

Handbook for Virginia Mayors & Council Members

Seventh Edition – August 2021

Edited by
Rob Bullington, Mary Jo Fields, Michelle Gowdy, and Steve Owen



BETTER COMMUNITIES THROUGH
SOUND GOVERNMENT

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FORWARD

Dear Local Official:

Since it was first published in 1979, the Virginia Municipal League's *Handbook for Mayors and Council Members* has proven to be a valuable resource for both veteran and newly elected officials alike. We are pleased to continue that tradition with this Seventh Edition updated for 2021.

These chapters are drawn in large part on the previously published 2004 edition of the *Handbook*. The chapters have been updated to ensure they reflect current law. VML particularly would like to thank Kim Payne and Jack Tuttle for their invaluable guidance on this project. Also deserving credit is Steve Owen who helped coordinate and edit the contributions from the various authors who added or revised content for the Seventh Edition.

If you are using an electronic version of the handbook, please note that there are active links to resources, Code of Virginia sections, etc. throughout. If you are using a printed copy, please be aware that officials and staff from VML member localities can receive an electronic (PDF) version by sending a request to VML's Director of Communications Rob Bullington at rbullington@vml.org.

Please also be aware that local officials are required to have read and become familiar with the Virginia Freedom of Information Act, Virginia Conflict of Interests Act and the Virginia Public Records Act. VML annually publishes an update of this legislation; the most recent edition is available on VML's Legal Resources page at www.vml.org/publications/legal-resources. In addition to copies of the acts, VML provides information that will help you avoid any mishaps with these acts.

It should be noted, however, that this handbook is meant to serve as a reference only. You should consult your local attorney before making any decisions or taking any actions related to the topics covered in this handbook.

We always welcome comments and feedback on our publications. Please let us know how we can make them most useful.

Sincerely,

A handwritten signature in black ink, appearing to be 'MG' with a long horizontal stroke extending to the right.

Michelle Gowdy
VML Executive Director

CHAPTER 1

ABCs of Virginia Local Government

By Mary Jo Fields

Local Government Basics

[Article VII](#) of Virginia's 1971 Constitution establishes four types of local governments: cities, towns, counties and regional governments.

Virginia has 38 cities, 190 towns and 95 counties. No regional governments have been established.

The Constitution defines cities as independent incorporated communities of 5,000 or more but the Constitution also grandfathered cities of lower populations that were cities as of July 1, 1971. Towns are defined as incorporated communities of 1,000 or more but again, towns that existed as of July 1, 1971 are grandfathered. Counties are defined simply as "any existing county or any such unit hereafter created." Regional governments are defined as "a unit of general government organized as provided by law within defined boundaries, as determined by the General Assembly," but again, none have been established in Virginia.

Two other local bodies are mentioned in the Constitution: The local electoral board ([Article II, Section 8](#)) and school boards ([Article VIII, Section 7](#)).

In addition to cities, counties, towns and regional governments included in the Constitution, state law authorizes a variety of interlocal, multi-local and regional entities, such as planning commissions and various authorities. State law governing the consolidation of local government also authorizes the establishment of tier cities, shires, boroughs and townships (Code of Virginia [§ 15.2-3534](#)) but none have been created.

The populations of towns and cities varies widely. The largest city in terms of population is Virginia Beach, which had a population approaching 454,000 in 2018, while the smallest is Norton, with a 2018 population of 3,908.

Distinctive Features of Virginia Local Government

Virginia local governments are distinctive in several aspects:

- Its statewide system of independent cities, in which cities are geographically separate from counties. In most states, localities, whether they be called, cities, towns, or other names, are part of counties. There are some independent cities in some other states, but Virginia is the only state in which all cities are independent.
- Widespread use of the council/manager form of government.
- Fiscally dependent school divisions. Most school districts in other states have independent taxing authority.
- Fewer units of local government.

Both cities and towns, and three counties, operate under charters that are granted by the Virginia General Assembly. Unless state law says otherwise (for example, "Notwithstanding any other provision of general law or special act"), charter provisions take precedence over state law. Local governments cannot amend their own charters but must have amendments (or complete re-writes) approved by the General Assembly. The procedure for adopting a new charter or requesting an amendment of a charter is outlined in state law in the Code of Virginia, [Title 15.2, Chapter 2](#).

As stated earlier, Virginia cities are independent of counties. City residents vote for city council members but not for the board of supervisors. City residents pay city, not county, taxes. Cities, like counties, are required to provide services on behalf of the state, including social services, public health, mental health services and election administration.

Towns, on the other hand, are geographically and politically part of a county (in some cases, more than one county). Town residents elect both their council members and the members of the county governing body and county constitutional officers. Town residents pay both town and county taxes and receive services from both the town and the county.

State law outlines procedures for incorporation of towns (Code of Virginia [§ 15.2-3600-3605](#)) as well as a procedure for relinquishing a town charter (Code of Virginia [§ 15.2-3700-3712](#)). State law also outlines procedures for towns becoming cities, incorporation of cities and consolidation of cities.

Mayor & Council: Nuts and Bolts

Cities and towns are governed by councils made up of elected officials. All but one city (Richmond) is organized under a council/manager form of government, in which legislative authority and responsibility is vested in the elected council. Administrative authority and responsibility are held by the city manager, who is appointed by the city council.

State law (Code of Virginia [§ 15.2-1400](#)) prescribes that local governing bodies have from three to 11 members.

Make up of city councils

- Most city councils have either five or seven members, including the mayor.
- Terms are for four years, except in two cities. Alexandria has three-year terms, and Fairfax has two.
- The mayor is directly-elected by the voters in 22 cities; elected by council in the other 16 cities.
- Elections are staggered in all but three cities.
- Councils are elected at-large in 24 cities.
- In 14 cities, councils are elected either by wards, or a combination of wards and at-large seats, or a combination of wards and super ward seats.
- The mayor is elected at-large in most, but not all, of the cities electing councils by a ward or mixed ward system.

Make up of town councils

- About 60 percent of the 190 towns have 7-member councils.
- The terms for council members in about 66 percent of towns is four years; councils run for two-year terms in the other towns.
- The mayor in most towns is directly elected.
- Some of the mayors have two-year terms even if their councils have four-year terms.
- Elections are staggered in most of the towns that have four-year terms.
- Council is elected at-large in all but a handful of towns.

Timing of Local Elections

At one time, state law (Code of Virginia [§ 24.2-222](#)) prescribed that local elections be held in May in an even-numbered year. The 2000 session of the General Assembly enacted legislation to allow localities the option of moving local elections to November. (Code of Virginia [§ 24.2-222.1](#)). Each year some localities change their elections to November so the statistics on when elections are held can become quickly outdated. As of 2019, close to half of the cities and towns had elections in November, with most, but not all, having elections in the even years.

Unfortunately, in the 2021 General Assembly Special Session I, SB1157 passed which mandates all localities to move their elections to November by January 1, 2022. This is to be done by ordinance, no need for charter changes.



About the Author: Mary Jo Fields has decades of experience in various roles as a staff member of the Virginia Municipal League.

