planning Commission held work sessions to discuss these items during the September and October meetings. They heard public comment and recommended approval on November 26, 2012.

ATTACHMENTS:

Staff Report proposed to the Planning Commission
Ordinances

REQUESTED ACTION:

NO ACTION REQUESTED

FOR MORE INFORMATION, CONTACT:

Name: Morgan Brim

Phone#: (703)221-3400

E-mail: mbrim@dumfriesva.gov

FOR USE DURING MEETING

VOTE:

PASSED

NOT PASSED

Y	N		Y	N		Y	N	
<input type="checkbox"/>	<input type="checkbox"/>	Brewer	<input type="checkbox"/>	<input type="checkbox"/>	Foreman	<input type="checkbox"/>	<input type="checkbox"/>	Forrester
<input type="checkbox"/>	<input type="checkbox"/>	Reynolds	<input type="checkbox"/>	<input type="checkbox"/>	Toney	<input type="checkbox"/>	<input type="checkbox"/>	Washington
<input type="checkbox"/>	<input type="checkbox"/>	Wood						

To: Town Council
From: Morgan Brim, Town Planner/Zoning Administrator
Date: December 5, 2012
Re: Town Council Public Hearing for December 11, 2012

The Town Council will hear public comment on two Town initiated text amendments. The amendments are as follows:

- ZTA-12-003 Criminal Violations and Penalties, amending Section 70-2 by adding Section 70-2.1 and Section 70-2.2.
- ZTA-12-004 Temporary Signs, amending Section 70-14 to add Subsection 70-14(h)(1)(h) related to religious and nonprofit institutions ability to display temporary signs.

The Planning Commission, on November 26, 2012, recommended that the Town Council approve the text amendments. Below are the staff reports for each item as was presented to the Planning Commission in their November 26, 2012 staff report.

A. ZTA-12-003 Section 70-2 Criminal Violations and Penalties; addition of civil penalties for certain zoning violations.

This staff report proposes a text amendment to Section 70-2 of Town Code to enable the zoning administrator or his/her designee, to issue fines for code violations to the zoning ordinance (Chapter 70). Currently, Town Code requires the zoning administrator to issue a violation, provide a 30 day appeal period and if the violation has not been remedied, proceed to the general district court. This process takes several months and is costly in terms of staff time and court fees. Some municipalities are using civil fines, which are issued by the zoning administrator, as a method to gain compliance. Legal proceedings through the court system are still available as a last resort. Municipalities are finding property owners become increasingly motivated to comply with Town Code, when they are presented with promise of a fine. Manassas City issues code violators a warning ticket, which indicates violators will be fined \$200 if the violation is not abated within 30 days of issuance.

State Code § 15.2-2209 provides localities the ability to adopt a uniform schedule of civil penalties for violations of specific provisions in the zoning ordinance. The penalty for any one violation shall not exceed \$200 for the initial summons and not more than \$500 for each additional summons. Every day in which the offense exists, constitutes a separate offense; however the penalty shall not be fined more than once for every ten day frequency and shall not exceed \$5,000. State Code further allows the violator to meet with the Town's Department to pay the fee before the scheduled court date. If the violator does not request to remedy the offense or pay the fee, the case will be tried before the general district court.

Staff is requesting that the Planning Commission provide a positive recommendation of the proposed ordinance text as written below:

Proposed Text Amendment/Addition to Section 70-2. – Penalties

Sec. 70-2.1- Criminal Violations and Penalties.

- (a) Any person, whether as principal, agent, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$10.00, nor more than \$1,000.00. ~~for each violation. Each day upon which such violation shall continue shall constitute a separate offense.~~ In the case of a continuing violation, further penalties and abatement orders are governed by Virginia Code § 15.2-2286 A.5.
- (b) The remedy provided for in this section shall be in addition to any other remedies provided by law, however, the designation of a particular violation of the zoning ordinance as an infraction pursuant to Section 70-2.2 of this Code shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury to any person or persons or where such civil penalties exceed \$5,000.00.

Sec. 70-2.2 – Infractions and civil penalties.

