

# VIRGINIA

TOWN & CITY

The magazine of the Virginia Municipal League

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OCTOBER 2019

## 'Project Imagine' takes top honors for Danville

Robert David, Youth and Gang  
Violence Prevention Coordinator

### Inside:

All Innovation Award Winners  
Annual Conference highlights  
And more!





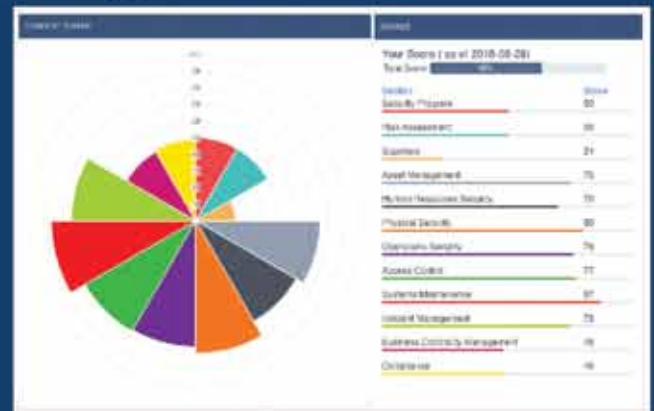
# CYBER SECURITY



## Assess Your Cyber Vulnerabilities

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YourCISO offers a **Security Health Check** tool to identify strengths, weaknesses, and gaps in your information security program. Has your organization taken advantage of this resource? Learn more at: [www.yourciso.com/vrsa](http://www.yourciso.com/vrsa)



## VRSA Cyber Roundtable

Wednesday, Nov. 6, Glen Allen, 10 a.m. - 1 p.m.

Cyber risks are not emerging - they are here today. Join VRSA for a Cyber Roundtable to discuss data and security challenges faced by public entities. The roundtable is designed to bring top managers, risk managers and IT/IS professionals together for a group discussion.

Brief presentations will review cyber coverage, physical site assessments and awareness training. VRSA members can register at: [www.vrsa.us/events](http://www.vrsa.us/events).



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## About the cover

*The City of Danville was awarded the 2019 VML President's Innovation Award at this year's annual conference in Roanoke. Their winning entry in the Youth Services category was for "Project Imagine" a program created by Robert David to help at-risk youths imagine a life outside of gangs by working for their community. Learn more on page 11.*

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### Virginiaforever unveils new five-year plan

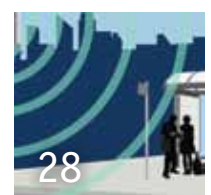
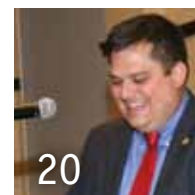
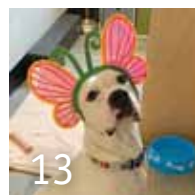
Preston Bryant of McGuire Woods Consulting takes a look at the potential benefits for water quality and land conservation.

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### Putting the Cart Before the Horse – The FCC's "5G First, Safety Second" Policy

Attorneys Albert Catalano, Eric Gotting, and Timothy Doughty offer a thorough look at issues related to Radiofrequency (RF) safety standards in light of the FCC's recent "Small Cell Order."

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# Roanoke shines as host of the 2019 annual conference

THERE ARE SO MANY PEOPLE who worked to make this year's annual conference a success, I don't have space to thank them all. But I do want to take this opportunity to give credit to several standouts, starting with the awesome employees of the City of Roanoke! Thanks to all of them for their enthusiasm and effort during the conference. Also, the Mayor and City Council (including our now immediate-past-president, Anita James Price) were wonderful hosts and proved to be great ambassadors for their city. I think a healthy round of thanks goes to Eden Freeman from the City of Winchester for the awesome yoga class and to Roanoke Parks and Recreation for the morning run; I had 24,073 steps on Monday because of them! Appreciation is also due to our speakers who provided a lot of valuable information that still has my head spinning with ideas! I hope that everyone who attended had time to visit our fantastic exhibitors who provided a variety of products and services to local government from streetlights to cyber security, GIS and street sweeping. Thanks to all of them! I am sorry I missed the candied bacon in the busy exhibit hall, but I heard it was tasty! Finally, none of it would have made any difference if so many great people hadn't come from all over the state to be in Roanoke with us, so I also want to thank everyone who attended. I think that fun was had by all!

VML has sent a survey asking for feedback on the conference. Please take a moment to complete it; VML wants to hear your voice!


Of course, it wasn't all just fun and learning at the conference. The Annual Business meeting is an opportunity for the entire VML membership to discuss legislative and budget policies and priorities in a respectful manner. Each member city, town and county were asked to vote to support these legislative and state budget priorities keeping in mind that our membership reflects the entire Commonwealth of Virginia. Our legislative and policy committees worked hard through the summer and fall to craft the VML legislative program which establishes the legislative and budget priorities that are voted on at the Annual Business meeting. Committee members take the time to come to Richmond to explore and debate issues that affect all localities. The process ensures that VML's advocacy team is well informed about topics that are important to localities. Please let VML know if you are interested in participating!

With the 2019 conference behind us, our work continues; the 2020 General Assembly Session looms along with elections of all our Senators and Delegates! As reported in our *eNews* newsletter,

VML has attended several meetings since the conference. It is the time of year when drafts of specific legislation (solar, FOIA, etc.) are percolating and VML needs feedback on these specific drafts. Please confirm that you are signed up for *eNews* so that you are a part of this process.



Finally, as our newly elected President Tommy Smigiel announced at the conference, VML is beginning a strategic planning process utilizing the services of The Spark Mill consulting service. Representatives from The Spark Mill attended the conference and may have asked you to sit down with them or to fill out a survey. VML appreciates our members taking the time to provide input on our strategic plan. The strategic plan survey will be sent out again via email; if you have not filled it out, please do so. Yes – that is two surveys (conference feedback and strategic plan input) in a very short time, but your feedback is what helps VML adapt to our members' needs. It is expected that the strategic planning process will be complete by the October 2020 Annual Conference in the City of Norfolk.

While this column is full of thank yous and reminders, I want you to know that VML's primary mission remains providing excellent service to our members by advocating strongly for local governments. We look forward to working on your behalf to meet the challenges to come. 



VML connects you with a variety of networking and professional development events. Learn about these opportunities at [vml.org/events](http://vml.org/events).

- Nov. 7, 2019** **Virginia Energy Purchasing Group Association (VEPGA) Board Meeting**  
Henrico County Administration Building, Henrico, VA
- Jan. 6, 2020** **2020 VML/VACo Finance Forum**  
Delta Hotel by Marriott Richmond, 555 E. Canal St., Richmond, VA
- Feb. 6, 2020** **2020 VML Legislative Day**  
Omni Richmond Hotel, 100 S. 12th St., Richmond, VA

People

**Price named city manager in Chesapeake**

**Christopher M. Price**, currently the Deputy County Executive in Prince William County, Virginia, has been named Chesapeake's new city manager, effective November 4, 2019.



- Price -

According to the city's media release, Price has served Prince William County since 2011, first as the Planning Director and as Deputy County Executive since 2016. From 2007 until 2011, Price served as Executive Director of the Northern Shenandoah Valley Regional Commission, leading both the planning district commission and the metropolitan planning organization. Price began his public service career in the City of Chesapeake, Department of Planning, from 1997 until 2002.

Price holds a Master of Public Administration degree from Old Dominion University, and a Bachelor of Science in Psychology from Penn State University. He is also a graduate of the Senior Executive Institute at the University of Virginia. Price is a member of the International City/County Management Association, the Virginia Local Government Management Association, and the American Institute of Certified Planners.

Price replaces James E. Baker, who has served as City Manager since January of 2013. Baker will retire on October 31, 2019.

**Forbes named Chase City new town manager**



- Forbes -

**C.F. "Dusty" Forbes** became the town's fifth full-time town manager after being sworn in earlier in October. The position became vacant when Angela Lawrence took a similar position in Dayton earlier this year.

Forbes is a Chase City native. He retired after serving for 25 years in the U.S. Navy, where he rose to the rank of senior chief petty officer while serving at various duty posts throughout the U.S. After leaving Naval service, Forbes spent five years working in the finance industry before returning to Chase City. He spent the past year working in the security industry.

**Barber appointed as director of justice services**



- Barber -

**Dawn Barber** has been appointed as director of the City of Richmond's Department of Justice Services. Prior to this appointment, Barber was the Director of Juvenile Services for the City of Newport News. She is a former assistant police chief in Newport News. In addition to her experience in city government, she serves as a Lieutenant Commander in the United States Navy Reserves.

Barber will oversee the city's services for adults facing potential incarceration and youth who are either at risk of involvement in the juvenile justice system or who have been formally processed by the Juvenile and Domestic Relations Court.

Barber obtained a Bachelor of Science in Governmental Administration and Criminal Justice Administration from Christopher Newport University. She is a certified PREA Auditor through the Department of Justice's Bureau of Justice Assistance.

**Prince appointed director of public services**

**Melvin Prince** has been appointed as the Director of Public Services in the City of Emporia. Prince has 30 years of experience in local government utilities. He previously was the superintendent of the wastewater treatment plant and most recently served as the interim director of public utilities.

**Micas retires as county attorney**

**Steve Micas**, the former attorney in Prince George County, retired at the beginning of



- Micas -

August. Micas has over 40 years in municipal legal experience, including serving as the county attorney in Chesterfield County. He joined Prince George 10 years ago and played an important part in major issues that have advanced county government over the last decade. Micas was honored by the Prince George County Board of Supervisors at its August 13th meeting.

He earned his bachelor's and law degrees from the University of Virginia and then served as assistant city attorney for the City of Charlottesville before taking the job in Chesterfield County. He is a past president of the Local Government Attorneys of Virginia, Inc.