CHAPTER 2

Local Government Authority: The Dillon Rule

By Michelle Gowdy

In the United States, localities receive authority from their state using either a “Home Rule” or “Dillon Rule” model. Prior to delving into Virginia law, it is important to understand both models of governance.

Home Rule is a transfer of power from the state to units of local government so that the local governments can self-govern. The goal is for local governments to have some freedom from state interference and the ability to act quickly to respond to local issues. Over 40 states consider themselves home rule states.

Dillon Rule means that the powers of localities must come from specific state code provisions or the state constitution. In practice, the Dillon Rule can be frustrating to local governments because it can make them feel like children always being told “no!” by their parent.

Virginia is a Dillon Rule state. This means that Virginia’s localities get their authority to act from the Virginia State Constitution and various sections of the Code of Virginia.

History of the Dillon Rule and its application in Virginia

John Forrest Dillon was a judge for the 8th Federal Judicial Circuit (Iowa) in the late 1800s. He held a strong distrust for local government and was quoted as saying “those best fitted by their intelligence, business experience, capacity and moral character usually did not hold local office,” and that the “conduct of municipal affairs was generally unwise and extravagant.”

Through Judge Dillon, the Dillon Rule began and is recognized as the following:

The State legislature has complete control over municipal government except as limited by the state or federal constitution. Local governments’ powers only extend to three categories:

- *Those powers granted in express words;*
- *Those powers necessarily implied or necessarily incident to the powers expressly granted; and*
- *Those powers absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable.*

The first reference to the Dillon Rule by Virginia’s courts came in an 1896 decision in which the court found that the city of Winchester had no authority to offer a reward relating to the “apprehension and conviction of incendiaries.” (*City of Winchester vs. Redmond*, 93 Va. 711, 25 S.E. 1001 (1896)).

Furthermore, a 2012 decision maintained that if there is reasonable doubt as to whether the legislative power exists, the doubt must be resolved against the local governing body. (*Sinclair vs. New Cingular Wireless*, 283 VA. 198, 204, 720 S.E.2d 543, 546 (2012)).

So, be mindful when considering your scope of authority!

Despite attempts to move toward the Home Rule model, Virginia remains a Dillon Rule state. Indeed, the Virginia Constitution expressly gives power to the General Assembly to pass laws, both general and special, that set forth the organization and powers of local government. Practically speaking, this means that a locality cannot enact an ordinance without express authority in state code or in their charter. For example: §15.2-2829 of the Code of Virginia says the following:

Mandatory provisions of ordinances. (Code of Virginia [§ 15.2-2829](#)).

If an ordinance is enacted by a locality in accordance with this chapter, it shall provide that it is unlawful for any person to smoke in any of the following places:

1. Common areas in an educational facility, including but not limited to, classrooms, hallways, auditoriums, and public meeting rooms;
2. School buses and public conveyances; and
3. Any of the places governed by Code of Virginia [§ 15.2-2824](#) or [§ 15.2-2825](#).

Further, [§ 15.2-926.4](#), which was added in the 2019 session, grants localities the authority to “designate reasonable no-smoking areas within an outdoor amphitheater or concert venue owned by that locality.”



So, a locality can enact an ordinance prohibiting smoking in the common areas of the school, but what about at a local park? Local attorneys may view this differently, but there is a fair interpretation that a locality cannot prohibit smoking in parks. Why? Because, as a Dillon Rule state, if the statute does not authorize the locality to act, it cannot.

There are other code sections that deal with smoking, but as a result of needing express permission to prohibit smoking, some localities have taken to asking that people not smoke near various facilities. As Jason Spencer of the *Clarendon-Courthouse-Rosslyn Patch* noted in 2012 when Arlington County began a campaign asking people not to smoke in certain locations, “Because of the Dillon Rule, which limits the authority of cities and counties to regulate only what the state allows, Arlington County cannot outright ban smoking in public parks. Further, the state law regulating indoor smoking prohibits localities from enacting any laws that are more stringent than what the General Assembly has approved.”

Determining local authority: Research

The Code of Virginia is the “go to” guide for what authority localities have. The following sections are particularly relevant:

- [Title 15.2](#) is directly related to local governments and should be the place to begin a search for what things localities have authorization to regulate. Examples of items covered in 15.2 are: authority to handle wastewater; authority to regulate zoning and authority to create positions in management of a locality.
- [Title 2.2](#) deals with the [Freedom of Information Act](#) and the [State and Local Government Conflict of Interests Act](#).
- [Title 22.1](#) relates to Education.
- [Title 58.1](#) on Taxation.

Please note that while these are not the only applicable sections, they are some that localities use the most when questions of local authority arise.

Determining local authority: Analysis

Upon locating a section of the Constitution or Code that is relevant to what your locality would like to regulate, you should conduct the following, two-part analysis.

Part One – Determine specific authority

Determine whether the local governing body is enabled to act. Remember that “there is no presumption that an ordinance is valid; if the General Assembly has not authorized a particular act, it is void.” (*Sinclair 204 / 546*.) This is a difficult step because the Code will most likely not specify the exact thing that you want to accomplish. Like the smoking example above, even though it seems to make common sense that if a locality can ban smoking in public buildings it should be able to ban smoking in public parks, the Code does not specifically include parks, so the

authority is not there. Furthermore, if a locality enacted a smoking prohibition at parks – it would be void. Proceed with caution when there is not express authority and ask your attorney to review case law, etc. for support on your position.

Part Two – Establish proper execution

Let's turn to enforcement now. If you have the authority, is the power properly executed? Assuming you have determined that you have the specific authority for an action, it is essential that you then implement the manner of enforcement that is specified; no other manner of enforcement can be used. Here is an example of a Code of Virginia Section that allows a locality to create a zoning ordinance and prescribes the penalties as well.

Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties. (Code of Virginia [§ 15.2-2286](#)).

For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not more than \$1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,000; any such failure during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,500; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.

However, when the manner of enforcement is not outlined, a reasonable method of enforcement must be selected. The rule is known as the “reasonable selection of method rule.”

For example, in the case of *Logie v. Town of Front Royal*, 58 Va. Cir. 527, the town enacted a town ordinance to enforce the uniform statewide property maintenance code. The enabling state statutes allowed for fines and misdemeanors to be used to enforce the code. In this case, the Town of Front Royal was an electricity provider, so it added a provision that allowed the town to discontinue utility/electric service if violations occurred. Mr. Logie ran afoul of the new ordinance and sued the town, arguing that this was a violation of the Dillon Rule because the state statute did not allow for the termination of electric service. The court ruled, “In this case, the General Assembly has specified how violations of the Property Maintenance Code may be enforced in the penalty provisions in the enabling legislation by prosecution as misdemeanors and the imposition of civil fines...and these provisions do not include the power to terminate utility service to the property.” Thus, the court found that in this case the town had abused its authority because of the Dillon Rule.

The case of *Logie v. Town of Front Royal* is a stark reminder to proceed with caution when there is not express authority. Before proceeding, ask your attorney to review case law, etc. to support your position. The rule of thumb is, if the Code doesn't say that you can do it – you probably cannot!