- (a) Any violation of the following provisions of this chapter shall be punishable by a civil penalty of \$200.00 for the initial summons and \$500.00 for each additional summons. The penalty for a first offense shall be a warning providing a reasonable period of remediation not to exceed 10 days.
- (1) Erecting or maintaining fences in violation of this chapter.
 - (2) Erecting or maintaining signs in violation of this chapter (except for posting of signs on public property or public rights of way, which is not subject to civil penalty).
 - (3) Failure to enclose trash receptacles in violation of this chapter.
 - (4) Failure to use parking and loading spaces in accordance with this Chapter and approved site plans.
 - (5) Obstructions that impair the vehicular sight distance at an intersection, such as structures, fences, plantings or landscaping; and obstructions created by any structure or landscaping of any form along a public right-of-way that will impede the adjoining property owner's sight distance for access onto a public right-of-way.
 - (6) Conducting a home business, as defined in this chapter, without obtaining the appropriate permit, or conducting a home occupation, as defined in this chapter, without obtaining the approval of the zoning administrator.
 - (7) Storage, keeping collecting or bailing of paper, rags, scrap metals, other scrap or discarded materials, or the storage of automobile or other vehicles not in operable condition or the storage of machinery or parts thereof, in violation of this chapter.
 - (8) Alteration of a structure within the historic district without a certificate of appropriateness.
 - (9) Parking and storing vehicles in violation of this chapter.
 - (10) Constructing structures in violation of this chapter.
 - (11) Nonconforming uses in violation of this chapter.
 - (12) Failure to obtain a certificate of occupancy in violation of this chapter.
 - (13) Growth of grass or weeds in violation of this chapter.
 - (14) Maintenance of buildings and grounds in violation of this chapter.
 - (15) Keeping of septic tanks, privies, cesspools and privy vaults in violation of this chapter.
 - (16) Keeping of stagnant water in violation of this chapter.
- (b) Each day during which any violation of the provision enumerated in subsection (a) of this section is found to have existed 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 which exceed a total of \$5,000.00. The existence of a civil penalty shall not preclude enforcement by the zoning administrator under subdivision A.4 of Virginia Code § 15.2-2286 or enforcement by the City Council under Virginia Code § 15.2-2208.

- (c) After having served a notice of violation on any person committing or permitting a violation of a zoning ordinance provisions enumerated in subsection (a) of this section and if such violation has not ceased within such reasonable time as is specified in such notice, then, upon the approval of the town attorney, the zoning administrator shall cause two copies of a summons to be personally served upon such person.
- (d) Such summons shall contain the following information:
 - (1) The name and address of the person charged.
 - (2) The nature of the infraction and the ordinance provision(s) of this chapter allegedly being violated.
 - (3) The location, date and time that the infraction occurred or was observed.
 - (4) The amount of the civil penalty assessed for the infraction.
 - (5) The manner, location and time in which the civil penalty may be paid to the town.
 - (6) The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
 - (7) A statement that a signature to an admission of liability will have the same force and effect as a judgment of the court.
- (e) The summons 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 town treasurer's office at least 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.
- (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. 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 ordinance. 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 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.
- (g) An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

B. ZTA 12-004 Town Council's request for the review of Section 70-14 Signs, related to the allowance of religious institutions and non-profit organizations to display temporary signs.

The Town Council has requested the Planning Commission to review chapter 70-14 Signs and propose an amendment allowing nonprofit and religious institutions the ability to display banner signs four times annually. Staff requests that the Planning Commission provide a positive recommendation of the below proposed amendment to the Town Council:

Sec. 70-14(h)(1)(h)

(h)Temporary signs for religious institutions and nonprofit organizations. Religious institutions and nonprofit organizations are permitted to display a temporary banner sign, onsite up to a 30 day period, four times annually. The banner sign shall not exceed 20 square feet in size. Such signs are permitted in order to advertize special programs, events and grand openings. A permit is required.

NOTICE OF PUBLIC HEARING

**BY THE TOWN COUNCIL
OF THE TOWN OF DUMFRIES, VIRGINIA ON**

**December 11, 2012 at 7:00 PM
or as soon thereafter as may be heard
Located at 17755 Main Street, Dumfries, VA 22026**

The Town Council of the Town of Dumfries hereby gives notice of a public hearing on the adoption of text amendments to Town Code Chapter 70 as follows: Sec. 70-14(h) which includes clarifying language allowing religious institutions and nonprofit organizations the ability to temporarily display banner signs four times annually; amending/adding Sec. 70-2.1 Criminal violations and penalties and Sec. 70.2 Infractions and civil penalties. Sec. 70.1 is amended to add reference to Virginia Code § 15.2-2286 A.5 as related to the continuation of violations; Sec. 70-2.2 is a new Sec. added which provides allowance to levy civil penalties and summons for a schedule of offenses to Chapter 70 Zoning Ord. of the Town and clarifying the required information to be included in the summons, and detailing the process for a waiver of trial and payment to town treasurer.

