



DOCKET ITEM
Zoning Text Amendment #2024-00004
Civil Violations

Issue: (A) Initiation of a Text Amendment and (B) Public Hearing and consideration of a Text Amendment to the Zoning Ordinance to amend Section 11-207 Civil violations, specifically Section 11-207(C) Penalties.	Planning Commission Hearing:	May 7, 2024
	City Council Hearing:	May 17, 2024
Staff: Tony LaColla, AICP, Division Chief anthony.lacolla@alexandriava.gov Christina Zechman Brown, Deputy City Attorney christina.brown@alexandriava.gov		
Staff recommendation: Staff recommends that the Planning Commission INITIATE and recommend APPROVAL of the text amendments.		
<u>PLANNING COMMISSION ACTION, MAY 7, 2024:</u> By unanimous consent, the Planning Commission voted to initiate and recommend approval of ZTA #2024-00004.		
<u>Reason:</u> The Planning Commission agreed with staff analysis.		

I. Summary

Staff propose to amend Section 11-207(C) of the Zoning Ordinance to increase civil penalties for Zoning Ordinance civil violations and codify a practice which limits the issuance of civil penalties to once every ten days for the same violation.

II. Background

Zoning violations are rare with most violations stemming from property owners who are unaware they have violated a zoning regulation. If and when a zoning violation is reported and identified, standard procedure is to first issue a warning (no civil penalty assessed) and provide 10 days for the violation to be remedied. Only after 10 days of no action will monetary penalties be issued in order to achieve compliance.

On average, Planning & Zoning receives 126 (average of past three years) valid zoning complaints annually, with the overwhelming majority categorized as Class Five violations. Class Five violations apply citywide and to holders of Special Use Permits and carry a \$50 fine for the first citation and a \$100 fine for each additional citation. Class Two through Class Five civil citations apply to local historic districts and those structures on the 100-year-old building list only.

Current Alexandria Civil Citations				
Violation	1st Violation Fine	2nd Violation Fine	Each Additional Fine	Maximum Annual Penalty
Class One*	\$1,500.00	\$1,500.00	\$1,500.00	Market value of property
Class Two*	\$500.00	\$1,000.00	\$1,500.00	\$3,000.00
Class Three*	\$100.00	\$150.00	\$500.00	\$3,000.00
Class Four*	\$50.00	\$100.00	\$500.00	\$3,000.00
Class Five	\$50.00	\$100.00	\$100.00 SUP Violation: \$500.00	\$3,000.00

*Historic districts only

Class One: Unauthorized demolition of any building or structure in a historic district or on the 100-year-old building list.

Class Two: Unauthorized construction, alteration or repair of a building or structure for which a building permit is required in a local historic district or on the 100-year-old building list.

Class Three: Construction, alteration or repair of a building or structure for which no building permit is required but BAR review is required in a local historic district or on the 100-year-old building list.

Class Four: Violation of any sign, marquee, or awning regulation in a local historic district or on the 100-year-old building list.

Class Five: Generally, all other zoning and Special Use Permit violations citywide.

Details of Class One through Class Five civil citations can be found in Attachment 1.

Approximately 75% of violations are resolved after a warning is issued and before an initial civil penalty is assessed. Of the remaining approximately 25%, typically only 7-10 violators receive more than one monetary penalty before achieving compliance or initiating civil proceedings. Typically, those receiving more than one penalty are businesses or developers who violate the conditions of their Special Use Permits.

III. DISCUSSION OF PROPOSED TEXT CHANGES

Increase in Civil Citations

The current zoning citation monetary penalties have not been adjusted in twenty years and often do not motivate compliance with the Zoning Ordinance for repeat offenders. Planning & Zoning is primarily proposing to increase the monetary penalties for all classes of civil citations in order to achieve greater compliance.

Additionally, increasing civil citations will bring Alexandria more in line with adjacent jurisdictions, including Fairfax County and Arlington County. It must be noted that with regards to maximum penalties, Fairfax County and Arlington County operate under the Code of Virginia while Alexandria’s authority comes from its City Charter.