Successful navigation of the Dillon rule by the City of Harrisonburg

In 2015, the City of Harrisonburg enacted an ordinance requested by the fire chief due to the number of mulch related fires that had occurred in that jurisdiction. The ordinance forbade the placement of landscape cover material (which could be mulch) within 18 inches of buildings with combustible siding, such as vinyl. This 18-inch space had to be filled with a non-combustible material such as stone, dirt or gravel. The city claimed authorization for this ordinance came from a general provision in the State Code that allows localities to protect the health, safety and welfare of its citizens.

During the 2016 General Assembly Session, bills were introduced and passed in both the House and the Senate that said in part that “the City of Harrisonburg shall not include in any local fire prevention regulations a requirement that an owner of real property who has an occupancy permit issued by the City use specific landscape cover materials...” ([Senate Bill 736](#)). Interestingly, the bills introduced in the General Assembly were by a delegate and a senator who represented the City of Harrisonburg. This is an excellent example of the General Assembly using its power under the Dillon Rule to prohibit action by a locality.

BUT – the City of Harrisonburg kept working on the issue and in 2016 amended the local ordinance to accomplish its goal of health, safety and the general welfare of its citizens while abiding by the Dillon Rule limitation of its power. As amended, the ordinance does not require the *removal* of any combustible landscape material, instead it prohibits *replacement*. Thus, as soon as the mulch needs replacing, under the amended ordinance it would need to be replaced with stone, dirt or gravel.

This debate lasted another full General Assembly session. In 2018 two bills – [HB1595](#) and [SB972](#) – were vetoed that would have prohibited localities from requiring the retrofitting of mulch. This “Dillon Rule” issue looks to be a perennial one.

The future of the Dillon Rule in Virginia

While Virginia continues to claim its “Dillon Rule” status, this is often only true in spirit. While there have been efforts to officially get rid of the Dillon Rule, local governments have by and large not supported such efforts. Local governments feel generally that the General Assembly is responsive to their needs. In fact, the issues that raise the most disputes about authority – zoning and taxation – are true for both Home Rule and Dillon Rule states.



About the Author: Michelle Gowdy is the Executive Director of the Virginia Municipal League. An attorney, she has served as the general counsel of VML, as the county attorney in James City and New Kent counties and on the staff of the Virginia Department of Forensic Science.

CHAPTER 3

Who's who: Elected Officials in Local Governments

By Kimball Payne

Introduction: Citizens

Local government exists fundamentally to serve the citizens of the community and it is appropriate that the citizens lead the list of who's who in local government. Citizens may be customers of local services, but they also have a responsibility to participate in local government by electing their representatives to council and providing feedback and input to policy decisions.

One of the unique characteristics of local government is that it is the level of government that is the closest to the citizens that it serves, and this provides both challenges and opportunities. As an elected official you have a responsibility to be accessible and responsive to the citizens of your community; however, you may find that your accessibility goes beyond the formal arrangements that you make to receive citizen inquiries, complaints or input. You will find that you are approached in other settings such as in the grocery store, or at church, sporting events and other activities. You may also receive phone calls, texts or emails at any hour of the day or night. Each council member will have to develop his or her own approach to citizen interaction.

Because cities and towns are typically the focus of commerce and culture in the larger region, there may be many non-citizens, or visitors, who have a close affinity to the locality through employment, shopping, dining, and participation in recreational and cultural activities. Local services often must be scaled to accommodate those non-residents who add demand and enhance economic vitality. Such actors may also have a significant voice in city or town affairs.

Elected Officials

The duties and responsibilities of elected (and appointed) local government officials depends on the form of government in the locality. Virginia's localities operate under either the "council-manager" form of government or the "mayor-council" form. Except for Richmond, all of the Commonwealth's cities (and many of its larger towns) are under the council-manager form of government.

Restrictions on Dual Office Holding

[Article VII, Section 6](#) of the State Constitution prohibits local elected officials from holding more than one office at the same time. This prohibition is codified, with restrictions and exceptions, in state law (Code of Virginia [§ 15.2-1534](#) and [§ 15.2-1535](#)). In some cases, governing body members are specifically allowed to serve in additional capacities and on other bodies (e.g. planning district commissions, local planning commission, and housing authorities). Always consult your local government attorney for advice before accepting two offices.

City/Town Councils and Mayors

The Code of Virginia [§ 15.2-1400](#) requires the qualified voters of every locality to elect a governing body. For localities that governing body is called a city or town council and the head is referred to as "mayor." The authority and responsibilities of the members of the governing body depends on the form of local government.

Role of the Mayor

Regardless of the form of government, state general law (Code of Virginia [§ 15.2-1423](#)) assigns to the mayor the duty of serving as presiding officer at council meetings and designates the mayor as the head of the local government for all official functions and ceremonial purposes. The mayor has a vote but no veto, again according to general law.

Under the mayor-council form of government, if there is no manager, Code of Virginia [§ 15.2-1423](#) states that it shall be the duty of the mayor to see that administrative functions, otherwise the responsibility of an appointed chief administrative officer, are carried out. This duty includes oversight of the operations of local departments, a responsibility that may be shared with council members or council committees. Specific responsibilities and authority may be included in the locality’s charter.

Under the council-manager form of government, the mayor has no administrative responsibility for the day-to-day operations of the locality and, other than the duties assigned by the State Code, he or she has no more power or authority than the other council members.

As the ceremonial head of government, however, the mayor has the opportunity to be a strong community leader. Individual personalities and leadership styles will determine how this role is played.

How the mayor is elected also can influence the power that the mayor has (or is perceived to have). In slightly more than half of Virginia’s cities, the council elects the mayor from among its own members. Councils in some of these cities follow a tradition of electing as mayor the council member who received the most votes in the election. Others may rotate the mayoral seat, or the person(s) interested in serving as mayor may campaign for the seat. In slightly less than half the cities, the mayor is directly elected; meaning that a candidate runs for the specific seat of mayor and is elected by the voters.

Most mayors of Virginia cities, whether elected by council or directly elected, vote as a regular member of council and do not have tie-breaking or veto power. A few mayors, however, do not vote as a regular member of council but do have the power to break ties and, in some cases, to veto council actions.

A majority of Virginia towns directly elect their mayor. In most towns, the mayor does not vote as a regular member of council but has either tie-breaking or veto power, or both.

Regardless of the form of local government or the way the mayor is elected, the mayor is the head of the local government and can serve a powerful leadership role. Many informal roles and relationships exist, depending on the personality and desires of the mayor and the council members.

Informal Roles of the Mayor

Educator: Identifies issues and problems for consideration, promotes awareness of important concerns, and seeks a locality-wide understanding of issues, both among the council and within the community at large.

Liaison with the Manager: Helps to link the administrative and legislative bodies, increase the manager’s awareness of council preferences, and predict how council members will react to proposals.

Liaison with the Community: Helps to improve communication between the public and the municipal government.

Team Leader: Works to coalesce council, build consensus, and enhance group performance.

Goal Setter: Establishes goals and objectives for council.

Organizer and Stabilizer: Guides council to recognition of its roles, responsibilities, and limits and helps define interaction between council and manager.

Policy Advocate: Develops programs and lines up support for (or opposition to) proposals.

Promoter of the Locality: Has extensive dealings with citizens; the business and civic community; and local, regional, state, and national elected leaders.