All supporting material is available for public inspection at the Office of the Town Clerk at 17755 Main Street, Dumfries, Virginia 22026 between the hours of 8:30 AM and 5:00 PM; M-F. The public hearing is being held in a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility or needing to discuss accommodation of a disability should contact the Town Clerk at 703-221-3400 or dhobgood@dumfriesva.gov, during normal working hours.

Please post on November 28 and December 5, 2012

AT A MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON JANUARY 8, 2013, AT 7:00 P. M., IN THE COUNCIL CHAMBERS, LOCATED AT 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY _____, AND SECONDED BY _____, THE FOLLOWING ORDINANCE WAS ADOPTED BY THE FOLLOWING VOTE:

Charles C. Brewer, ____;
Gerald M. Foreman, II, ____;
Kristin W. Forrester, ____;
Helen D. Reynolds, ____;
Willie J. Toney, ____;
Gwen P. Washington, ____;
Derrick R. Wood, ____;

ORDINANCE TO AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA, AS AMENDED, BY AMENDING CHAPTER 70, ARTICLE I, SECTION 70-2 RELATED TO CIVIL PENALTIES AND ZONING VIOLATIONS FOR CERTAIN ZONING VIOLATIONS

WHEREAS, the Town Council directed the Planning Commission to initiate a zoning text amendment to Town Code Section 70-2 to add Section 70-2.1 and Section 70-2.2 to add civil penalties and fees for certain zoning violations; and

WHEREAS, the Planning Commission discussed the matter in a September 17, 2012 and October 15, 2012 work session; and

WHEREAS, the Planning Commission held a public hearing and recommended approval to the Town Council on November 26, 2012; and

WHEREAS, a public hearing was scheduled for the December 11, 2012 Town Council Meeting; and

WHEREAS, the Town Council held a public hearing on this matter, duly advertised for the purpose, on December 11, 2012 and all interested citizens were heard.

THEREFORE BE IT ORDAINED by the Council of the Town of Dumfries on this 8th day of January, 2013, that the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by amending Chapter 70, Article I, Section 70-2 and adding Section 70-2.2 and is reenacted as follows:

Proposed Text Amendment/Addition to Section 70-2. – Penalties

Sec. 70-2.1- Criminal Violations and Penalties.

- (a) Any person, whether as principal, agent, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$10.00, nor more than \$1,000.00 ~~for each violation. Each day upon which such violation shall continue shall constitute a separate offense.~~ In the case of a continuing violation, further penalties and abatement orders are governed by Virginia Code § 15.2-2286 A.5.
- (b) The remedy provided for in this section shall be in addition to any other remedies provided by law, however, the designation of a particular violation of the zoning ordinance as an infraction pursuant to Section 70-2.2 of this Code shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury to any person or persons or where such civil penalties exceed \$5,000.00.

Sec. 70-2.2 – Infractions and civil penalties.

- (a) Any violation of the following provisions of this chapter shall be punishable by a civil penalty

of \$200.00 for the initial summons and \$500.00 for each additional summons. The penalty for a first offense shall be a warning providing a reasonable period of remediation not to exceed 10 days.