Proposed Alexandria Civil Citations				
Violation	1st Violation Fine	2nd Violation Fine	Each Additional Fine	Maximum Annual Penalty
Class One*	\$5,000.00	\$5,000.00	\$5,000.00	Market value of property
Class Two*	\$1,000.00	\$1,500.00	\$2,500.00	\$5,000.00
Class Three*	\$200.00	\$500.00	\$1,000.00	\$5,000.00
Class Four*	\$200.00	\$500.00	\$500.00	\$5,000.00
Class Five	\$200.00	\$500.00	\$500.00 SUP Violation: \$1000.00	\$5,000.00

*Historic districts only

Fairfax County Civil Citations				
Violation	1st Violation Fine	2nd Violation Fine	Each Additional Fine	Maximum Annual Penalty
Equivalent Class One	Up to the market value of property	N/A	N/A	Market value of property
Equivalent Class Two	\$200.00	\$500.00	\$500.00	\$5,000.00

Equivalent Class Three	\$200.00	\$500.00	\$500.00	\$5,000.00
Equivalent Class Four	\$200.00	\$500.00	\$500.00	\$5,000.00
Equivalent Class Five	\$200.00	\$500.00	\$500.00	\$5,000.00

Arlington County Civil Citations				
Violation	1st Violation Fine	2nd Violation Fine	Each Additional Fine	Maximum Annual Penalty
Equivalent Class One	Up to twice the market value of property	N/A	N/A	Twice the market value of property
Equivalent Class Two	\$10.00-\$1,000.00	\$10.00-\$1,000.00	\$100.00-\$1,500.00	\$5,000.00
Equivalent Class Three	\$10.00-\$1,000.00	\$10.00-\$1,000.00	\$100.00-\$1,500.00	\$5,000.00
Equivalent Class Four	\$200.00	\$500.00	\$500.00	\$5,000.00
Equivalent Class Five	\$200.00	\$500.00	\$500.00	\$5,000.00

Codify 10 Day Correction Period

Beyond increasing civil citations, staff also propose to codify a standard practice, which provides a ten-day period to correct zoning violations by limiting the issuance of civil penalties to once every 10 days for the same violation. This is a common practice, and the proposed language is found in numerous zoning ordinances throughout Virginia.

IV. Recommendation

Staff recommends initiation and approval of the proposed text amendment.

Staff: Tony LaColla, AICP, Division Chief
Christina Zechman Brown, Deputy City Attorney

Attachments: Proposed Zoning Text Amendments

Attachment 1

Proposed Text Amendment Language

11-207 Civil violations.

- (A) *General.* Any person who, as the owner of any land, building or structure, or the agent thereof having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, who commits, permits, assists in or attempts any of the following violations of this ordinance, whether by act or omission, shall be liable for a civil violation as follows:
- (1) Violation of any use or occupancy regulation or performance standard applicable under this ordinance, including the failure to obtain a special use permit where so required: class five civil violation.
 - (2) Violation of any frontage regulation applicable under this ordinance: class five civil violation.
 - (3) Violation of any yard regulation applicable under this ordinance: class five civil violation.
 - (4) Violation of any floor area ratio regulation applicable under this ordinance: class five civil violation.
 - (5) Violation of any coverage, open space or landscaping regulation applicable under this ordinance: class five civil violation.
 - (6) Violation of any height regulation applicable under this ordinance: class five civil violation.
 - (7) Violation of any off-street parking or loading regulation applicable under this ordinance: class five civil violation.
 - (8) Violation of any floodplain district regulation applicable under section 6-300 of this ordinance: class five civil violation.
 - (9) Violation of any sign, marquee and awning regulation applicable under sections 9-100, 9-200 or 9-400 of this ordinance: class five civil violation.
 - (10) Violation of any specific statement, proffer, representation or plan made or submitted in connection with any application, permit or approval granted under the provisions of this ordinance, and violation of any condition imposed by the approving authority: class five civil violation.
 - (11) Violation of any regulation of this ordinance punishable as a civil violation and not set forth above and not subject to section 11-207(B): class five civil violation.

(12) The transfer, sale, offer to sell, or agreement to sell any land or portion of land by reference to or display of an unapproved and unrecorded plat, regardless of whether the land is described by metes and bounds; class five civil violation.

(B) *Historic districts.* Any person who, as the owner of any land, building or structure located within the Old and Historic Alexandria District, the Parker-Gray District, or listed for preservation pursuant to section 10-300 of this ordinance, or as the agent thereof having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, commits, permits, assists in or attempts any violation of article X or section 9-300 of this ordinance, whether by act or omission, shall be liable for a civil violation as follows:

- (1) Violation of any sign, marquee, or awning regulation of section 9-300 of this ordinance: class four civil violation.
- (2) Violation of section 10-103(A), 10-203(A) or 10-304, involving the construction, alteration or repair of a building or structure for which no building permit under the Uniform Statewide Building Code is required: class three civil violation.
- (3) Violation of section 10-103(A), 10-203(A) or 10-304, involving the construction, alteration or repair of a building or structure for which a building permit is required under the Uniform Statewide Building Code: class two civil violation.
- (4) Violation of section 10-103(B), 10-203(B) or 10-305, involving the unauthorized demolition of any building or structure: class one civil violation.