**Gehr appointed as Manassas social services director**



- Gehr -

**Michele D. Gehr** was appointed director of the City of Manassas Department of Social Services effective Sept. 16, 2019. She has more than 10 years of experience as a strategic program leader – designing, implementing, managing and evaluating programs and personnel. She has served as a youth director, and most recently as the executive director of the Eddy House, which works with homeless and at-risk youth in northern Nevada to develop life and job skills.

Gehr holds a Bachelor's degree in Psychology from the University of Nevada and a Master's of Science in Social Work from Columbia University in New York City.



**Fauber retires as Mount Jackson manager**



- Fauber -

**Kevin Fauber**, the town manager in Mount Jackson since 2013, retired from his position at the end of September. During his years in Mount Jackson, he oversaw projects that included two new wells to help the town supply its own water; the building of a new fire and rescue department and the development of a sidewalk network.

Prior to his work in Mount Jackson, Fauber served as the town manager in Strasburg from 1986 to 2010 and as the manager in Elkton from 2011 to 2013.

Fauber has a Bachelor of Science degree in public administration from Virginia Tech.

**Eagle appointed as fire chief in Williamsburg**

City Manager Andrew O. Trivette has announced the appointment of **David Eagle** as Fire Chief effective October 15th. Eagle previously was the fire chief in Danville. He will succeed Williamsburg Fire Chief Pat Dent who retired at the end of June.

With over 24 years of experience in Fire



- Eagle -

and Emergency Medical Services, Eagle worked his way up the ranks beginning as a firefighter/EMT in the Danville Fire Department in 1995. He became Assistant Fire Marshall in 1997, Fire Marshall in 2003, and Fire Chief in 2007.

Chief Eagle holds a Bachelor of Arts degree in Communications from Virginia Tech and an Associate in Applied Science in Fire Science from Danville Community College. He is a graduate of the Executive Fire Officer Program in Emmitsburg, MD and he received a Graduate Certificate in Local Government Management from Virginia Tech.

**Mayor launches new Excellence Award program**

Winchester Mayor **John David Smith, Jr.** has launched a new Excellence Award program to recognize and honor individuals, businesses, groups or organizations whose efforts in the community have showcased the City of Winchester as a great place to be; helped others in the community without hesitation or motive; made contributions or



- Smith -

shown commitment to the betterment of the community; thought outside the box in response to societal needs; etc.

Nominations will be accepted through October 31, 2019 and the award recipient(s) will be announced at the December Council meeting. Following this inaugural award ceremony, nominations will be accepted year-round.

**Boies tapped as Clarke County administrator**



- Boies -

**Chris Boies** has been named the new administrator in Clarke County effective Feb. 1, following David Ash's retirement on Jan. 31. Boies will begin work with the county, however, on Dec. 2.

Boies is the assistant vice president of business operation for facilities administration at George Mason University. Prior to that he was a vice-president at Lord Fairfax Community College, the town manager in New Market and the director of planning and zoning at Shenandoah County.

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Boies holds a doctorate of education degree in administrative leadership from Shenandoah University and a master's and undergraduate degree in public administration from James Madison University.

**Smith appointed as Chesterfield deputy administrator**



**Jesse Smith** has been named as the Deputy County Administrator for Community Development in Chesterfield County, effective at the beginning of October. Prior to that appointment, Smith was the director of transportation for the county. He began work for the county in 2002 as a senior engineer. His other previous experience

- Smith -

included working for the Virginia Department of Transportation and for Anderson and Associates, Inc.

Smith holds an undergraduate degree from Virginia Tech.



- Dupler -

**Bill Dupler**, the previous deputy, retired Sept. 30. Dupler had held the position since 2010. Prior to that, he was the Director of Building Inspections. He is a past president of the Virginia Building and Code Officials Association.

**Local officials appointed to boards, commissions**

Governor Ralph S. Northam has appointed or reappointed several local officials to state boards and commissions, including:

- Harrisonburg Council Member **Richard A. Baugh**, Hopewell Mayor **Jasmine Gore**, Norfolk Council Member **Andria McClellan**, King George County Supervisor **Ruby A. Brabo** and Fairfax County Supervisor **Penny Gross** to the Local Government Advisory Committee to the Chesapeake Bay Executive Council.
- Staunton Commissioner of the Revenue **Maggie A. Ragon** to the Virginia Aviation Board.
- Culpeper Council Member **Jamie Clancey** to the Board of Social Work.
- **Jerome I. Williams**, Fairfax County Battalion Chief, Virginia Fire Services Board

**Harrisonburg rolls out Community Cams program**



THE HARRISONBURG POLICE DEPARTMENT (HPD) recently unveiled its Community Cams program, which encourages residents and businesses to register the location of their security surveillance cameras with the department. When an incident occurs in the area of a camera, HPD knows where the cameras are located and can ask the individual or business to provide access to saved video recordings to potentially aid the investigation. The effort will help provide some extra eyes in the community and bring residents and police closer together in keeping neighborhoods safe.

Registration is voluntary and there is no cost associated with participating in the program. Registering information does not provide the police department with direct access to cameras. Participants may cancel their registration at any time.

Interested in learning more? You can email HPD at [communityresourceofficer@harrisonburgva.gov](mailto:communityresourceofficer@harrisonburgva.gov).

**Portsmouth recognized for resiliency planning**

THE VIRGINIA CHAPTER of the American Planning Association has recognized the City of Portsmouth's "Build One Portsmouth Comprehensive Plan" as a model for resiliency. Planning Administrator Brian Swets was also the recipient of the Nelsonite Award as Virginia's Planning Advocate of the Year. The awards were presented at the chapter's annual conference awards luncheon July 23, 2019.

The "Build One Portsmouth Comprehensive Plan" categorizes strategies under four main themes: thriving, resilient, evolving and equitable. Each theme highlights what it will take to improve

Portsmouth over the life of the plan. Each theme is then summarized with a vision statement and supported by goals outlined in the plan. Each goal contains strategies, specific tactics and possible measures of success.





## 2019 technology awards announced

GOVERNOR RALPH NORTHAM recently recognized 22 Virginia government entities for their innovative approaches to improving the delivery and efficiency of government services. The winners were celebrated at a ceremony in September at the Commonwealth of Virginia Innovative Technology Symposium (COVITS).

Local governments receiving 2019 Virginia Governor’s Technology Awards include:

- Roanoke County (NextGen 9-1-1 Public Safety Answering Point) in the cross-boundary collaboration category.
- Virginia Beach (VB Connect) and Charlottesville (Free Meal program) in the IT as efficiency driver-government to citizen category.
- Fairfax County (Medallion Web Mapping Applications) and Spotsylvania County (Fiber Network Initiative) in the IT as efficiency driver-government to government category.



- Newport News (StormSense Alerts) and Chesterfield County (Unmanned Aerial Systems Policy and Program) in the innovative use of technology in local government category.
- Virginia Beach (Traffic Data-Sharing Partnership), Norfolk (Data Innovation Initiative), and Chesapeake Health Department (BabyCare Analytics) in the innovative use of big data and analytics category.
- York County (Citizen Cyber Security) in the best cybersecurity initiative;
- Newport News (Tourism Interactive Web Maps: Bike Trails and Toast the Coast) in the best citizen portal category.

## Norfolk PD wins national ‘Lip Sync to the Rescue’ competition

THE NORFOLK POLICE Department’s “Uptown Funk” lip sync took the top spot in a special “Lip Sync to the Rescue” tribute on CBS in September. Voting for the top videos started in April but viewers chose between the top two contenders – Norfolk and Seattle – during the airing of the show on Sept. 9. The city police department took home bragging rights and a \$100,000 prize.

The program was hosted by comedian Cedric the Entertainer and featured country artist Luke Bryan.



## Woodstock earns public works accreditation

WOODSTOCK’S PUBLIC WORKS Department earned full accreditation from the American Public Works Association (APWA) this past June. The accreditation program is a voluntary, self-motivated approach to evaluate, verify and recognize compliance with management practices recommended by the APWA. According to the APWA’s website, Woodstock joins 191 other public works departments in the nation and nine other departments (Alexandria, Chesapeake, Fairfax County, Newport News, Prince William County, Richmond, Smithfield, Virginia Beach and Herndon) in Virginia in achieving full accreditation.



## Alexandria recognized for new landscaping guidelines

NEW LANDSCAPING GUIDELINES approved by the City of Alexandria received a Communications Merit Award from the Virginia Chapter of the American Society of Landscape Architects on Sept. 20. According to the city media release, the guidelines emphasize increasing the use of native plants and ensuring biodiversity, with an equally strong emphasis on selecting, planting, and caring for plants for long-term survivability.

The guidelines are part of a broader city initiative to address the challenge of climate change with an approach that ensures that new buildings and landscaped areas are as “green” as possible. The expectation is that new public buildings will meet “net zero energy” standards and higher stormwater requirements than new private development.



For more information on the city’s environmental and planning efforts, please visit [www.alexandriava.gov/Planning](http://www.alexandriava.gov/Planning).



## Richmond designated a Green & Healthy Homes Initiative site



THE CITY OF RICHMOND was recently designated a Green and Healthy Homes Initiative (GHHI) site. GHHI Richmond is a comprehensive approach to align health, safety, and weatherization interventions in low income homes in the City.

As part of the designation, stakeholders have entered into a contract to coordinate programs with the goal of producing healthier, more energy-efficient housing, higher-quality green jobs, and improved health and social outcomes for families. Signatories to the contract include Mayor Levar Stoney, Director of the Richmond City and Henrico County Health Districts Dr. Danny Avula, KC Bleile of Viridiant, Lee Householder of project: HOMES, Malcolm Jones of Rebuilding Together Richmond, Ruth Ann Norton of Green & Healthy Homes Initiative and Amy

Strite of Family Lifeline.