Mayor/Manger Relationship

Ideally the mayor and the manager have a close working relationship. They must work together to:

- Keep council informed, so that it is neither the appearance nor the reality that the council is being left out of the loop on the decision-making process.
- Communicate with council; includes both written and verbal communications to the group as a whole and individually.
- Respond to council desires.
- Honor the majority's direction and respect the minority viewpoint, keeping in mind that the majority and minority are likely to change depending on the issue.

In many localities the mayor has established special advisory committees, such as a youth advisory committee or a mayor's committee on services for persons with disabilities. In these cases, generally the mayor appoints the members of the committee and is responsible for attending their meetings and following through with their direction.

Role of Council

The council is the legislative and policy-making body in local government. General law states that “all powers granted to localities shall be vested in their respective governing bodies” (Code of Virginia [§ 15.2-1401](#)). Council members do not have formal or legal powers as individuals, but only as members of the council as a whole.

While council members possess governmental authority only as a body, council members individually have a powerful opportunity to serve their constituents. They can help the council coalesce as an effective working group; serve as community leaders; act as liaisons between the locality and the citizens; propose programs; energize citizens; and set goals for the local government and the community as a whole.

The council is responsible for:

- Focusing on major community goals and projects.
- Setting overall policy for the local government.
- Addressing the locality's long-term future through considerations such as land use, capital improvement plans, and strategic planning.
- Appointing the clerk for the governing body.
- Appointing, in many localities, the chief administrative officer and the local attorney (depending on the local charter, some councils also appoint other officials such as an internal auditor, the assessor, or the police chief).
- Approving the budget and setting tax rates.
- Approving the issuance of local debt.
- Adopting local ordinances.
- Adopting a comprehensive plan (which dictates the future land use of the locality).
- Redistricting every ten years, in those localities where council is elected by ward.
- Determining the salaries of council members and the mayor.
- Electing the mayor, in those localities where the mayor is not directly elected; or, in localities where the mayor is directly elected, electing a president or vice-mayor from among the council members.
- Filling vacancies on council.
- Appointing members of various boards, committees, and commissions.

Under the council-manager form of government the council is required to hire a professional city or town manager responsible for the daily administration of local functions. Smaller towns operating under the mayor-council form are not required to hire a chief administrative officer, although they may hire a manager or administrator for specified functions.

As an employer, the local council is responsible for monitoring the performance of those employees under its direct supervision. While the part-time nature of the job limits traditional monitoring of personnel, it is important to establish and maintain constant communication with staff, a clear understanding of the job requirements and expectations, and an ongoing evaluation and feed back process. Many localities have implemented formal, annual manager evaluations, and similar processes for the clerk and the attorney. The evaluation is usually an integral part of the position’s employment contract renewal cycle.

In smaller towns that do not have a manager, the town may use a committee structure to oversee government administration, under the direction of the mayor. In those localities, council members may undertake administrative duties that are foreign to council members in localities with a manager.

In some localities the council may establish standing committees to help fulfill its responsibilities. One example would be a Finance Committee. Standing committees usually act in an advisory role, making recommendations for action by the whole council. When standing committees are used it is important to clearly spell out the responsibilities and authority of each committee and to establish procedures for ensuring that all council members, and the public, are kept informed of the committee’s deliberations.

Constitutional Officers

Council members share responsibilities for local government with other locally elected officials. [Article VII, Section 4](#) of the Constitution of Virginia mandates the election of five additional officers in every city and county. These “Constitutional Officers” are the Treasurer, Sheriff, Commonwealth’s Attorney, Clerk of the Circuit Court, and Commissioner of the Revenue. [Chapter 16](#) of Title 15.2 of the Code of Virginia implements this requirement in statute and addresses the local relationship with and responsibilities toward the constitutional officers.

The constitutional officers, whose positions date back to colonial days, are, in part, state officials and, in part, local officials. Some of their duties, such as collecting state taxes, originally were those of state officials. As the state government grew, some constitutional officers gave up these functions and local duties became a larger part of their jobs.

Today, while many duties of these offices are local in character, they also include duties for which uniformity across the Commonwealth is desirable. This is one reason that general state law, rather than local policies established by the council, prevails in governing the constitutional officers.

Briefly, the responsibilities of each office are as follows.

Commissioner of the Revenue. The commissioner of the revenue prepares real estate and personal property tax books and bills; assesses personal property, machinery and tools, merchants’ capital, and some business taxes (like the business, professional, and occupational license tax); and, in some cities, assesses real estate. In addition, the commissioner serves a significant state function as the receiving point for state income tax forms.

Treasurer. The treasurer is charged with the collection, custody, investment, and disbursement of city funds. Either the local council or the circuit court may require the treasurer to furnish a periodic account of receipts and expenditures and a statement of the treasurer’s account. The treasurer also collects funds for the state, reporting on these accounts to the state comptroller.

Clerk of the Circuit Court. The duties of the clerk of the circuit court fall into two major categories, associated with:

- **Judicial proceedings in the circuit court.** These functions include working with the judge on trial schedules, maintaining jury lists, and handling other duties related to circuit court trials.
- **General record keeping for the locality.** These duties include recording all documents relating to land transfers, deeds of trust, mortgages, births, deaths, wills, and divorces-as well as recording election results and issuing hunting, fishing, and marriage licenses.

Commonwealth's Attorney. The commonwealth's attorney is primarily responsible for prosecuting alleged violations of criminal law. That official makes the decision as to whether to prosecute violations. While some commonwealth's attorneys prosecute misdemeanor cases, for example, some do not, and they are not required to do so. He or she also has certain responsibilities under the Conflict of Interests Act with respect to making a determination of a legal conflict for an elected or appointed official. Because the commonwealth's attorney is responsible for criminal prosecutions, a close relationship with the local law enforcement agency, either police or sheriff's department, is necessary.

Sheriff. The sheriff, in cities, is the custodian of the jail and process server and bailiff for the courts. In cities and counties operating a regional jail, generally a jail superintendent (rather than the sheriff) is the jail custodian. The Sheriff, however, serves on the jail board, as provided by statute. In most counties, the sheriff also is the chief law enforcement officer, a duty assigned to the police department in cities and towns. Some towns have entered into a joint cost sharing agreement with a county for law enforcement services.

Constitutional officers are elected at large for a term of four years, except for the circuit court clerk, who serves an eight-year term.

A few cities and counties have either eliminated the office of the commissioner of the revenue and/or the treasurer or have combined the two offices, to foster efficiency and reduce duplication of staff. Such action requires a referendum and a change to the local charter approved by the General Assembly. In most cases, however, constitutional officers are an integral part of the local government.

Some smaller cities share the sheriff, commonwealth's attorney and clerk of the circuit court with an adjoining county.

Towns have no constitutional officers since towns are considered part of the county for certain governmental functions.

