

**Virginia Code Commission
Meeting Materials
December 4, 2023**

VIRGINIA CODE COMMISSION

Tuesday, November 21, 2023 - 10:00 a.m.

Senate Committee Room A, Room 305 - General Assembly Building

DRAFT

Meeting Minutes

Members Present: John. S. Edwards, Nicole S. Cheuk, Richard E. Gardner, James Leftwich, Christopher R. Nolen, Malfourd W. Trumbo, Amigo R. Wade, Wren M. Williams

Member Present Electronically: Ward L. Armstrong, Ryan McDougale

Members Absent: Steven G. Popp, Charles S. Sharp

Staff Present: Holly Trice, Anne Bloomsburg, Joanne Frye, Division of Legislative Services; Maryanne Horch, Glenn Robertson, Senate Technology

Others Present: Brian Kennedy, Lexis Nexis

Call to order: Senator Edwards, chair, called the meeting to order at 10:03 a.m. Ward L. Armstrong and Ryan McDougale requested to attend the meeting virtually pursuant to the "Virginia Code Commission Policy for Electronic Meetings Held under § 2.2-3708.3 of the Code of Virginia." That request was granted. A quorum of the commission was present in person.

Review and Approval of June 14, 2023, Meeting Minutes: Chair Edwards asked for a motion to approve the draft June 14, 2023, meeting minutes.

A motion was made, properly seconded, and a vote was conducted. The motion carried.

Vote to approve the June 14, 2023, meeting minutes.	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Richard Gardiner	1			
James Leftwich	1			
Ryan McDougale	1			
Christopher R. Nolan	1			
Steven Popp				1
Charles S. Sharp				1
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			

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Total	10			2
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Public Notice Work group, Status Update: Amigo Wade, Director of DLS, presented the recommendations of the Public Notice Work group. Director Wade described the materials provided to the Commission and the objectives and process of the Work group. Chapters 506 and 507 of the 2023 Acts of Assembly reconvened the Work group to finish the work of looking at how entities must provide public notice. Working with standardizing language, the Work group met five times and developed two subgroups. Director Wade reviewed the recommendations of the Work group for the Commission.

Regarding recommendations relating to timing and frequency of notice, Judge Gardner asked for clarification as to whether the recommendations include a minimum time out from a public meeting within which a notice must be published. He stated that there should be a minimum time required before the meeting to allow for proper notice. Director Wade suggested reconvening the Work group to address this issue.

Recommendations relating to amendments to descriptive information required in certain notices in Title 15.2 of the Code of Virginia were provided.

Recommendations relating to SB 859, which removes the requirement for a local public body to publish notice of a RFP on the DGS eVAC (central procurement website) if a local body chose instead to publish the same in a newspaper of general circulation was passed by indefinitely during the 2023 Session of the General Assembly with a request for the Commission to have the Public Notice Work group study the issue. Based on meetings with the locality that had requested the bill, the Work group decided to take no action.

A motion was made to take no action on SB 859. The motion was properly seconded, and a vote was conducted. The motion carried.

Vote to take no action on SB 859	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Richard Gardiner	1			
James Leftwich	1			
Ryan McDougle	1			
Christopher R. Nolan			1	
Steven Pops				1
Charles S. Sharp				1
Malfourd W. Trumbo	1			
Amigo R. Wade	1			

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Wren Williams	1			
John Edwards	1			
Total	9		1	2

A motion was made to accept recommendations of the work group (except for the timing issue brought up by Judge Gardiner). It was properly seconded, and a vote was conducted. The motion carried.

Vote to accept Work group recommendations	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Richard Gardiner	1			
James Leftwich	1			
Ryan McDougle	1			
Christopher R. Nolan			1	
Steven Pops				1
Charles S. Sharp				1
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			
Total	9		1	2

2024 Code of Virginia Pricing and Replacement Volumes: Brian Kennedy, representative of Lexis Nexis, presented Lexis Nexis recommendations for five replacement volumes of the Code of Virginia. Mr. Kennedy also explained a price increase going into effect.