The Green & Healthy Homes Initiative was originally founded in 1986 as Parents Against Lead, a grassroots volunteer effort. In 2008, the Initiative was charged by the White House Office of Recovery to lead national efforts to integrate lead hazard control, healthy homes and weatherization and energy efficiency work. This project later became the Green & Healthy Homes Initiative that addresses the health and energy efficiency needs of a home through a holistic intervention model.

The media release announcing the designation is posted at [www.greenandhealthyhomes.org](http://www.greenandhealthyhomes.org).

## Charlottesville Gas wins two national awards

CHARLOTTESVILLE GAS RECEIVED two national awards earlier in October for the Flicker Jingle Sing-along Contest. The first award came from the American Public Gas Association (APGA), and the second from the City-County Communications and Marketing Association (3CMA). These honors add to the previous recognition and awards Charlottesville Gas has received for its safety program, bringing the total to an impressive 13 national awards.

The APGA awarded the Flicker Jingle Sing-along contest first place for its 2019 Marketing & Sales Award, while 3CMA awarded the contest its highest honor, the Savvy Award, for Resident Participation.

The Flicker Jingle Sing-along Contest invited area residents to help spread the gas safety message by submitting a video of their own version of Flicker's signature safety jingle. The top ten



videos were showcased on social media, as well as on traditional media outlets, and were then voted on by the community to determine the winner. The contest allowed residents to become active participants in gas safety awareness.

For over 10 years Flicker the Flame has served as Charlottesville Gas' safety ambassador. He visits local schools, attends community events, and is known for his catchy jingle. Educational topics include how to detect the smell of natural gas, contacting VA811 prior to digging, and what to do in the event of a gas leak. Since 2006 there has been a 113% increase in residents' ability to recognize the smell of natural gas and a 75% reduction in gas line damage caused by third party excavators. Flicker has played a key role in achieving these significant gains in natural gas safety.

## Newport News opens workforce development center

THE CITY OF NEWPORT NEWS has opened the Brooks Crossing Innovation and Opportunity Center which will focus on workforce development and STEM-education and will bring manufacturing, technology, innovation, nonprofits, education and more into a central hub. The facility includes a collaborative space for innovation and new ventures, such as entrepreneurial initiatives. This resource features two elements key to the city's



ongoing community engagement efforts: The Brooks Crossing Opportunity Center (BCOC) and the STEM Digital Innovation and Fabrication Lab.

BCOC is a centralized hub for services related to career awareness, skill development, wealth building, training and employment, and support services. In addition to serving as a location for case management support and hosting interviews and job fairs, citizens can test for certificate programs and participate in career readiness seminars, workshops and training programs.

The STEM Digital Innovation and Fabrication Lab serves as a resource for students, parents and citizens interested in learning about digital technologies used in design and fabrication. It is a partnership between the city, Newport News Shipbuilding, Old Dominion University and the Newport News Economic Development Authority.



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# Cyber insurance: What you need to know

IN LAST MONTH'S issue of *Virginia Town & City* we weighed the pros and cons of paying a cyber-attack ransom. As cyber threats continue to grow more sophisticated, and become increasingly common, public bodies are forced to confront evolving challenges with limited options to meet those challenges. This month, we continue our cyber dialogue by taking a close look at one of the tools public bodies may choose to consider when trying to anticipate a cyber attack: cyber insurance.

- **Cyber Liability** provides coverage for privacy liability, network liability, internet media liability and associated data breach costs.


The areas covered by the above options are considered “hard costs,” as the amounts fall into a predictable range which can be covered by insurance. Beyond hard costs, other expenses vary widely by organization following a cyber event. These “soft costs” are incurred when closing security gaps (i.e. upgrading applications, systems and/or networks).

## Resources to the rescue!

Cyber insurance works by allowing public bodies to invest now in order to lower the likelihood or severity of future losses. By the same token, investing time, money, and resources into a cyber security program can also work to reduce future losses. VRSA's cyber security resources provide an understanding of industry best practices in cyber security risk management, governance and operations.

- **YourCISO, offered through Risk Based Security**, provides public bodies with access to information security resources, a security health check, awareness training, security program sample documentation and incident response.

- **Beazley Breach Solutions** provides planning, training and online learning and webinars.
- **Cyber security training** with presentations conducted by VRSA staff.
- Access to the **VRSA Online University** includes cyber courses for education and training such as Security Awareness and Preventing Phishing.

These resources are included at no additional cost to our members to promote not only secure networks and systems, but also more educated and trained staff. By educating and training staff and upgrading applications, systems and networks, public bodies can lower the probability of a cyber related loss. 

**About the authors:** *The Virginia Risk Sharing Association (VRSA), formerly VML Insurance, is the first and most financially sound self-insurance pool in the Commonwealth of Virginia. For nearly 40 years VRSA has provided auto, property, liability, and workers' compensation coverage to Virginia local political subdivisions.*



## What is cyber insurance?

Cyber insurance provides coverage for liability, data breaches and cybercrimes. This coverage may also be referred to as cyber risk insurance or cyber security insurance. Additionally, cyber liability coverage is available to cover losses arising out of failure to protect sensitive information.

The Virginia Risk Sharing Association (VRSA) is pleased to include cyber insurance coverage options to our members to help manage the cost of a cyber attack. These options include:

- The **Data Breach Fund** which covers expenses to retain a computer forensics firm to determine the scope of a breach, notify customers or employees whose sensitive personal information was compromised, provide credit monitoring services to affected individuals, and obtain public relations services. Taken together, these items are where 100 percent of the typical costs resulting from a cyber-attack are incurred.
- **Social Engineering and Security Coverage** provides for liability from fraudulent instruction, cyber extortion and telecommunications fraud.

# Announcing the winners of the 2019 VML Innovation Awards

VML'S ANNUAL INNOVATION Awards recognize excellence in local government and are among the most distinguished honors in the state. The statewide competition recognizes innovative problem-solving, excellence in management, citizen participation, and improved services to citizens. Judges selected one winner in each of six categories and one of the category winners was selected by VML president and Roanoke council member Anita James Price to receive this year's President's Award.

This year's winners are:

## Working with Youth & President's Award

**City of Danville** for a program that puts at-risk youth to work for the community and gives them a chance to imagine a better future for themselves.

## Environmental Quality

**City of Fredericksburg** for finding inexpensive solutions to control litter and graffiti by involving the community and a punishment-fits-the-crime approach to enforcement.

## Communications

**City of Richmond** for letting its animal shelter residents "speak" for themselves through visits to local businesses.

## Economic Development

**Town of Warsaw** for refusing to let its downtown fade away by finding innovative incentives to bring businesses back.

## Public Safety

**James City County** for bridging the connection between the elderly residents who need help the most and the social services that can provide that help.

## Community Health

**City of Falls Church** for using an existing property to make it possible for several special needs residents to live independently for the first time in their lives.



Visit [www.vml.org](http://www.vml.org) to view videos submitted by the winners.





# DANVILLE

WORKING WITH YOUTH & PRESIDENT'S AWARD



“Project Imagine is building future productive citizens, which is what every community wants to achieve.”

– Anita James Price (VML president 2018-2019)



**F**OUR YEARS AGO, the City of Danville adopted a new credo, “Danville: Reimagine That.” The motto captures the spirit of the city’s progress and sends a clear message to those within and outside the community that the city will adapt to changes and challenges

by reimagining the established ways of doing things to see if there’s a better path to success.

One of the clearest examples of the city’s new credo in action is Project Imagine – a program which acknowledges that young people mired in gang activity or being lured to join gangs often can’t imagine a different way to live their lives. Robert David, who was hired as the city’s gang violence prevention and youth services

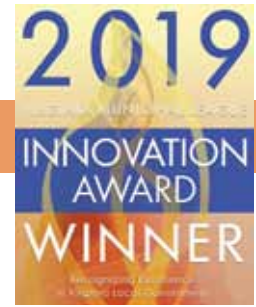
coordinator, knows this truth well, having worked with youths for most of his career. Implemented through a partnership with the Virginia Workforce Center and the Virginia Department of Juvenile Justice, the nine-week training and employment program designed by David gives youths with gang connections a future off the streets by providing them with paid work experience as well as mentoring while on the job. Not only do the participants learn valuable skills, they learn the satisfaction of getting paid to do a job that benefits the community. Most importantly, they come to appreciate that the pride that comes with these things can be stronger than any gang membership.

Since October 2018, two groups have completed the program. The first group was assigned jobs within the Public Works and the Parks and Recreation departments. The Danville Redevelopment and Housing Authority provided jobs for the second group. A third class began on Oct. 21. Danville Redevelopment and Housing Authority is again providing the jobs and supervision.

Looking ahead, David also hopes to expand the program by securing funds to hire outreach workers whose role will include guiding the youths who complete their nine-week training and employment program.



(L to R) Vice Mayor Lee Vogler, Council Member Larry Campbell, Council Member James Buckner, City Manager Ken Larking, Youth and Gang Violence Prevention Coordinator Robert David, Mayor Alonzo Jones, and Deputy City Manager Earl Reynolds.



## A city starts a lot of smart initiatives to improve its natural environment in a short amount of time.

**I**N 2016 THE FREDERICKSBURG

City Council's 20-year vision for their city included language to expand sustainability efforts and prevent littering – both of which affect the long-term quality of life for residents of the Rappahannock River community. Several initiatives begun since January 2018 have already resulted in significant improvements. Even better, these initiatives take a common-sense approach that motivates Fredericksburg's citizens to be part of the solution. For starters, the city's Parks and Recreation Department initiated a "Clean as you Go" program along the riverbank walking paths. As part of the program, the department set up several stations where hikers can obtain bags and trash grabbers to collect litter during their outings and deposit the full bags at the end of their walk. To discourage littering, a new policy requires that those caught littering be given a bag to pick up trash for an hour instead of being arrested.