(C) *Penalties.*

- (1) For a class one civil violation, the penalty for each individual offense shall be \$5,000.00 ~~1,500.00~~.
- (2) For a class two civil violation, the penalty for each individual offense shall be \$1,000.00 ~~500.00~~ for the first violation, \$1,500.00 ~~1,000.00~~ for the second violation of the same regulation or requirement arising from the same set of operative facts, and \$2,500.00 ~~1,500.00~~ for each additional violation of the same regulation or requirement arising from the same set of operative facts.
- (3) For a class three civil violation, the penalty for each individual offense shall be \$200.00 ~~100.00~~ for the first violation, \$500.00 ~~150.00~~ for the second violation of the same regulation or requirement arising from the same set of operative facts, and \$1,000.00 ~~500.00~~ for each additional violation of the same regulation or requirement arising from the same set of operative facts.

- (4) For a class four civil violation, the penalty for each individual offense shall be ~~\$200.00~~ ~~50.00~~ for the first violation, ~~\$100.00~~ ~~for the second violation of the same regulation or requirement arising from the same set of operative facts~~, and \$500.00 for each additional violation of the same regulation or requirement arising from the same set of operative facts.
- (5) For a class five civil violation, the penalty for each individual offense shall be ~~\$200.00~~ ~~50.00~~ for the first violation, and ~~\$500.00~~ ~~100.00~~ for each subsequent violation of the same regulation or requirement arising from the same set of operative facts; provided, however, that in the case of a third violation of a special use permit condition within any one 12-month period, the penalty shall be ~~\$1,000.00~~ ~~500.00~~.
- (6) Each day during which any class one civil violation exists shall constitute a separate individual offense. A class one civil violation shall be deemed to exist until such time as the director certifies to the board of architectural review that the unlawfully demolished building or structure has been reconstructed to the pre-existing footprint, envelope, configuration and appearance, using original materials and techniques of construction to the extent possible; provided, however, that, after a public hearing for which notice has been given pursuant to section 11-300, the board of architectural review may determine that a class one civil violation shall cease to exist at such time as the person responsible therefor shall have paid to the city a sum equivalent to the cost of reconstruction required under this section 11-207(C)(6), such sum to be used exclusively for the purpose of promoting historic preservation within the city as determined by the director. The civil penalty for a class one violation shall in no case exceed the market value of the property, which shall include the value of any improvements together with the value of the land upon which any such improvements are located, and shall be determined by the assessed value of the property at the time of the violation.
- (7) Each day during which any class two, or three ~~or four~~ civil violation exists shall constitute a separate individual offense. In no event will any such violation arising from the same set of operative facts be charged more frequently than once in any ten-day period.
- (8) Each day during which any class four or five civil violation exists shall constitute a separate individual offense. In no event will any such violation arising from the same set of operative facts be charged more frequently than once in any ten-day period. In no event shall a series of charges for the same class five civil violation arising from the same set of operative facts result in civil penalties which exceed a total of ~~\$5,000.00~~ ~~3,000.00~~.

(D) *Procedures.*

- (1) If the director determines that a civil violation enumerated in section 11-207(A) or (B) has occurred, he may cause a notice of the violation to be served on any or all persons committing or permitting such violation.
- (2) The notice shall provide that the person served may elect to make an appearance in person, or in writing by mail, to the treasurer of the city, and admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, all within the time period fixed in the notice.
- (3) If a person charged with a violation does not elect to admit liability or plead no contest, and abate the violation, the violation shall be tried in the Alexandria General District Court upon a warrant in debt or motion for judgment, with the same right of appeal as provided for civil actions at law. In the event the violation exceeds the jurisdictional limits of the General District Court, the violation shall be tried in the Alexandria Circuit Court. In any such proceeding, the interpretation of the zoning ordinance made by the director, by the board of zoning appeals, or by the Alexandria Circuit Court on writ of certiorari to the board of zoning appeals, as the case may be, shall be conclusive.
- (4) A finding or admission of liability or a plea of no contest to a civil violation shall not be deemed a criminal conviction for any purpose.