A motion was made to accept Lexis Nexis plan and pricing, properly seconded, and a vote was conducted. The motion carried.

Vote to approve Lexis Nexis recommendations & pricing	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			

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Richard Gardiner	1			
James Leftwich	1			
Ryan McDougle	1			
Christopher R. Nolan			1	
Steven Pops				1
Charles S. Sharp				1
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			
Total	9		1	2

Modernization of Chapters 2 and 3 of Title 57 of the Code of Virginia: Joanne Frye, Division of Legislative Services, explained the scope of the project is focused on Code of Virginia provisions for Church Trustees and Cemetery Trustees. Commission Member Ward Armstrong provided background for the project intended to clean up and modernize the language. Mr. Armstrong and Ms. Frye will complete the draft of a bill for session. They will have materials ready for the next Commission meeting.

Recodification Schedule: Director Wade presented the Commission with the recommendation to begin a recodification of Title 30, General Assembly, for next spring at beginning of the 2024 interim. Director Wade provided the general topic of the title and basic scope of the recodification.

Director Wade recommended picking back up the recodification of Title 32.1, Health, at the end of the 2024 interim, that is fall of 2024.

Publication of the Code of Virginia: 2023 Review: Holly Trice, Registrar of Regulations, presented an overview of how the July 1 Code of Virginia update went. July's upload was better than the previous year, but some major errors persisted. These errors included catchlines, sections not being set out twice, dead links in historical notes, the data being provided later than optimal, and differing versions of the TOSA was sent several times. Next year DLS (with help from DLAS) will create one chart of acts of assembly so that both the publishers will use the same chart. All discrepancies will be posted on and discussed and reconciled via the forum.

Director Wade stated that this approach will be an improvement in the process.

Other Business - December Meeting: Ms. Trice began a discussion for a December Commission meeting to allow the Public Notice Work group to meet and present the timing information recommendation to the Commission and cover the modernization of Chapters 2 and 3 of Title 57 of the Code of Virginia. Of the dates provided, Monday December 4, 2023, at 10:00 a.m. was chosen for a vote.

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A motion was made, properly seconded, and a vote was conducted. The motion carried.

Vote to reappoint ALAC memb	Yea	Nay	Abstain	Absent
Ward Armstrong	1			
Nicole Cheuk	1			
Richard Gardiner	1			
James Leftwich	1			
Ryan McDougle	1			
Christopher R. Nolan	1			
Steven Poppo				1
Charles S. Sharp				1
Malfourd W. Trumbo	1			
Amigo R. Wade	1			
Wren Williams	1			
John Edwards	1			
Total	10			2

Public comment: Mary Ottinot introduced herself and gave the Commission an overview of her experience with public comment in the Commonwealth. She stated that citizens need to be trained to work with the system of government in the Commonwealth. She also requested that behavioral health care in the Commonwealth align with the Americans with Disabilities Act. She cited § 32.1-127.1:03 of the Code of Virginia as an example of Virginia laws that conflict with the ADA. She also brought her concern with § 54.1-2400.2 of the Code of Virginia, which she says discourages or penalizes a health care provider for reporting unsafe care and other problems in the system. Ms. Ottinot stated there is a serious health care workforce issue in the Commonwealth.

Delegate Wren Williams suggested the witness have her delegate, Delegate Seibold, bring a bill to session. Chris Nolen also suggested that managing the issue with sections of the Code of Virginia that don't align with federal law may be accomplished as part of a recodification of Title 32.1 of the Code of Virginia.

Adjourn: Chair Edwards adjourned the meeting at 11:18 a.m.