Another new policy seeks to reduce the graffiti commonly found on rocks and surfaces near the river. Violators are now required to pay



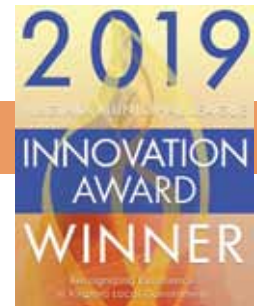
the \$1,000 cost for one gallon of the environmentally friendly cleaner that must be used in proximity to the river.

The city also partnered with several organizations to install cigarette butt collectors in city-owned parks so that the butts can be recycled into compost and park benches. Finally, new brochures distributed by Public Works encourage city residents to begin composting to reduce organic waste sent to the landfill.



(L to R) City Manager Tim Baroody, Council Member Tim Duffy, Council Member Kerry Devine, Council Member Chuck Frye, and Assistant City Manager Mark Whitley.





## A city discovers that furry ambassadors are a great way to communicate its animal shelter's mission.

**M**ANY PEOPLE THINK of their municipality's animal control shelter as "the pound" – a jail for dogs and cats. In fact, animal control shelters are places where lots of great animals are cared for by compassionate staff until they find a new home. For a homeless pet, however, a shelter is a stressful environment full of unfamiliar sounds, smells and people. As a result, visitors don't get to see the animals at their best. The staff of the Richmond Animal Care and Control (RACC) wanted to find a way to give the animals in their care a break from the shelter. They also wanted a way to educate the public about what RACC does to help animals. The solution: Casual Friday – a program that places dogs in area businesses each Friday to interact with the employees and customers.

Since the program began in September 2018, businesses ranging from small stores to corporations to the Senate of Virginia have participated in a Casual Friday. Everybody wins on Casual Fridays – the adoptable animals get a break from the shelter, the businesses get a furry friend for the day and the RACC shows the community that they are a place that goes above and beyond to help animals. In fact, many of the pets that have been part of a Casual Friday have been adopted by an employee of a participating organization or by friends or family who see their picture on social media.



Licensing Coordinator Brent Carson and Outreach Coordinator Robin Young from Richmond Animal Care and Control.



# WARSAW

ECONOMIC DEVELOPMENT



## A downtown development initiative makes for a big win for a great small town on the rebound.

**M**ANY SMALL TOWNS grapple with the high commercial vacancy rates in their downtown. But the town council and staff of Warsaw decided to do something about it. With a vacancy rate well over 50 percent their community risked becoming a residential area with little to no businesses. To turn the tide, the town council implemented several policies including reduced water and sewer hookup rates, beautification grants and successfully applying for a DHCD Downtown Revitalization Grant.

While these were great steps, the town quickly realized it wasn't enough to "jump start" the local economy to the extent needed to begin revitalizing their downtown. So, the council shifted into high gear by budgeting for and passing a resolution authorizing the Warsaw Economic Incentive Grant to provide 2 forms of financial assistance to new or relocating small businesses.

The results have been tangible – and delicious – with the town's first ice cream shop, a gourmet popcorn shop, a fine jeweler and a custom granite provider all opening shops downtown in the past year alone. Without the decisive positive actions of the town, none of these businesses – or the ones sure to follow – would have been able to open.



(L to R) Town Treasurer and Clerk Julia Blackley-Rice, Town Manager Joseph Quesenberry, Mayor Randall Phelps, Community Development Specialist Missy Coates, and Chief of Police Joan Kent.





## A county finds a great way to make life better for its elderly residents and those who care for them.

**C**URRENTLY, MORE THAN 24 percent of the residents of James City County are over 65 years old. This population, which is the fastest growing segment in the locality, strains the county's Fire/EMS department through an increase in mobility emergency calls (i.e. instances in which an individual has fallen or is unable to perform an essential task due to mobility issues). In FY2018 James City County's Fire/EMS personnel responded to over 3,500 mobility related calls (roughly 16 percent of the total calls). In many of these instances the individual needed help but did not have an actual emergency. However, the Fire/EMS teams knew that eventually these individuals would experience a real medical emergency if they did not receive assistance to meet their needs. So, James City County created the CONECT (Community Outreach Network Educate Care Thrive) Program which allows Fire/EMS personnel to refer at-risk seniors directly to the Department of Social Services (DSS) so that residents can be connected to appropriate services.

Previously, Fire/EMS personnel who responded to a call from an elderly resident in need of additional services, or whom they suspected was a victim of abuse or neglect, would report this to the hospitals who would then contact DSS. Now, thanks to CONECT these reports are sent directly to DSS staff. Even if these individuals

do not take advantage of the DSS services, at least now they know that they are available.

Since the program began in March 2018, over 300 referrals have been made, with an average of 20 referrals per month from Fire/EMS and the Police Department. Amazingly, over 70 percent of those referred were previously unknown to DSS.



(L to R) Battalion Chief Jason Sweet, Family Services Specialist Ellie Rest, Sergeant Monique Myers, and Chief of Services Denise Kirschbaum.



## A city overcomes challenges to provide independent housing for special needs residents using existing resources.

**S**INCE 1973, THE CITY of Falls Church had owned a parcel of land with a house donated by the Miller family which was used as a group home for adults with disabilities. In recent years, however, the “Miller House” has stood vacant and fallen into disrepair. An inspection by city staff concluded that it needed to be demolished. But just because the original group home was unfit for habitation did not mean that there wasn’t a need in the community for such a place. In fact, many parents of adult children with disabilities had contacted city staff with the concern that they were getting too old to properly care for their children.

Lacking funds to establish a new group home on the site, the city awarded Community Havens, Inc., the property affiliate of CRi (a non-profit organization providing quality services to help empower individuals with disabilities and mental health needs) with the deed to the property for \$1.00 with a restrictive covenant on the use of the land to design, construct and deliver services for the operation of a group home.



Many community partners worked together to make the new “Miller House” group home a reality. Today, the Miller House is home to five young adults with disabilities, three of whom have never lived outside of their family’s homes.



(L to R) City Manager Wyatt Shields, Human Services Director Nancy Vincent, Deputy Human Services Director Dana Lewis, Council Member Phil Duncan, Project Implementation Manager, Community Residences, Inc. Mary Jayne Panek, and Council Member Ross Litkenhous.



# Congratulations to these award recipients



## 2019 HEALTHY EATING ACTIVE LIVING CAMPAIGN

The HEAL Cities & Towns Campaign provides free technical assistance to local government leaders to help them adopt healthy eating and active living policies and practices. Across Virginia, HEAL cities, towns and counties are creating healthier and more prosperous communities by making it easier for residents and municipal employees to eat healthier and move more. HEAL is a project of the Institute for Public Health Innovation in partnership with the Virginia Municipal League and funded by Kaiser Permanente, founding partner. For more information, visit the HEAL Cities and Towns website at [www.healcitiesmidatlantic.org](http://www.healcitiesmidatlantic.org).

VML and the HEAL Cities and Towns Campaign recognized the following communities at the VML Annual Conference in Roanoke, Oct. 6-8, 2019.

### 2019 HEAL Cities and Towns Campaign Leaders Club

#### Platinum

Town of Dumfries  
Town of Wytheville

#### Bronze

Town of Ashland  
Town of Scottsville

#### New HEAL Cities and Towns Campaign Members

City of Lexington  
Surry County

### 2019 Virginia HEAL Cities and Town Campaign Members

|                     |                    |               |                      |                |
|---------------------|--------------------|---------------|----------------------|----------------|
| Ashland             | Emporia            | Haymarket     | Middleburg           | Scottsville    |
| Big Stone Gap       | Fairfax            | Hopewell      | New Market           | Staunton       |
| Bluefield           | Falls Church       | Lawrenceville | Petersburg           | Surry County   |
| Charles City County | Galax              | Leesburg      | Prince George County | Virginia Beach |
| Charlottesville     | Glade Spring       | Lexington     | Richmond             | Warrenton      |
| Crewe               | Gordonsville       | Lovettsville  | Roanoke              | Williamsburg   |
| Dumfries            | Greensville County | Manassas      |                      | Wytheville     |

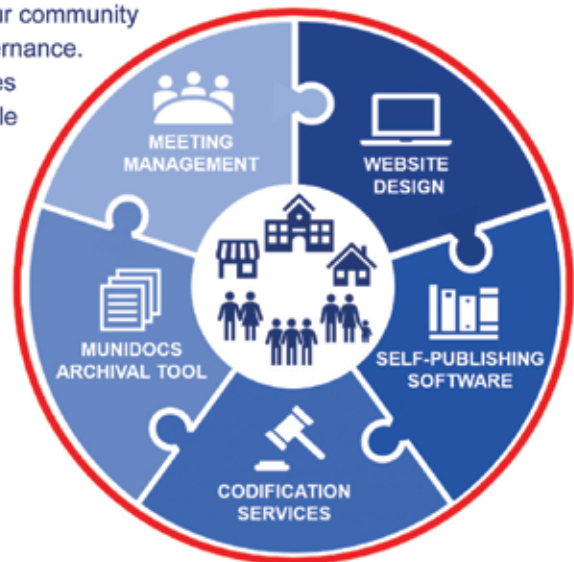
## INTRODUCING THE CIRCLE OF GOVERNANCE

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Pictured: Pohick Regional Library, Fairfax County, Virginia



# Roanoke's creativity goes green (literally)

## Plants take center stage



**T**HE BEAUTIFUL centerpieces for Tuesday's awards lunch banquet were lovingly crafted by Dana Long from Let's Party Creatively. Dana used the centerpieces to tell the story of Roanoke and to commemorate the splendor of the fall season in the Roanoke Valley.