Independent Status

Constitutional officers perform functions that are important to the smooth operation of the local government. In many cases, in addition to fulfilling state-mandated responsibilities, they perform duties resulting from local ordinances. Constitutional officers are, however, legally independent of the governing body, which has no inherent authority over them. They cannot be required to give information on their operations unless they desire to do so. They do, however, often seek funding from the governing body for salary supplements, additional positions, or equipment and supplies beyond what the state will provide. Consequently, a cooperative working relationship between the constitutional officers, the manager and council should be developed and sustained. This relationship can be enhanced if the council meets regularly with the constitutional officers, so that lines of communication remain open.

Employees of Constitutional Officers

Constitutional officers appoint their own employees and determine their working conditions. These employees are not covered by the local government's personnel plan and grievance procedure unless the council and the constitutional officers agree to include the employees in the system. If they are not included in the local system, however, they are still subject to all requirements of law concerning discrimination, partisan political activity, conflict of interests, and related matters. Constitutional officers are required to advertise vacancies in their offices.

Funding

The funding of the constitutional officers is complex and confusing. Funding levels vary according to the office, positions within the offices, and duties in a locality, so it is difficult to generalize. Further, some funding, such as for training and some office expenses, varies from year to year due to state budget decisions.

Under state statutes and administrative guidelines, the locality pays a certain percentage of the operations costs of the constitutional officers because they perform local functions. For example, the local government is required to furnish equipment, office space (including utilities), and supplies. Furthermore, the local government pays medical and hospitalization insurance benefits for constitutional officers and employees to the same extent that similar benefits are paid for other local employees. These expenses are not reimbursable by the state.

State law requires that the state pay 100 percent of approved salary and expenses for the offices of the sheriff, commonwealth’s attorney, and circuit court clerk. For commissioners and treasurers, the state pays one-third of the approved expenses of the office, fifty percent (50%) of the approved employee salaries, and a portion of the salaries of the commissioner and treasurer.

For all the constitutional officers, the key word is “approved,” because the amount approved by the state does not necessarily cover the entire costs of the office. The costs of purely local functions are not reimbursed by the state. Further, local governments supplement salaries in many instances, provide funding for additional staff positions (particularly in sheriffs’ offices), and pay for other expenses that are not reimbursed by the state. Due to the complexity of funding the salaries of constitutional officers’ employees, some localities have established memoranda of understanding with their constitutional offices placing their employees on the locality’s pay plan.

Funding of salaries and expenses of the constitutional officers and their employees is set annually in the state appropriations act. The State Compensation Board, a three-member panel consisting of the State Auditor of Public Accounts, the State Tax Commissioner, and a Chair appointed by the governor, then considers salary and expense reports filed by individual constitutional officers and determines the share of expenses that the state will cover. The local government must pay its assigned percentage of costs. Disputes can be resolved through negotiation, a formal appeal to the Compensation Board, or appeal to a three-judge court.

School board

The school boards are elected in most, but not all, cities and counties (and the two towns that operate their own schools). The state constitution ([Virginia Constitution, Article VIII, Section 7](#)) clearly makes the school board responsible for supervising the schools in its jurisdiction. The school board’s general powers and duties are further outlined in state law (Code of Virginia, [§ 22.1-71 through § 22.1-87](#)). The school board enforces state laws, manages the property of the school division, and sets the school term (within state legislative and regulatory guidelines). Various code sections also direct the school board to appoint a division superintendent, manage the funds available to the school division and report at least annually to the council on all expenditures.

State law sets out the process for appointment of school board members and for the holding of a referendum to switch to an elected school board and vice-versa (Code of Virginia, [Title 22, Chapter 5](#)).

State and Federal Elected Representatives

The local government’s relationship with its representatives at the State and Federal levels is an important one.

Because localities are instruments of the state, and because the Commonwealth follows the Dillon Rule, legislation adopted by the Virginia General Assembly can have a significant impact on local operations. Mandates (whether funded or un-funded), restrictions on local actions, and funding for shared state-local services such as education, public safety, and human services are all subject to annual decisions by the General Assembly.

Having a relationship with the delegates and senators who represent your locality and region is essential when seeking statutory assistance or in helping them understand the consequences of proposed legislation. Many localities adopt an annual legislative program outlining issues, either proactively or reactively, of concern to the local government. In many cases local members of the General Assembly meet annually with governing bodies to discuss the upcoming legislative session. Some larger localities hire a dedicated lobbyist to represent them in Richmond. Others assign existing staff to follow the thousands of bills introduced each session. In any case, VML and the Virginia Association of Counties (VACo) work closely with local legislative liaisons to track legislation of interest and to advocate on behalf of the Commonwealth’s local governments.

Although the impact of Federal legislation is not as direct or immediate on local governments, nonetheless tax law, environmental regulations, and funding decisions can affect local operations. Every locality should communicate its concerns to its United States senators and representative, either directly or through their staffs in Washington, D.C. or in local and regional offices. Organizations such as the National League of Cities also represent local governments at the Federal level.



About the Author: L. Kimball Payne III, (“Kim”) is an executive manager with the Berkley Group. He served as the Lynchburg City Manager from February 2001 until his retirement at the end of June 2016. Prior to that he served as the County Administrator of Spotsylvania County, Virginia, from February 1987 to February 2001, and as Assistant County Administrator in Spotsylvania from February 1984 to February 1987.

CHAPTER 4

Appointed Officials and Staff in Local Government

By **Kimball Payne**

Appointed Staff

Every locality is required by state law to appoint a clerk for the governing body (Code of Virginia [§ 15.2-1538](#)). General law (Code of Virginia [§ 15.2-1537](#)) also requires each locality to appoint an officer responsible for its financial affairs (unless the charter provides otherwise, or the commissioner of the revenue and treasurer perform these duties). Every locality is authorized to appoint a chief administrative officer and an attorney.

The local council operating under the council-manager form of government generally appoints three positions: (1) the manager, (2) the attorney/legal counsel, and (3) the city or town clerk (who may be the manager). In some cases, the governing body may also appoint the property assessor, an internal auditor, certain department heads, or other positions as authorized in the locality's charter. The council should review this subject with legal counsel for an enumeration of its particular responsibilities.

The City or Town Manager

Code of Virginia [§ 15.2-1540](#) authorizes a governing body to appoint a chief administrative officer. In most cities and towns, the council appoints a manager. In 1908, the City of Staunton became the first city in the United States to employ a professional city manager when it hired Charles E. Ashburner, setting in motion the development of today's council-manager form of government.

In the most general terms, the city or town manager is responsible for directing and supervising the day-to-day activities of the locality. Specific responsibilities and authority are established by state code, the local charter, and tradition.

State law (Code of Virginia [§ 15.2-1541](#)) stipulates eight required duties for a chief administrative officer, the city or town manager. Unless otherwise provided by law, charter, or ordinance/resolution of the council, the manager shall:

1. See that all ordinances, resolutions, directives and orders of the governing body and all laws of the Commonwealth required to be enforced through the governing body or officers subject to the control of the governing body are faithfully executed.
2. Make reports to the governing body from time to time as required or deemed advisable upon the affairs of the locality under his or her control and supervision.
3. Receive reports from, and give directions to, all heads of offices, departments and boards of the locality under his or her control and supervision.
4. Submit to the governing body a proposed annual budget, in accordance with general law, with his or her recommendations.
5. Execute the budget as finally adopted by the governing body.
6. Keep the governing body fully advised on the locality's financial condition and its future financial needs.