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Public Notice Work Group
Notice Recommendation**

Adopted 11/28/2023

1 **§ 15.2-1427. Adoption of ordinances and resolutions generally; amending or**
2 **repealing ordinances.**

3
4 A. Unless otherwise specifically provided for by the Constitution or by other general or
5 special law, an ordinance may be adopted by majority vote of those present and voting at any
6 lawful meeting.

7 B. On final vote on any ordinance or resolution, the name of each member of the
8 governing body voting and how he voted shall be recorded; however, votes on all ordinances and
9 resolutions adopted prior to February 27, 1998, in which an unanimous vote of the governing
10 body was recorded, shall be deemed to have been validly recorded. The governing body may
11 adopt an ordinance or resolution by a recorded voice vote unless otherwise provided by law, or
12 any member calls for a roll call vote. An ordinance shall become effective upon adoption or upon
13 a date fixed by the governing body.

14 C. All ordinances or resolutions heretofore adopted by a governing body shall be deemed
15 to have been validly adopted, unless some provision of the Constitution of Virginia or the
16 Constitution of the United States has been violated in such adoption.

17 D. An ordinance may be amended or repealed in the same manner, or by the same
18 procedure, in which, or by which, ordinances are adopted.

19 E. An amendment or repeal of an ordinance shall be in the form of an ordinance which
20 shall become effective upon adoption or upon a date fixed by the governing body, but, if no
21 effective date is specified, then such ordinance shall become effective upon adoption.

22 F. In counties, except as otherwise authorized by law, no ordinance shall be passed until
23 after ~~descriptive~~ notice of an intention to propose the ordinance for passage ~~has been published~~
24 ~~once a week for two successive weeks~~ is advertised by reference twice, with the first notice
25 appearing no more than 14 28 days prior to the ~~intended passage of the ordinance~~ date of the
26 meeting referenced in the notice, in a newspaper having a general circulation in the county. ~~The~~
27 ~~second publication shall not be sooner than one calendar week after the first publication.~~ The
28 publication of the second notice shall appear at least four days after the first notice. The
29 publication shall include a statement ~~either that the publication contains the full text of the~~
30 ~~ordinance or~~ that a copy of the full text of the ordinance is on file in the clerk's office of the

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31 circuit court of the county or in the office of the county administrator; or in the case of any
32 county organized under the form of government set out in Chapter 5, 7 or 8 of this title, a
33 statement that a copy of the full text of the ordinance is on file in the office of the clerk of the
34 county board. ~~Even if the publication contains the full text of the ordinance, a complete copy~~
35 ~~shall be available for public inspection in the offices named herein.~~

36 In counties, emergency ordinances may be adopted without prior notice; however, no such
37 ordinance shall be enforced for more than sixty days unless readopted in conformity with the
38 provisions of this Code.

39 G. In towns, no tax shall be imposed except by a two-thirds vote of the council members.

40

41 **§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written**
42 **notice of certain amendments.**

43

44 A. Plans or ordinances, or amendments thereof, recommended or adopted under the
45 powers conferred by this chapter need not be advertised in full, but may be advertised by
46 reference. Every such advertisement shall identify the place or places within the locality where
47 copies of the proposed plans, ordinances or amendments may be examined.

48 The local planning commission shall not recommend nor the governing body adopt any
49 plan, ordinance or amendment thereof until notice of intention to do so has been published ~~once~~
50 ~~a week for two successive weeks- twice~~ in some newspaper published or having general
51 circulation in the locality, with the first notice appearing no more than ~~14~~ 28 days before the
52 ~~intended adoption date of the meeting referenced in the notice~~; however, the notice for both the
53 local planning commission and the governing body may be published concurrently. The notice
54 shall specify the time and place of hearing at which persons affected may appear and present
55 their views. The local planning commission and governing body may hold a joint public hearing
56 after public notice as set forth in this subsection. If a joint hearing is held, then public notice as
57 set forth in this subsection need be given only by the governing body. ~~As used in this subsection,~~
58 ~~"two successive weeks" means that such notice shall be published at least twice in such~~
59 ~~newspaper, with not less than six days elapsing between the first and second publication.- The~~
60 ~~publication of the second notice shall appear at least four days after the first notice.~~ In any

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61 instance in which a locality has submitted a correct and timely notice request to such newspaper
62 and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality
63 shall be deemed to have met the notice requirements of this subsection so long as the notice was
64 published in the next available edition of a newspaper having general circulation in the locality.
65 After enactment of any plan, ordinance or amendment, further publication thereof shall not be
66 required.