**Origins:** "Roanoke" is a word from the Powhatan language spoken by the Powhatan tribe of Tidewater, Virginia. It comes from the word "rawrenock," which means, "things rubbed smooth by hand" and referred to polished shells that were used as currency. The City of Roanoke was first called "Big Lick" owing to the salt deposits in the area.

**Railroads:** Members of the Roanoke Valley Model Train Club loaned examples of train engines manufactured in Roanoke. VML greatly appreciates R. David McCall for heading up this effort and for coming up with such great models! These included:

- The "Y" class was one of the strongest pulling steam locomotives in the world, earning their nickname as the "workhorses of the Norfolk & Western."

- The "A" class (aka "The Finest Steam Engine Ever Built") was equipped with the most up to date features in North American railroading.
- The "J" class, designed for first-class passenger service, were as reliable as they were beautiful. Number 611, the last one in existence, has been designated a National Historic Mechanical Engineering Landmark.

**Beer:** Brewery-themed centerpieces included examples from Big Lick Brewing Company and Soaring Ridge Brewery. Big Lick Brewing and The Hotel Roanoke recently launched a pre-prohibition style beer to commemorate "The Grand Old Lady on the Hill" – a documentary about the history of this iconic Roanoke landmark. The beer was brewed in the style from the time period with locally sourced ingredients. Soaring Ridge Brewery has named its flagship brews after regional landmarks such as Tinker Creek, Virginia Creeper, and White Top.

**Market Square:** A highlight of every VML conference in Roanoke is Host City Night held in Market Square. The historic Roanoke City Market (popularly known as the Farmer's Market) is the oldest continuously operating open-air market in the Commonwealth. It began in 1882, when licenses were issued to 25 area "hucksters" or vendors. The Historic Roanoke City Market has been recognized as a "Great American Public Place" by the Lyndhurst Foundation (along with the likes of the Vietnam Memorial in Washington, DC and Central Park in New York City).

### "Planternoon" guest activity planters

Dana Long also led the "Planternoon" activity Monday afternoon which found several of the spouses and guests of conference attendees getting their hands dirty while creating unique planters. Gnomes were provided; dinosaurs were optional!





## Highlights from Roanoke

Based on the success of previous VML events in Roanoke, expectations were running high for the 2019 annual conference... and Roanoke delivered! From the warm hospitality of Mayor Sherman Lea and the city council members to the tireless dedication of the city staff and organizers it was apparent that Roanoke was all-in on making this a fantastic visit for its fellow VML members. The historic Hotel Roanoke proved a perfect setting for productive sessions and meetings, social gatherings and meals, exhibitor services and wares and even scooter demos from Lime in the courtyard! Host City Night in the Roanoke City Market delighted attendees with 3 floors of fun and food. Thanks to everyone who participated and made this year's annual conference a truly memorable occasion.



**1.** Conference attendees participate in a scooter demonstration by LIME. **2.** VML's new President Thomas Smigiel Jr., presents Anita James Price a special award for her 2018-19 VML President term. **3.** Town of Haymarket Business Manager Chris Coon. **4.** The 2019 Mayors Institute graduates. **5.** Grant Project Manager Cheri Hartman of the Carilion Clinic spoke at the Women in Local Government Lunch which addressed the crisis of the opioid epidemic.







**1.** City of Huntington, West Virginia Mayor Steve Williams and Town of Warrenton Council Member Sean Polster discuss Huntington's opioid story on Tuesday's general session. **2.** Virginia Governor Ralph Northam opened Tuesday's general session. **3.** Town of Pennington Gap Physician Dr. Art Van Zee began a panel discussion on the opioid epidemic with (seated L-R) Norfolk Council Member Thomas Smigiel, Virginia Attorney General Mark Herring and Kaufman & Canoles Attorney W. Edgar Spivey. **4.** New River Valley Regional Commission Executive Director Kevin Byrd conducts a roundtable session. **5.** City of Suffolk Council Member Roger Fawcett and VML's Policy and Advisory Relations Manager Jessica Ackerman discuss VML's legislative agenda at a roundtable.



## Conference highlights



**1.** (L-R) iamGIS CEO Tony Shriner and VP of Operations Ryan Bacon. **2.** Another happy attendee gets his headshot photo taken by Eddie Arrosi, owner of EAPHOTO. **3.** Strategic Housing Officer Suzanne Armstrong from conference sponsor VHDA with the phone charging station. **4.** Sales Manager Brad Storkley and Sales Representative Brad Greifzu from Playground Specialists, Inc. **5.** (L-R) Allison Bibb-Carson, External Affairs Manager and Leslie Steves, PE, Senior Operations Superintendent at the Virginia American Water booth. **6.** (L-R) Matt Fulton, National Engagement Director and Pat Cannon, Vice President of Community Outreach for POLCO. **7.** Mike Guzo, Chief Regional Coordinator for Region 6 with the Virginia Department of Emergency Management leads a roundtable discussion on preparing for emergencies.







**1.** (L-R) At the VRSA booth: Account Executive, Nora Pierre; Peter Stephenson, Local Government Specialist and unofficial “Great Pumpkin” of the conference; Harry McMillan, Senior Account Executive; Lisa Schenk, Senior Account Executive. **2.** Members of Roanoke’s own Rootstone old-time band perform at the Sunday reception **3.** Account Executive Kathleen Hall from VC3. **4.** (L-R) Brad Hurst, Outside Sales with JJM Associates – Eaton Manufacturer Rep Agency, Spencer Pidgeon, Regional Sales Manager – Eaton Lighting Solutions; Pat Luce, Government Contracts Manager with GFL Environmental **5.** Chris Pomeroy, President of AquaLaw, conducts a wastewater treatment plant workshop. **6.** Mark Flynn, Director of Virginia Department of Aviation leads a workshop on the role of airports in the economic health of localities. **7.** Negheen Sanjar, Director of Legal Research with the International Municipal Lawyers Association talks small cell deployment.





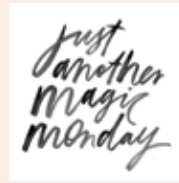
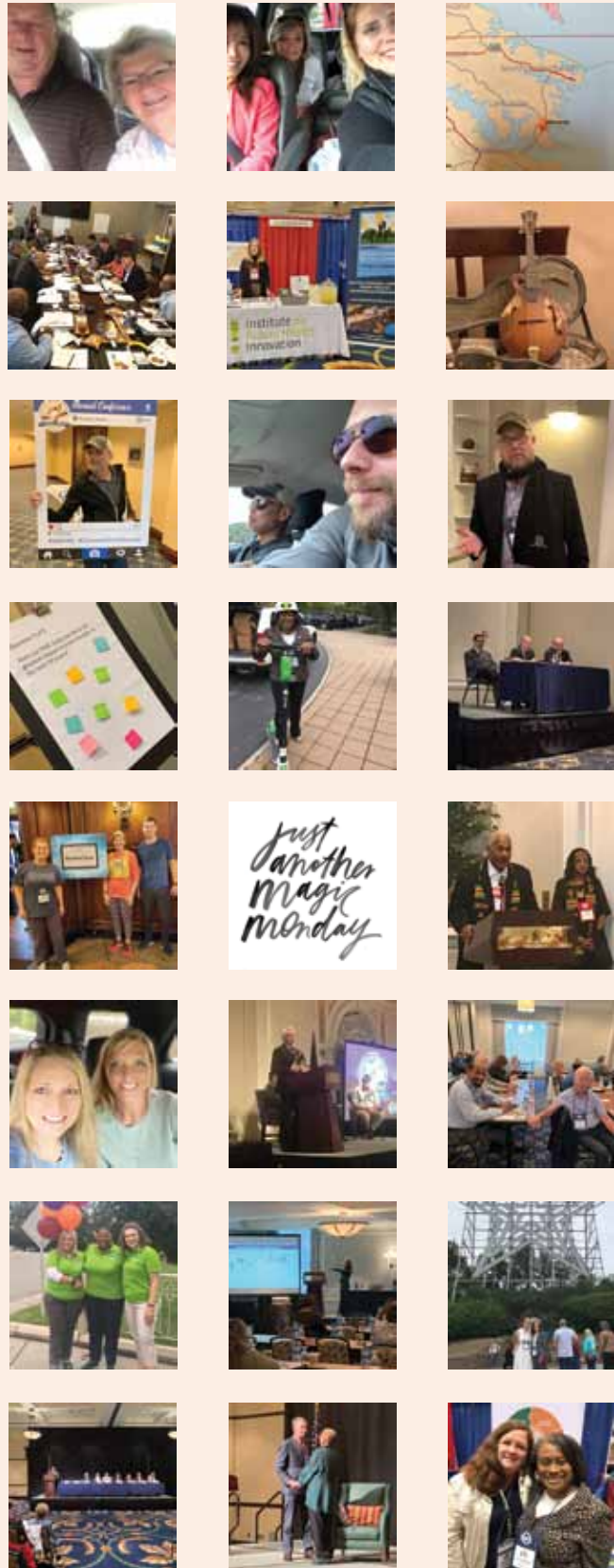
**1.** The Town of Dumfries takes the stage for Sunday’s game night karaoke (L-R) Cydney Neville, Council Member; Melva Willis, Council Member; Selonia Miles, Council Member; and Monae Nickerson, Vice Mayor. **2.** Host Night reception atop the Center in the Square. **3.** Sam Louis Taylor, Regional Director for the Office of U.S. Senator Mark Warner leads a roundtable on navigating federal grants. **4.** (L-R) Dr. Patricia Woodbury, Council Member City of Newport News; Bill Rush, Manager Town of Marion; Laurie DiRocco, Mayor Town of Vienna; David Meyer Mayor City of Fairfax. **5.** Jon Stehle, Council Member City of Fairfax (in blue) visits with newly elected VML President and City of Norfolk Council Member Thomas Smigiel and his kids. **6.** The Monday morning guided run group takes a well-earned rest.