7. Appoint all officers and employees of the locality, except as he or she may authorize the head of an office, department and board responsible to him or her to appoint subordinates in such office, department and board.
8. Perform such other duties as may be prescribed by the governing body.

The manager's specific duties vary from one community to another, depending on such characteristics as population, level of local services, size of staff, and other unique local conditions. Many of the manager's duties will be determined formally, through the local charter and an employment agreement, and informally, through discussion and mutual agreement of the manager and council. Depending on the size of the community and its related staff, the manager may direct several functions or employ professional staff for that purpose.

When an administrator is hired under the mayor-council form of government, the authority directly assigned that individual may not be as strong as under the council-manager form. In those localities, the personalities of the mayor, the manager and council often may be as important as the charter and statutes in determining the relationship between them.

What the Council Expects of the Manager

While the Code of Virginia and local charters specify the duties of the manager, there are also perceived responsibilities that an effective professional manager should carry out. These include:

1. Being the chief advisor to the council by making recommendations to the elected officials on matters critical to the future of the community. An important role of the manager is to straddle the divide between policy setting and implementation, working in the gap between political acceptability and administrative sustainability.
2. Working to build a great community by anticipating and reacting to changing conditions within the community.
3. Recruiting, hiring, supervising, disciplining and dismissing the staff of the locality. Under the council-manager form of government, other than the limited positions that the council is responsible for hiring, the manager has ultimate responsibility for personnel administration. Local staff members are employees of the manager, not the council. All dealings with staff should be handled through the manager unless he or she prescribes otherwise.
4. Recommending ways to improve/expand Local services while maintaining effective cost controls. The manager should work to improve the efficiency, effectiveness and equity of a local government's delivery of services.
5. Recommending improvements and clarifications to local policies.
6. Demonstrating the highest professional and ethical standards to build and maintain trust with the council and the community. Many managers are members of the International City/County Management Association (ICMA) and/or the Virginia Local Government Management Association (VLGMA) and are obligated to uphold the ICMA Code of Ethics. (See Appendix A for a copy of the code as of July 2018.)

The council and the manager should always keep in mind that the manager works for and represents the council as a whole. While he or she may make recommendations, council may not always accept them. Council is the ultimate decision maker on policy issues, and it must own those decisions. The manager must implement the enacted policies of the council; individual council members, regardless of their position on a matter, should respect the manager's responsibility to carry out the will of council.

The local council, both individually and collectively, needs to cultivate a professional relationship with the manager, to gain insights into the locality's structure and abilities. This will help develop the appropriate vision and goals for the

community. The manager, in turn, should be adept at listening, helping council to identify areas of consensus and then developing a strategy to implement and communicate council's vision.

The manager should take care to project the council's desired image of the community. This is crucial, since the manager is often the community's point person for the news media and the public in general. The manner in which the manager represents the local government in these situations will directly influence the public's perception of how council is conducting its business.

What the Manager Expects of Council

A problem that causes managers more headaches than any other is council members who forget or do not understand that their role is to develop policy, rather than to become involved in administration. Such behavior can erode the manager's authority with staff members and often leads to morale and productivity problems within the organization. As the chief appointed official of the community, the manager should determine which staff members or teams are assigned to specific projects based upon their expertise and current workloads. Council members' interference in this process inevitably leads to inefficiency and disenchantment on all fronts.

A second potential problem area involves conduct during public meetings. Council members and the manager should meet in advance of public meetings and discuss any matters that will require the manager's response during the meeting. This practice allows the manager and staff to complete any research and prepare any materials that will be needed at the public meeting. It also allows those citizens with a vested interest in the question at hand to be given accurate answers in a timely, public fashion. In addition, the council is more likely to be seen as responsive to citizen concerns.

The manager is responsible for seeing that any written materials prepared for council members are distributed as far ahead of the council meeting as possible. In return, the conscientious council member will find time to review these materials before any discussion takes place, since they often contain valuable background information.

Finally, a manager appreciates council members who maintain consistent positions in both their public declarations and private discussions with the manager. The manager and other local staff can become disheartened and demoralized if council consistently concedes to small but vocal citizen groups, especially if the policy decisions are integral to achieving the council's overall objectives. Likewise, directing the manager to prepare time-consuming background materials for projects that are then jettisoned because of political vagaries creates an unnecessary workload for the manager and staff, while also lowering productivity.

Choosing a Manager

Arguably, one of the most important decisions a council will make is the selection of a manager. Many organizations are available to assist councils in their search for a manager, either through publications, advertising resources, knowledge of potential candidates, professional searches, or direct assistance to council in determining its requirements for a manager. These organizations include the International City/County Management Association (ICMA), the Virginia Municipal League, the Virginia Institute of Government and other university public service organizations, private consultants and executive search firms.

Although each locality will develop its own process, basic steps include:

1. Determining who will assist the council in the recruitment and hiring process. This should include the locality's human resources staff, possibly with outside assistance.
2. Identifying an interim manager, from existing staff or outside the organization, if necessary.
3. Determining an appropriate level of public involvement in the process, while respecting the confidentiality of potential candidates.
4. Developing a community profile, outlining attributes, opportunities and challenges for potential candidates.
5. Developing a position profile that identifies the characteristics wanted and needed in a manager, desired education and experience, expectations for the position, a description of benefits and a compensation range.

6. Advertising the position; setting an appropriate closing date; and conducting a preliminary review of applications to eliminate those that do not meet the minimum requirements.
7. Conducting one or more rounds of interviews with candidates; determining who will conduct the interviews, the willingness to engage spouses of candidates, and how finalists will be identified.
8. Performing background and reference checks on one or more finalists.
9. Negotiating an employment agreement with the selected candidate.
10. Introducing the new manager to the community and local staff.

Employment Agreements

The manager serves at the pleasure of the council, meaning he or she can be terminated without cause at any time. Most professional managers will want an employment agreement with council to set forth the parameters and expectations of the relationship and to provide some degree of security if the manager is terminated for any reason other than for cause.

The employment agreement typically stipulates conditions such as salary, benefits, severance payments, and the evaluation process, among other aspects of the employer-employee relationship. It may be a formal document, an open contract, a detailed letter, or a memorandum of understanding and should be recognized as binding on both parties. ICMA has a model agreement that can be used as a template and the Virginia Municipal League and the Virginia Institute of Government can help obtain copies of employment agreements used in Virginia's localities.

An agreement or contract does not take away the council's control. It does, however, set forth the terms and arrangements for each party, should the relationship not work out. An employment agreement can give the manager a degree of security that will encourage him or her to be more objective in giving advice.

Evaluating the Manager

For a healthy working relationship, the manager needs to know if he or she is meeting council's desires and needs. A yearly evaluation can accomplish this, by highlighting both the manager's accomplishments and areas needing improvement. If an employment agreement has been used, it should stipulate the frequency and content areas of the evaluation. ICMA has resources to guide the evaluation process and VML and the Virginia Institute of Government can also help obtain copies of evaluation procedures used in various localities.

By undertaking an evaluation process on a regular basis, the manager and council can receive feedback on each other's views about how the government is progressing and where each party sees it going. Through this process, small problems that are bothering either party also can be aired and corrected before they become major impediments to the local government's operation.