67 B. When a proposed amendment of the zoning ordinance involves a change in the zoning
68 map classification of 25 or fewer parcels of land, then, in addition to the advertising as required
69 by subsection A, the advertisement shall include the street address or tax map parcel number of
70 the parcels subject to the action. Written notice shall be given by the local planning commission,
71 or its representative, at least five days before the hearing to the owner or owners, their agent or
72 the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting
73 property and property immediately across the street or road from the property affected, including
74 those parcels that lie in other localities of the Commonwealth; and, if any portion of the affected
75 property is within a planned unit development, then to such incorporated property owner's
76 associations within the planned unit development that have members owning property located
77 within 2,000 feet of the affected property as may be required by the commission or its agent.
78 However, when a proposed amendment to the zoning ordinance involves a tract of land not less
79 than 500 acres owned by the Commonwealth or by the federal government, and when the
80 proposed change affects only a portion of the larger tract, notice need be given only to the
81 owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by
82 registered or certified mail to the last known address of such owner as shown on the current real
83 estate tax assessment books or current real estate tax assessment records shall be deemed
84 adequate compliance with this requirement. If the hearing is continued, notice shall be remailed.
85 Costs of any notice required under this chapter shall be taxed to the applicant.

86 When a proposed amendment of the zoning ordinance involves a change in the zoning
87 map classification of more than 25 parcels of land, or a change to the applicable zoning
88 ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land,
89 then, in addition to the advertising as required by subsection A, the advertisement shall include

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90 the street address or tax map parcel number of the parcels as well as the approximate acreage
91 subject to the action. For more than 100 parcels of land, the advertisement may instead include a
92 description of the boundaries of the area subject to the changes and a link to a map of the subject
93 area. Written notice shall be given by the local planning commission, or its representative, at
94 least five days before the hearing to the owner, owners, or their agent of each parcel of land
95 involved, provided, however, that written notice of such changes to zoning ordinance text
96 regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a
97 subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ [15.2-2240](#) et
98 seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the
99 last known address of such owner as shown on the current real estate tax assessment books or
100 current real estate tax assessment records shall be deemed adequate compliance with this
101 requirement, provided that a representative of the local commission shall make affidavit that
102 such mailings have been made and file such affidavit with the papers in the case. Nothing in this
103 subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance
104 because of the inadvertent failure by the representative of the local commission to give written
105 notice to the owner, owners or their agent of any parcel involved.

106 The governing body may provide that, in the case of a condominium or a cooperative, the
107 written notice may be mailed to the unit owners' association or proprietary lessees' association,
108 respectively, in lieu of each individual unit owner.

109 Whenever the notices required hereby are sent by an agency, department or division of the local
110 governing body, or their representative, such notices may be sent by first class mail; however, a
111 representative of such agency, department or division shall make affidavit that such mailings
112 have been made and file such affidavit with the papers in the case.

113 A party's actual notice of, or active participation in, the proceedings for which the written
114 notice provided by this section is required shall waive the right of that party to challenge the
115 validity of the proceeding due to failure of the party to receive the written notice required by this
116 section.

117 C. When a proposed comprehensive plan or amendment thereto; a proposed change in
118 zoning map classification; or an application for special exception for a change in use or to

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119 increase by greater than 50 percent of the bulk or height of an existing or proposed building, but
120 not including renewals of previously approved special exceptions, involves any parcel of land
121 located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then,
122 in addition to the advertising and written notification as required by this section, written notice
123 shall also be given by the local commission, or its representative, at least 10 days before the
124 hearing to the chief administrative officer, or his designee, of such adjoining locality.