With 414 points, Town of Dumfries Council Member Cydney Neville is the Activity Leaderboard winner!

## CONFERENCE APP GALLERY





**VML thanks our sponsors who helped make this annual conference possible.**

**Special thanks to our host, the City of Roanoke!**





# VIRGINIAforever unveils new five-year plan

## Benefits for water quality, land conservation

**V**IRGINIA'S LEADING WATER quality and land conservation coalition has released its new plan laying out how much the state should appropriate over the next five years to meet important environmental protection goals. The plan could benefit local governments.

VIRGINIAforever is comprised of more than 40 leading businesses, environmental organizations, and other advocates who lobby the General Assembly for increased investments in water quality and land conservation. It is the only statewide organization whose primary focus is increased funding for natural resources.

The Virginia Municipal League and the Virginia Association of Counties often work closely with VIRGINIAforever on lobbying for increased funding, especially for state financial assistance for wastewater and stormwater infrastructure. This coordinated effort has resulted in hundreds of millions of dollars annually appropriated for environmental protection. For stormwater projects alone – among local governments’ most vexing spending challenges – the legislature has appropriated \$110 million over the past seven years!

That’s impressive. But not impressive enough.

Virginia currently spends less than 1 percent of its general fund budget on natural resources. VIRGINIAforever argues that this is a woefully inadequate amount for the 12th largest state with some of the nation’s most historic natural resources. Indeed, a 2017 Wason Center for Public Service survey showed that nearly 70% of voters believed the state should spend more on environmental priorities.

VIRGINIAforever’s new plan calls for \$660 million to be invested in land conservation and public access initiatives and \$1.175 billion for water quality improvements over the 2021-2025 period.

For land conservation, this includes \$20 million annually for Virginia Land Conservation Fund (VLCF) grants; \$70 million in bonds for land acquisition for state parks and natural areas; \$75 million annually for the Land Preservation Tax Credit; and \$115 million in bonds for greater public access to state-owned recreational lands and waters.

For water quality, the plan calls for \$55 million per year for wastewater treatment plants; \$80 million annually for stormwater infrastructure; and \$100 million each year for agricultural best management practices.

Virginia local governments and public service authorities would be helped by such appropriations to VLCF, the Water Quality Improvement Fund (WQIF), the Stormwater Local Assistance Fund (SLAF), and agriculture BMP cost-share programs.



**VIRGINIA** forever  
OUR LAND. OUR WATER.

In putting together its 2021-2025 spending proposal, VIRGINIAforever spent more than six months consulting with Secretary of Natural Resources Matt Strickler, Secretary of Agriculture and Forestry Bettina Ring, and key state agencies, such as the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Forestry, and the Virginia Outdoors Foundation, among others. VIRGINIAforever used these consultations to better understand each agency’s strategic plan and funding needs, which were then matched against the organization’s own studies and goals.

VIRGINIAforever’s members – businesses, environmental organizations, outdoor enthusiasts – represent broad and diverse interests. The organization’s five-year plans are developed by consensus.

VIRGINIAforever’s first five-year plan (2015-2019) laid out similar land conservation and water quality investment goals. Over that period, land conservation programs were underfunded by \$420 million and water quality initiatives by \$285 million.

In addition to land conservation and water quality, VIRGINIAforever’s new five-year plan calls for increased spending for Virginia’s environmental agencies and greater focus on resiliency, such as shore-

line protection in coastal regions and healthier forests across the state.

To learn more about VIRGINIAforever’s five-year plan, go to [www.virginiaforever.org](http://www.virginiaforever.org)

**About the author:** L. Preston Bryant, Jr. is senior vice president at McGuireWoods Consulting. He served as Virginia’s secretary of natural resources from 2006 to 2010. He consults with VML on environmental and energy policy matters.

**General Fund Operating Appropriation Growth (\$ Mil.)**

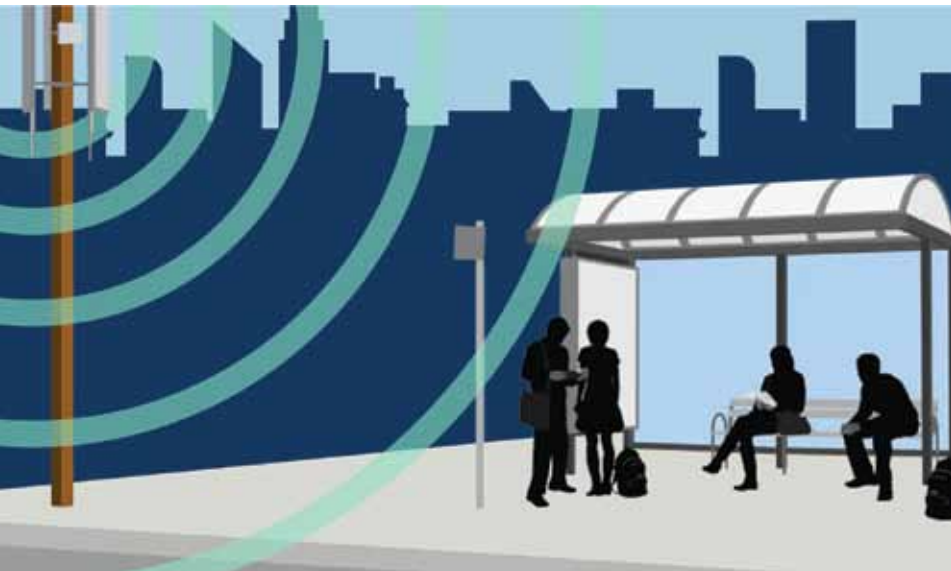
|                           | 2001              | 2018              | Growth        | Annualized Growth |
|---------------------------|-------------------|-------------------|---------------|-------------------|
| Medicaid                  | \$1,384.2         | \$4,605.7         | 232.7%        | 7.3%              |
| GF Debt Service           | \$243.1           | \$763.7           | 214.2%        | 7.0%              |
| Behavioral Health         | \$430.2           | \$772.6           | 79.6%         | 3.5%              |
| Other H&HS                | \$648.9           | \$1,059.0         | 63.2%         | 2.9%              |
| K-12 Public Education     | \$3,942.4         | \$6,030.0         | 53.0%         | 2.5%              |
| Public Safety/Comp Board  | \$1,949.1         | \$2,588.3         | 32.8%         | 1.7%              |
| Higher Education          | \$1,634.2         | \$2,014.5         | 23.3%         | 1.2%              |
| All Other                 | \$1,634.2         | \$2,392.3         | 25.9%         | 1.4%              |
| <b>Natural Resources*</b> | <b>\$152.1</b>    | <b>\$128.5</b>    | <b>-15.5%</b> | <b>-1.0%</b>      |
| <b>Total GF Operating</b> | <b>\$12,283.6</b> | <b>\$20,354.6</b> | <b>65.7%</b>  | <b>3.0%</b>       |

\* Includes NR Secretariat, Forest Management and VDACS Farmland Preservation

# Putting the Cart Before the Horse – The FCC’s “5G First, Safety Second” Policy

The Virginia Municipal League is pleased to reprint this insightful look at issues related to the deployment of 5G broadband internet access that we believe will be of interest to our readers. The original article was published in the September/October 2019 issue of *Municipal Lawyer*, the magazine of the International Municipal Lawyers Association (IMLA).

ON SEPTEMBER 2018, the Federal Communications Commission (“FCC” or “Commission”) released a Declaratory Ruling with the goal of accelerating the deployment of 5G wireless broadband services across the country (“Small Cell Order” or “Order”).<sup>1</sup> The Commission sees its action as needed so that the U.S. “wins the global race to 5G.”<sup>2</sup> The wireless industry promises that with fifth generation wireless network technology - or 5G as it is more commonly known - greater wireless speeds and lower latency will lead to innovation and uses such as augmented and virtual reality, the Internet of Things, smart homes, smart cities and autonomous cars. However, in order to win “the 5G race,” hundreds of thousands of small cell transmitters must be deployed on a national scale and in densely populated areas.



The FCC’s carrier-centric Order has had several controversial effects on local jurisdictions: (i) limiting state and local regulatory authority over wireless infrastructure deployment; (ii) mandating that fees for carrier use of public rights-of-way (“ROW”) and facilities within the ROW be limited to costs; and (iii) rushing the deployment of hundreds of thousands of 5G transmitters into residential areas and other public spaces without ever considering if the Commission’s decades-old Radiofrequency (“RF”) safety standards remain sufficient to protect public health and safety.

Montgomery County, Maryland appealed the Small Cell Order based on the RF issue and its case has been consolidated in the United States Court of Appeals for the Ninth Circuit with numerous appeals challenging other parts of the same order. Specifically, Montgomery

County is asking the Ninth Circuit to determine whether the FCC violated the National Environmental Policy Act and the Administrative Procedure Act by failing to conduct an environmental analysis of the RF standards and potential 5G health risks, or explain why it did not consider whether its own existing RF standards will be protective of human health in a new 5G world.