The City or Town Manager – Final Thoughts

The working relationship that council members establish with the manager will be the most critical relationship they develop while in office. To be successful, it is vital that the mayor, council, and manager establish lines and methods of communication that will work for all. Mutual expectations should be outlined at the beginning of the relationship and reviewed each year, to ensure that everyone involved continues to be aware of the process in this continuously evolving relationship.

The core foundation of the council-manager relationship is the betterment of the community. Allowing the manager to carry out the policies and programs that the council establishes is critical to achieving its vision for the community. The council has the ultimate authority for determining the direction of the community, but someone must be responsible for making that happen, and in the council-manager form of government, that someone is the manager. Maintaining open lines of communication and establishing clear expectations for the manager are essential ingredients. It is also important to remember that the council as a whole, not individual members, is responsible for directing the work of the manager. If your manager is a member of ICMA, he or she has access to excellent advice and support to strengthen this crucial relationship.

Attorney/Legal Counsel

As authorized by state law, (Code of Virginia [§ 15.2-1542](#)) the council may employ a lawyer or contract with a law firm to provide ongoing legal assistance to the locality; medium to large localities generally employ their own attorney. The attorney's client is the locality and its council, not the individual council members, the manager, or citizens. The attorney works directly for the governing body, but he or she also works with the top administrative leadership on many day-to-day matters. In a very few localities, the attorney reports to the manager but this is not a recommended practice.

The attorney's routine responsibilities include:

- Advising the governing body and all boards, departments, agencies, officials and employees of the locality; this could include the School Board and Department of Social Services.
- Drafting or preparing ordinances.
- Defending or bringing actions in which the local government may be a party.
- Ensuring proper legal processes and procedures are followed.
- Providing advice on a multitude of issues from zoning to personnel administration to land acquisition, just to name a few areas of concern.

Attendance at all council meetings is normally expected. When the locality faces more complex legal challenges, the governing body may elect to employ additional outside counsel for expertise in a particular area. A locality's insurance company will choose the attorney in cases involving insurance claims. When outside counsel is used, the local attorney should manage the contract, stay involved and informed.

City or Town Clerk for Council

The Code of Virginia ([§ 15.2-1538](#)) requires the governing body of every locality in the Commonwealth to appoint a qualified person to record the official actions of the governing body. This individual generally serves at the pleasure of the council and provides a series of important administrative services. Under most circumstances, the clerk is responsible for:

- Recording and maintaining the official minutes of the council.
- Recording the votes of council members.
- Maintaining the locality's code of ordinances.
- Recording and preserving resolutions approved by the council.
- Handling the proper legal advertising of notices.
- Ensuring that the governing body members are in compliance with various filings, oaths of office, and other official requirements.

Depending on the locality, the clerk may be assigned additional responsibilities such as records retention and management and a role in agenda preparation and distribution.

Assessor

The assessor is responsible for establishing the fair market value of real property within the locality. Depending on the community, reassessments take place on a rotating basis that may range from a one-year to a six-year cycle. The assessments are then turned over to the commissioner of the revenue for review, appeals processes, and final publication. In some cities, the assessor is appointed directly by council, but in most cities the assessor is appointed by the manager.

Auditor (Internal)

An internal auditor reviews governmental functions and practices, including financial transactions, to ensure legal and policy compliance by the various departments in the locality or other agencies that receive local government funds.

The auditor is independent of the locality's administration, serving as an independent watchdog or investigator for the council. This function does not replace the financial audit performed by an independent certified public accountant, as required by the Code of Virginia, § [15.2-2511](#). Only a few larger localities have an independent auditor of this type.

Boards, Committees, and Commissions

Code of Virginia § [15.2-1411](#) authorizes the governing body of any locality to “appoint such advisory boards, committees, and commissions as it deems necessary to advise the governing body with regard to any matter of concern to the locality.” In addition, council may be required to appoint members to other bodies, such as the Planning Commission or School Board, by state statute, local charter, or ordinance. Although council members may be allowed or required to serve on some bodies as stipulated in the state code, this is an area where the prohibition against dual office holding by elected officials may apply. The local attorney or legal counsel should be consulted for guidance.

The effective use of boards, committees, or commissions can enhance citizen participation in local government and improve council's decision-making process by bringing a wider range of options into the governance process.

Types of Bodies

The local council may appoint members to numerous authorities, boards, commissions, and committees once they are legally established (for a listing of typical bodies, see the end of this chapter). These bodies have a wide range of responsibilities, often set forth in state law. They may serve only the city or town (the planning commission, for example); or they may serve a number of local governments (a regional jail authority or planning district commission, for example). State law requires some of these bodies, but not all.

Advisory bodies, such as the planning commission or a beautification committee, make recommendations to council. Typically, these groups have no responsibility for setting policy or administering programs.

Governing bodies, such as the school board or social services board, are responsible for managing and operating a certain function of government. They have the ability and responsibility to set policy and carry out programs according to appropriate federal and state guidelines governing their functional area.

Benefits of Citizen Bodies

Because of the wide range of problems and issues that council members must deal with, and the large number of citizen requests to which they must respond, council members often have trouble finding enough time to study issues in depth. At the same time, the council may not have among its members the expertise needed to determine how best to approach a particular problem or issue. By appointing citizen bodies, the council is able to:

- Gain a wider range of ideas for resolving problems.
- Establish stability in an activity.
- Meet the requirements of a higher level of government (state or federal).
- Increase citizen participation.
- Develop responses to issues that will gain wider community acceptance.

Getting the Best Results

To gain maximum benefits from boards, commissions, and committees, council members need to set clear purposes or goals for new groups or be keenly aware of an existing group's purposes and goals. These goals and purposes should be concise and accurately reflect the task for which the group has been organized and appointed. Council members should be aware that nothing can breed failure more quickly than appointing a committee and then not giving it proper direction. In those cases where the body has a mission statement or program agenda established by law (for example, the social services board), the council should clearly indicate its relationship to expectations for that particular body.

Sometimes the work of a commission or committee may result in group recommendations that do not fit the perceptions of the council. When this happens, council should recognize that the group making the recommendations has spent many hours researching the problem or issue and has given council what the group deemed the best independent advice possible.

To establish and maintain successful boards, commissions, and committees, the council should choose members carefully, using a process that best fits the community and with which the council feels most comfortable. The solicitation and selection process may vary with the size of the community. In smaller communities, word-of-mouth is often used to solicit candidates; names are advanced as nominations and confirmed at a council meeting. Larger communities often place advertisements in local newspapers announcing the vacancy and asking individuals to respond in writing expressing their desire to serve, their qualifications, and other relevant information.

In selecting new appointees, council members should consider several factors. First, the council should review the makeup of the entire board to which the appointment is being made. Some appropriate questions include:

- Does the board or group reflect the diversity of the community?
- Is the group in need of special professional expertise?
- Does the board need new ideas?
- Is the board reacting to issues or taking a proactive approach to dealing with problems?