- (1) Erecting or maintaining fences in violation of this chapter.
 - (2) Erecting or maintaining signs in violation of this chapter (except for posting of signs on public property or public rights of way, which is not subject to civil penalty).
 - (3) Failure to enclose trash receptacles in violation of this chapter.
 - (4) Failure to use parking and loading spaces in accordance with this Chapter and approved site plans.
 - (5) Obstructions that impair the vehicular sight distance at an intersection, such as structures, fences, plantings or landscaping; and obstructions created by any structure or landscaping of any form along a public right-of-way that will impede the adjoining property owner's sight distance for access onto a public right-of-way.
 - (6) Conducting a home business, as defined in this chapter, without obtaining the appropriate permit, or conducting a home occupation, as defined in this chapter, without obtaining the approval of the zoning administrator.
 - (7) Storage, keeping collecting or bailing of paper, rags, scrap metals, other scrap or discarded materials, or the storage of automobile or other vehicles not in operable condition or the storage of machinery or parts thereof, in violation of this chapter.
 - (8) Alteration of a structure within the historic district without a certificate of appropriateness.
 - (9) Parking and storing vehicles in violation of this chapter.
 - (10) Constructing structures in violation of this chapter.
 - (11) Nonconforming uses in violation of this chapter.
 - (12) Failure to obtain a certificate of occupancy in violation of this chapter.
 - (13) Growth of grass or weeds in violation of this chapter.
 - (14) Maintenance of buildings and grounds in violation of this chapter.
 - (15) Keeping of septic tanks, privies, cesspools and privy vaults in violation of this chapter.
 - (16) Keeping of stagnant water in violation of this chapter.
- (b) Each day during which any violation of the provision enumerated in subsection (a) of this section is found to have existed 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 which exceed a total of \$5,000.00. The existence of a civil penalty shall not preclude enforcement by the zoning administrator under subdivision A.4 of Virginia Code § 15.2-2286 or enforcement by the City Council under Virginia Code § 15.2-2208.
- (c) After having served a notice of violation on any person committing or permitting a violation of a zoning ordinance provisions enumerated in subsection (a) of this section and if such violation has not ceased within such reasonable time as is specified in such notice, then, upon the approval of the town attorney, the zoning administrator shall cause two copies of a summons to be personally served upon such person.
- (d) Such summons shall contain the following information:
- (1) The name and address of the person charged.
 - (2) The nature of the infraction and the ordinance provision(s) of this chapter allegedly being violated.
 - (3) The location, date and time that the infraction occurred or was observed.
 - (4) The amount of the civil penalty assessed for the infraction.
 - (5) The manner, location and time in which the civil penalty may be paid to the town.

- (6) The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
- (7) A statement that a signature to an admission of liability will have the same force and effect as a judgment of the court.
- (e) The summons 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 town treasurer's office at least 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.
- (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. 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 ordinance. 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 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.
- (g) An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

BY ORDER OF COUNCIL

Gerald M. Foreman, Mayor

ATTEST:

Dawn Hobgood, Town Clerk

AT A MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON JANUARY 8, 2013, AT 7:00 P. M., IN THE COUNCIL CHAMBERS, LOCATED AT 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY _____, AND SECONDED BY _____, THE FOLLOWING ORDINANCE WAS ADOPTED BY THE FOLLOWING VOTE:

Charles C. Brewer, ____;
Gerald M. Foreman, II, ____;
Kristin W. Forrester, ____;
Helen D. Reynolds, ____;
Willie J. Toney, ____;
Gwen P. Washington, ____;
Derrick R. Wood, ____;

**ORDINANCE TO AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA,
AS AMENDED, BY AMENDING CHAPTER 70, ARTICLE I, SECTION 70-14(h)(1)(h)
TO ALLOW RELIGIOUS INSTITUTIONS AND NONPROFIT ORGANIZATIONS
THE ABILITY TO DISPLAY TEMPORARY SIGNS**

WHEREAS, the Town Council directed the Planning Commission to initiate a zoning amendment to Town Code Section 70-14(h) to allow religious institutions the ability to display banners signs four times annually; and

WHEREAS, the Planning Commission discussed the matter during a work session on September 17, 2012; and

WHEREAS, the Planning Commission held a public hearing and recommended approval to the Town Council on November 26, 2012; and

WHEREAS, a public hearing was scheduled for the December 11, 2012 Town Council Meeting; and

WHEREAS, the Town Council held a public hearing on this matter, duly advertised for the purpose, on December 11, 2012 and all interested citizens were heard.

THEREFORE BE IT ORDAINED by the Council of the Town of Dumfries on this 8th day of January, 2013, that the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by amending Chapter 70, Article I, Section 70-14(h)(1)(h), and is reenacted as follows:

Sec. 70-14(h)(1)(h)

(h)Temporary signs for religious institutions and nonprofit organizations. Religious institutions and nonprofit organizations are permitted to display a temporary banner sign, onsite up to a 30 day period, four times annually. The banner sign shall not exceed 20 square feet in size. Such signs are permitted in order to advertize special programs, events and grand openings. A permit is required.

BY ORDER OF COUNCIL

Gerald M. Foreman, Mayor

ATTEST:

Dawn Hobgood, Town Clerk