## The FCC’s RF Exposure Rules

The FCC has an obligation to evaluate the risks of human exposure to RF energy under various statutory and regulatory provisions, including the National Environmental Policy Act of 1969 (“NEPA”), which requires Federal agencies to assess the effects of their actions on the quality of the human environment.<sup>3</sup> The Commission has long recognized its responsibility to evaluate whether FCC-regulated RF transmitters and facilities could harm the public health.<sup>4</sup>

In 1985, the Commission adopted a 1982 American National Standards Institute (“ANSI”) standard for RF radiation on the environment.<sup>5</sup> The ANSI standard was fairly basic and only contained one set of exposure limits. In 1992, ANSI replaced its 1982 standard and set out exposure criteria for “controlled environments” (like industrial locations only accessible to employees and contractors) and “uncontrolled environments” (typically accessible by the general public).<sup>6</sup> A year later, in 1993, the FCC initiated a rulemaking proceeding to update its RF exposure standards based on the 1992 ANSI standard.<sup>7</sup>

In enacting the Telecommunications Act of 1996 (“Act”), Congress required the FCC to complete its on-going RF proceeding and adopt new rules.<sup>8</sup> The Act also preempted State and local governments from regulating “personal wireless service” facilities based on the effects of RF emissions if those facilities comply with the Commission’s RF regulations.<sup>9</sup>

Based on scientific knowledge at the time, the rules adopted by the Commission in 1996 were designed to protect only against the thermal effects of RF exposure – that is, the excessive heating of biological tissue as a result of exposure to RF energy. The rules did not establish exposure limits based on potential non-thermal effects, such as cancer, neurological impacts, and immune system deficiencies.<sup>10</sup>

Also, when these rules were adopted nearly 23 years ago, the typical height for free standing wireless base station towers was between 50 and 200 feet above ground.<sup>11</sup> Often these towers were in locations along highways and far from residential or commercial areas. In contrast to the longer wavelengths of earlier technologies which allowed cell towers to be spaced miles apart, the 5G wireless transmitters covered by the FCC’s Order will rely on higher frequency millimeter wavelengths that carry massive amounts of information only short distances.

As a result, small cell poles (such as streetlights and lamp posts) will have 5G transmitters that are less than 50 ft. off the ground and will be located only a few hundred feet or less apart in rights-of-way like sidewalks and alleyways, only yards from homes and businesses. Yet, despite this vastly different environment for 5G, in its Order the FCC



summarily dismissed the requests of Montgomery County and others to reevaluate the Commission's RF rules, instead leaving standards of over 20 years in place without any environmental evaluation.

## The Montgomery County, Maryland Appeal

As noted, under the Act, state and local governments have no authority to regulate potential health impacts of RF emissions from wireless transmitters provided that those installations comply with federal safety standards. Instead, the responsibility to protect the public from dangerous RF levels lies with the FCC.<sup>12</sup>

Given that the FCC has not updated its RF exposure standards since 1996, and that an accelerated 5G deployment on a national scale will involve hundreds of thousands of small cell transmitters in densely populated areas, Montgomery County appealed the Small Cell Order and argues that the FCC had a legal duty under NEPA and the APA to reevaluate its RF standards before taking further action on the nationwide implementation of small cells. Montgomery County notes that this duty is particularly relevant in light of recent research on the health risks that potentially could be associated with 5G deployment.<sup>13</sup>

## RF Exposure Research

Much research has occurred since the FCC adopted its existing RF rules back in 1996. Since that time there have been many studies of various non-thermal impacts of RF radiation. These studies have examined a number of RF-related risks, such as carcinogenicity, DNA damage and genotoxicity, reproductive impacts (e.g., low sperm counts), and neurologic effects (e.g., behavioral issues in children).<sup>14</sup>

This research and the associated concerns with non-thermal impacts is world-wide. In 2015, over 200 scientists from 42 countries, including the United States, sent a letter to the United Nations and World Health Organization stating that “[b]ased upon peer-reviewed, published research, we have serious concerns regarding the ubiquitous and increasing exposure to EMF generated by electric and wireless devices,” including cell towers. Listed RF effects include “cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, [and] neurological disorders.”<sup>15</sup>

In 2017, several hundred experts from the United States and around the world sent a letter to the European Union requesting a moratorium on 5G technology until the “potential hazards for human health and the environment have been fully investigated by scientists independent from industry.” They note that 5G will contribute to cumulative RF exposures – i.e., an “increase[d] exposure to radiofrequency electromagnetic fields (RF-EMF) on top of the 2G, 3G, 4G, Wi-Fi, etc. for telecommunications already in place.”<sup>16</sup>

In light of this research, some scientists and academics warn that the FCC's current RF standards, which are limited to addressing thermal effects, may not be protective of human health. By way of example, the BioInitiative 2012 report (including updates through 2017) reviews over 1,800 studies showing various adverse health impacts from RF and, based on that research, maintains that the current FCC standards do not adequately protect the public health.<sup>17</sup> As a result, they recommend further research be conducted on non-thermal effects before 5G is widely available.

## FCC Review of RF Standards

Though the Commission has not updated its RF exposure standards since 1996, it did initiate a review of those standards in 2013, seeking comments to determine whether its RF exposure limits and

policies needed to be reassessed.<sup>18</sup> The FCC cited to both its NEPA obligations and other statutory provisions as justifying the review.<sup>19</sup>

The Commission subsequently received over 900 submissions in its 2013 docket, many of them focusing on non-thermal risks posed by RF radiation.<sup>20</sup> However, its review of the RF standards stalled and to date the Commission has not made any determinations in this proceeding (or any other proceeding) on whether the current RF standards remain protective of human health or whether the installation and operation of 5G small cells will pose health risks.<sup>21</sup>

## The FCC's Small Cell Order

Prior to the release of the FCC's Small Cell Order, a number of local jurisdictions raised concerns about the current RF standards and their ability to protect local citizens in a 5G environment. Montgomery County repeatedly urged the FCC to reevaluate the standards and determine if they remain protective of human health. Representatives of the County met with Commission leadership and filed comments requesting that the FCC delay rulemakings aimed at speeding small cell rollouts until the 2013 RF proceedings were completed.

Several other local governments and associations, scientists, and individual citizens also requested that the FCC complete the 2013 proceedings before expediting the rollout of 5G technology and otherwise expressed concerns about the substantially out-of-date RF standards.<sup>22</sup>

In its Order, the Commission responded to these serious and legitimate concerns about public health with a single terse footnote, stating “[w]e disagree” with concerns raised about RF emissions from 5G small cell facilities. The FCC emphasized “nothing in this Declaratory Ruling changes the applicability of the Commission's existing RF emissions exposure rules.”<sup>23</sup> There was no discussion by the FCC of potential non-thermal RF effects or any indication when it would complete the 2013 RF proceeding.

## Questions to be Addressed by the Ninth Circuit

The Ninth Circuit will now decide whether by refusing to substantively address RF/public health issues in the Small Cell Order, the FCC violated NEPA and/or the APA. Specifically, the issues before the Court are:

*Did the FCC violate NEPA when it failed to either: (i) explain why that statute does not apply to the Order; or (ii) conduct an environmental analysis of the RF standards and potential 5G health risks?*

and

*Did the FCC violate the APA when it failed to either: (i) explain why it did not consider whether the 1996 RF standards protect against potential 5G health risks; or (ii) address relevant public health and safety issues when adopting the Order?*<sup>24</sup>

## The FCC's NEPA Violation

Under NEPA, it is the “policy of the federal government” to “assure for all Americans [a] safe [and] healthful” environment.<sup>25</sup> In particular, for “major Federal actions significantly affecting the quality of the human environment,” the agency must prepare a “detailed statement” on the “environmental impact of the proposed action” (called an Environmental Impact Statement or “EIS”).<sup>26</sup> At a minimum, the agency must prepare a preliminary Environmental Assessment to determine whether the potential for such an impact exists and an EIS is therefore required.<sup>27</sup> While NEPA does not impose any substantive environmental mandates, it does require that agencies follow certain procedures for assessing environmental impacts of their decisions.<sup>28</sup>

Unfortunately, the FCC proceeded to implement its Small Cell

Order without any environmental analysis and otherwise failed to explain how the Order is somehow exempt from this requirement. Instead, the FCC responded to comments urging it to complete its 2013 review of the RF standards before finalizing the Order by simply stating that it “disagreed” with commenters who opposed the ruling on the basis of concerns regarding RF emissions. There was zero analysis by the Commission as to whether the current RF standards – enacted nearly 23 years ago – will be protective of human health in a new 5G environment.

The FCC’s decision to move forward with 5G infrastructure without considering the health effects of RF violates NEPA. The Order itself is a “major federal action,” within the scope of NEPA, because it involves “[a]doption of official policy, such as rules, regulations and interpretations” pursuant to the APA.<sup>29</sup> In the FCC’s own words, the Order was an exercise of Commission authority to “issue interpretations of the statutory language and to adopt implementing regulations that clarify and specify the scope and effect of the Act.”<sup>30</sup>

Moreover, the Order is a “major federal action” because it is an activity that is “potentially subject to federal control and responsibility” or is “regulated” by a Federal agency.<sup>31</sup> There is no question that the Small Cell Order regulates activities that are subject to Federal control and responsibility - it specifically establishes rules that municipalities must follow when reviewing carrier applications for the installation of small cells and the provision of 5G services in public rights-of-way.<sup>32</sup>

In addition, the Small Cell Order “may significantly affect the quality of the human environment.”<sup>33</sup> 5G deployments and operations will see the densification of transmitters in neighborhoods and public spaces in close proximity to households and businesses. Commenters noted that recent studies, conducted after the 1996 RF standards were adopted, have raised concerns about public health and safety, including potential RF-related risks associated with the anticipated use of 5G millimeter waves.