125 D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed
126 change in zoning map classification, or (iii) an application for special exception for a change in
127 use involves any parcel of land located within 3,000 feet of a boundary of a military base,
128 military installation, military airport, excluding armories operated by the Virginia National
129 Guard, or licensed public-use airport then, in addition to the advertising and written notification
130 as required by this section, written notice shall also be given by the local commission, or its
131 representative, at least 30 days before the hearing to the commander of the military base, military
132 installation, military airport, or owner of such public-use airport, and the notice shall advise the
133 military commander or owner of such public-use airport of the opportunity to submit comments
134 or recommendations.

135 E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the
136 authority of prior acts shall not be declared invalid by reason of a failure to advertise or give
137 notice as may be required by such act or by this chapter, provided a public hearing was
138 conducted by the governing body prior to such adoption or amendment. Every action contesting
139 a decision of a locality based on a failure to advertise or give notice as may be required by this
140 chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of
141 the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not
142 be affected by the 1996 amendment to this section.

143 F. Notwithstanding any contrary provision of law, general or special, the City of
144 Richmond may cause such notice to be published in any newspaper of general circulation in the
145 city.

146 G. When a proposed comprehensive plan or amendment of an existing plan designates or
147 alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or

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148 more, written notice shall also be given by the local planning commission, or its representative,
149 at least 10 days before the hearing to each electric utility with a certificated service territory that
150 includes all or any part of such designated electric transmission corridors or routes.

151 H. When any applicant requesting a written order, requirement, decision, or determination from
152 the zoning administrator, other administrative officer, or a board of zoning appeals that is subject
153 to the appeal provisions contained in § [15.2-2311](#) or [15.2-2314](#), is not the owner or the agent of
154 the owner of the real property subject to the written order, requirement, decision or
155 determination, written notice shall be given to the owner of the property within 10 days of the
156 receipt of such request. Such written notice shall be given by the zoning administrator or other
157 administrative officer or, at the direction of the administrator or officer, the requesting applicant
158 shall be required to give the owner such notice and to provide satisfactory evidence to the zoning
159 administrator or other administrative officer that the notice has been given. Written notice mailed
160 to the owner at the last known address of the owner as shown on the current real estate tax
161 assessment books or current real estate tax assessment records shall satisfy the notice
162 requirements of this subsection.

163 This subsection shall not apply to inquiries from the governing body, planning
164 commission, or employees of the locality made in the normal course of business.

165

Group 2 Samples

167 **§ 15.2-2606. Public hearing before issuance of bonds.**

168 A. Notwithstanding any contrary provision of law, general or special, but subject to
169 subsection B of this section, before the final authorization of the issuance of any bonds by a
170 locality, the governing body of the locality shall hold a public hearing on the proposed bond issue.
171 Notice of the hearing shall be published ~~once a week for two successive weeks twice~~ in a
172 newspaper published or having general circulation in the locality, with the first notice appearing
173 no more than ~~14-28~~ days before the hearing. The publication of the second notice shall appear at
174 least four days after the first notice. The notice shall (i) state the estimated maximum amount of

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175 the bonds proposed to be issued, (ii) state the proposed use of the bond proceeds, and if there is
176 more than one use, state the proposed uses for which more than 10 percent of the total bond
177 proceeds is expected to be used, and (iii) specify the time and place of the hearing at which persons
178 may appear and present their views. ~~The hearing shall not be held less than six nor more than 21~~
179 ~~days after the date the second notice appears in the newspaper.~~

180 B. No notice or public hearing shall be required for (i) bonds which have been approved
181 by a majority of the voters of the issuing locality voting on the issuance of such bonds or (ii)
182 obligations issued pursuant to §§ [15.2-2629](#), [15.2-2630](#) or [15.2-2643](#).

183

184 **§ 15.2-2653. Contesting issuance of bonds; notice and hearing; service on member of**
185 **governing body, etc.**

186 Any person, corporation, or association desiring to contest the issuance of any bonds
187 pursuant to the provisions of this chapter, or any other law, general or special, shall proceed by
188 filing a motion for judgment within thirty days after the filing of the resolution or ordinance
189 authorizing the issuance of the bonds with the circuit court having jurisdiction over the issuer, or
190 in contesting the validity of a petition for or the results of a referendum, within thirty days after
191 the date that the result of the election for the issuance of the bonds is certified, in the court having
192 jurisdiction as provided in § 15.2-2651. For bonds which are not authorized pursuant to a
193 referendum, or for which the authorizing resolution or ordinance is not required to be filed with
194 the circuit court, the contestant shall proceed by filing a motion for judgment within thirty days
195 after the adoption of the authorizing resolution or ordinance. Upon the filing of a motion for
196 judgment, the court shall fix a time and place for hearing the proceeding and shall enter an order
197 requiring the publication of the motion for judgment or a summary of it approved by the court,
198 together with the order setting forth the time and place of the hearing, ~~once a week for two~~

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199 ~~consecutive weeks twice~~ in a newspaper published or having general circulation in the jurisdiction
200 where the issuer is located, with the first notice appearing no more than ~~14~~ 28 days before the
201 hearing. ~~The date fixed for the hearing shall not be sooner than ten days after the date the second~~
202 ~~publication of the motion for judgment or summary and the order appears in the newspaper.~~ The
203 publication of the second notice shall appear at least four days after the first notice. In addition to
204 such publication, the plaintiff shall secure personal service on at least one member of the governing
205 body of the issuer.

Group 3 Sample

§ 15.2-5156. Hearing; notice.

209 A. An ordinance or resolution creating a community development authority shall not be
210 adopted or approved until a public hearing has been held by the governing body on the question
211 of its adoption or approval. Notice of the public hearing shall be published ~~once a week for three~~
212 ~~successive weeks three times~~ in a newspaper of general circulation within the locality, with the
213 first notice appearing no more than ~~21~~ 35 days before the hearing. The publication of the second
214 and third notices shall appear at least four days after the previous notice. The petitioning
215 landowners shall bear the expense of publishing the notice. ~~The hearing shall not be held sooner~~
216 ~~than ten days after completion of publication of the notice.~~

217 B. After the public hearing and before adoption of the ordinance or resolution, the local
218 governing body shall mail a true copy of its proposed ordinance or resolution creating the
219 development authority to the petitioning landowners or their attorney in fact. Unless waived in
220 writing, any petitioning landowner shall have thirty days from mailing of the proposed ordinance
221 or resolution in which to withdraw his signature from the petition in writing prior to the vote of
222 the local governing body on such ordinance or resolution. If any signatures on the petition are so

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223 withdrawn, the local governing body may pass the proposed ordinance or resolution only upon
224 certification by the petitioners that the petition continues to meet the requirements of § 15.2-5152.
225 If all petitioning landowners waive the right to withdraw their signatures from the petition, the
226 local governing body may adopt the ordinance or resolution upon compliance with the provisions
227 of subsection A and any other applicable provisions of law.

228

229 **Savings Clause for Community Development Authorities**

230

231 **2. That any community development authority created by ordinance or resolution, or**
232 **whose creating ordinance or resolution was amended, between July 1, 2023, and June 30,**
233 **2024, in accordance with § 15.2-5155 of the Code of Virginia, shall be declared to be validly**
234 **created and any such ordinance or resolution shall be declared to be validly adopted,**
235 **notwithstanding any failure to strictly comply with the public hearing notice requirements**
236 **of subsection A of § 15.2-5156 of the Code of Virginia in the creation and adoption thereof.**

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