No scientific certainty or consensus, however, is required to constitute a significant effect.<sup>34</sup> The point of NEPA is not for agencies to make the determination that significant effects on the human environment will occur, but rather to “insur[e] that available data is gathered and analyzed prior to the implementation of the proposed action.”<sup>35</sup> Therefore, even if studies have not conclusively shown that RF emissions pose a substantial risk of non-thermal effects, the FCC cannot ignore its NEPA obligations to review and analyze this critical issue. NEPA is designed to force agencies, like the FCC to confront head-on, rather than ignore, these uncertainties.<sup>36</sup>

What is particularly troubling with the FCC’s refusal to review its RF standards is that State and local governments are completely dependent on the FCC for the protection of their citizens from the dangers of RF emissions. In the 1996 Act, Congress directed the FCC to promulgate RF standards that are protective of human health, while preempting state and local governments from regulation in this area.<sup>37</sup> In fact, the FCC has stated repeatedly that only it has the authority under NEPA and other statutory provisions to set and maintain safe RF exposure levels.<sup>38</sup> Yet despite this mandated obligation to protect the public health, the FCC ignored its NEPA obligations in the rush for nationwide migration to 5G.

## The FCC’s APA Violation

Similar to the FCC’s shortcomings under NEPA, the FCC also violated the APA because it failed to consider whether the current RF standards will fully protect the health and safety of citizens living and working directly adjacent to 5G small cells and did not explain why it ignored this relevant factor. Under the APA, courts will strike down agency action as arbitrary and capricious if the agency has, among

other things, “entirely failed to consider an important aspect of the problem.”<sup>39</sup> The FCC itself has recognized that it has a continuing obligation to revise the RF standards as research on potential RF health impacts and wireless technology evolves.<sup>40</sup> In the last 23 years, significant research has been conducted and scientists and academics have warned that the FCC’s current RF standards may not be protective of human health. It goes without saying, moreover, that wireless technology has evolved. When the FCC’s current RF standards were adopted in 1996 the first ever flip phone had only been on the market a few months, which boasted cutting-edge features like the ability to receive SMS text messages and a vibrate function in place of a ring tone. 5G technology will look completely different.

Whether the 1996 RF standards remain protective of human health, including any potential non-thermal risks, is a relevant factor that the FCC should have considered when promulgating the Order. By the Commission’s own admission, the Order will hasten the deployment of 5G facilities and the provision of services.<sup>41</sup> This means more small cells, in more locations, and sooner than later. Because RF safety issues were implicated by the Small Cell Order it was incumbent on the FCC to determine whether the Order would increase harmful RF exposures in residential and public areas, particularly in light of the fact that countless 5G antennas spaced only about hundred feet apart will be placed in close proximity to homes and businesses.<sup>42</sup>

## The Rest of the Story – The FCC Finally Takes Action

Just as this article was going to publication - and with the Montgomery County lawsuit still pending - the FCC announced that FCC Chairman Ajit Pai was circulating a proposal to fellow Commissioners that would maintain the Commission’s RF exposure limits. According to the press release, the item would resolve the 2013 Notice of Inquiry that sought public input on whether to strengthen or relax existing RF exposure limits. In addition, the item would establish a uniform set of compliance guidelines – regardless of the type of service or technology involved - for determining how entities will assess their compliance with the RF standards. Finally, the item would seek comment on establishing a rule for determining compliance with the RF exposure standard for devices operating at higher frequencies.

## Conclusion

Regardless of any potential benefits that deployment of 5G infrastructure will bring to improve broadband availability across the country, the FCC - the sole authority for health and safety concerns related to RF – should have completed the review of its RF standards before opening the floodgates for the deployment of hundreds of thousands of small cell transmitters. At a bare minimum, the Commission should have explained its decision to summarily reject the comments submitted by Montgomery County, other local governments and associations, scientists, and individual citizens raising RF concerns.

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**Notes**

1. Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133, WT Docket No. 17-79, WC Docket No. 17-84 (Sept. 27, 2018).
2. Id. at par 1.
3. National Environmental Policy Act of 1969, 42 U.S.C. 5 4321, et seq.; Small Cell Order at n.72.
4. See, e.g., FCC, In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order, 1996 FCC LEXIS 4081, at \*4 (Aug. 1, 1996).
5. See Report and Order, GEN Docket No. 79-144, 100 FCC 2d 543 (1985); Memorandum Opinion and Order, 58 RR 2d 1128 (1985); see also ANSI C95.1-1982, American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz, ANSI, New York, NY.

6. See FCC, In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order, 1996 FCC LEXIS 4081, at \*7 (Aug. 1, 1996).
7. Id. at \*8.
8. Pub. L. No. 104-104, 110 Stat. 56 (1996).
9. 47 U.S.C. 5 332(c)(7)(B)(iv).
10. FCC, OET Bulletin 56, at 8 (August 1999).
11. Id. at 20.
12. Montgomery County, Maryland’s Opening Brief, at 1 (19-70147) (9th Cir.) (“Brief”), <https://www.beyondtelecomlawblog.com/5g-small-cells-and-rf-health-concerns/>.
13. Id. at 2.
14. Id. at 12-15.
15. Id. at 15.

16. Id. at 15-16.
17. BioInitiative 2012 – A Rationale for Biologically-based Exposure Standards for Low-Intensity Electromagnetic Radiation (2017), <https://bioinitiative.org/>.
18. FCC, In the Matter of Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies, First Report and Order; Notice of Proposed Rulemaking and Notice of Inquiry, 2013 FCC LEXIS 1257 (Mar. 27, 2013). 18 Brief at 19-20.
19. Id. at 22.
20. Id.
21. Id. at 24-26.
22. Id.
23. Small Cell Order at n.72.
24. Brief at 4-5.
25. 42 U.S.C. 55 4321, 4331.
26. 42 U.S.C. 5 4332.
27. 40 C.F.R. 5 1508.9.
28. Am. Bird Conservancy, Inc. v. FCC, 516 F.3d 1027, 1032 (D.C. Cir. 2008).
29. 40 C.F.R. 5 1508.18(b)(1).
30. Small Cell Order at ¶ 21.
31. 40 C.F.R. 5 1508.18
32. Brief at 40.
33. 42 U.S.C. 5 4332.
34. Am. Bird Conservancy, Inc., 516 F.3d at 1033.
35. Found. for North Am. Wild Sheep v. United States Dept. of Agric., 681 F.2d 1172, 1179 (9th Cir. 1982).
36. Brief at 46.
37. See 47 U.S.C. 5 332(c)(7)(B)(iv).
38. Brief at 37-38.
39. Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
40. Brief at 11-12, 19, 52.
41. Id. at 53.
42. Id. at 54.

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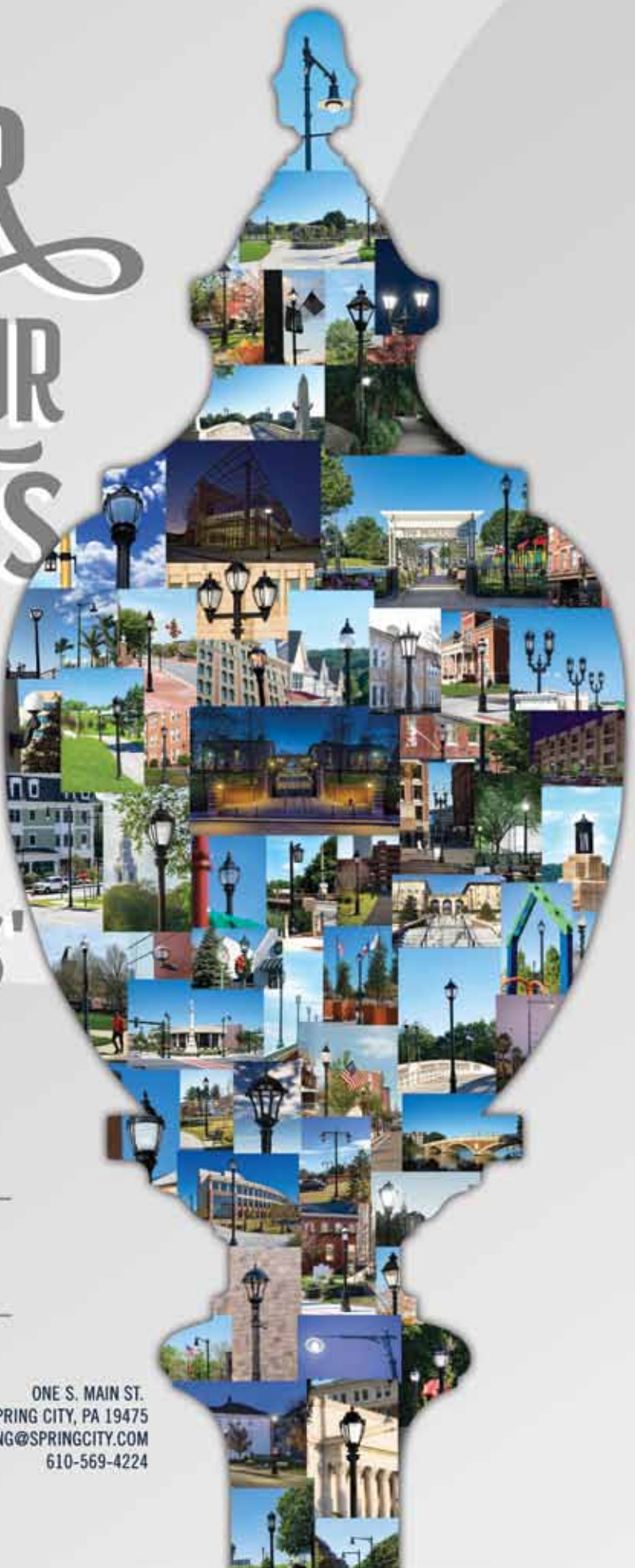


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