The persons selected should have a true interest in their community, a commitment to resolving the issues at hand (including the necessary investment of time), and the ability to make recommendations and decisions that are based upon fact, even though the recommendations may not be universally popular in the community. Citizens who have shown an interest in the position need to be vetted. Some background checking of their qualifications may be necessary, and it is imperative to avoid appointments that may result in a conflict of interest.

Prior to discussing the vacancy with potential candidates, the council should be clear on what the committee or board does, how often it meets, what the term of service is, whether or not compensation or expenses are covered by the locality, and other pertinent questions that interested applicants might ask. Some councils also interview candidates before making a final selection.

Giving Status & Support to Appointed Bodies

Once appointments have been made, council members must continually give those appointments status and support. Council members should listen to what the appointees have to say (even if they don't agree). Remember, many of the individuals appointed will show enormous dedication to the task at hand, and they are serving the community to the best of their ability. Before making key decisions, individual council members may wish to seek the advice of their appointees to a particular body to find out the group's position or thoughts about a particular issue. If council members don't agree or can't follow the body's recommendations, they should explain why. Communication and courtesy are key to a successful relationship, and failure to follow through will not only destroy the morale of committee or commission members, but also create the image of a council that does not listen to its appointees, thus making it more difficult to fill future vacancies.

Whatever the task, and particularly if it is complex, the council must ensure that adequate assistance is available from city or town staff, or consultants, to ensure that technical and legal issues are addressed, and problems are properly researched. Without this assistance, the results of volunteer efforts will often be ineffective and unproductive for neither the council nor the community. For example, citizen boards, committees and commissions must comply with the requirements of the Freedom of Information Act (FOIA), the Conflict of Interests Act (COIA) and the Records Retention Act. Staff support is essential to ensure that these requirements are met.

Finally, recognizing the efforts of citizen bodies shows appreciation and spurs volunteers on to greater contributions. Remember that pay for service on these boards, commissions, and committees is often low or nonexistent. A council's show of thanks, whether by resolution of appreciation, recognition dinner, or personal letter will send a positive message both to the members and to the community.



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APPENDIX

ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018.



CHAPTER 5

The Governing Body at Work: Effective Public Meetings

By Jack Tuttle

Local elected officials run for office saying, “Vote for me!” For the voters, it’s about the individual – why one candidate should be elected over another, and what each will do once elected. Each candidate expects to make an impact on their community and bring about positive changes.

Then the former candidates, now elected officials, show up for their first council meeting where it becomes abundantly clear that they will not be able to accomplish much of anything by themselves. Each has many ideas on how to build a better, stronger community, but individually they have little power or authority. They are now members of a city, town, or county governing body – a team. That team has lots of power and authority; but it is *corporate* power, and individual members each have just one vote.

The council exercises its corporate power through the public meeting: its most visible and essential act of governing. No council meeting is an isolated event; it is connected to meetings past and future. Every council meeting builds upon the ones that came before and sets the stage for the ones that will follow. In this manner, the governing body strives to accomplish its long-term goals for the community one meeting at a time. Together, what happens in those meetings defines the success of elected officials, corporately and individually.

“Council meetings are extremely important, both for individual council members and for the council as a whole. There are meetings where some members shine and others stumble. Usually it is not because successful members understand slick techniques, while the less successful ones do not. It is much more likely that successful members have a better understanding of the goals of a meeting, and that understanding guides their behavior.”

-Jack Edwards, William and Mary Professor of Government Emeritus and VML Past President

With all this in mind, we hope to promote effective meetings in your community by beginning our discussion with a look at the **Goals, Audiences, Roles, Types, and Mechanics** of council meetings.

Goals of Council Meetings

Members typically walk into a council meeting with their own set of objectives and purposes. Nevertheless, the following five meeting goals should be fundamental and universal.

Goal One: Make Good Public Policy

Certainly, the primary goal of every meeting is to make sound public policy decisions for the locality. While the line between policy and administration is not a bright one, only the elected body has the legitimacy and the authority to make the big decisions – legislative, financial and operational. That said, council members must resist the temptation to take hands-on control of governmental operations and employees so that the council can focus its attention on the work only it can do.

That said, making good public policy does mean making good staff appointments and setting high expectations for their performance. These include the city/town manager or county administrator, city/county attorney, clerk of council, and volunteer board and commission members.

Goal Two: Adjudicate Community Values

In the process of making policy, governing bodies adjudicate community values which are typically in tension with one another. Council must balance legitimate competing interests, and it must choose from among alternative paths when none are simply right or wrong. Examples are found in nearly every meeting agenda item: Property owner rights must be weighed against development standards in zoning cases; improved traffic flow competes with traffic calming in road projects; a dollar spent on parks cannot be spent on police...the list is endless.

Just remember, council members get paid to make the tough and often controversial value choices for the community – that’s the job of *elected* officials in a democracy.

Goal Three: Engage and Educate Citizens

Perhaps less apparent than the two goals outlined above, council meetings are also an opportunity to engage and educate the public. Staff presentations, guest speakers, and citizen comments can shed light on the reasoning behind difficult decisions. In discussing and explaining their votes, council members not only educate one another, but they raise public awareness and understanding of often complex and challenging issues.

All meetings are open to the public. Council members should see this as an opportunity, not a constraint. Some citizens may hear what they do not want to hear – but they need to hear it. Some may have come to hear one agenda item only, but then find themselves drawn into the work of their local government more broadly. Councils are wise to find creative and positive ways for citizens not only to listen, but to participate in meetings consistent with good order.

Goal Four: Burnish Reputation and Brand

It follows that if meetings are critical to building support for council’s policies, that, over time, they will build the reputation or “brand” of the council, both corporately and individually. Well-run and meaningful meetings can do much to uplift the image not only of the council, but of the local government as an organization and the community as a whole. Conversely, meetings that regularly run off the rails damage the image and outside reputation of the locality.

Know this: Citizens judge the council and its members—their ethics, character and performance—largely by what happens at public meetings.

Goal Five: Build Trust

According to the latest Pew Research Center report on trust in government, 65% of Americans have a favorable opinion of local government, compared to 56% for state government, and 32% for the federal government. Unlike for the federal government, Pew found virtually no partisan differences in the public’s perception of local and state government. (Pew Research Center, November 2015, “Beyond Distrust: How Americans View Their Government”)

Virginia’s own Bob O’Neill, former Executive Director of the International City/County Management Association (ICMA) who retired in 2016, has drawn attention to the importance of relatively high levels of trust that Americans have in local government generally, as shown in the Pew survey. That level of trust gives every local governing body a big head start.

To test the point, O’Neill studied local referenda and initiatives nationwide for increased revenue or spending authority from November 2010 to January 2012. He found that those elections were successful when the following were in place:

- Transparency – A specific use for the money; that is, people knew what would be done.
- Engagement – Priorities set through a process that included citizen collaboration, rather than being imposed from above.
- Performance and Accountability – Reliance on a trusted agent (usually a local government) to carry out the spending plan.

Significantly, of the local referenda and initiatives O'Neill studied, nearly 70% passed; all at a time when conventional wisdom said that the public would oppose any new taxes.

Drawing upon his findings, O'Neill writes about these “four building blocks” of public trust:

“Working in local government’s favor is the trust people have in local government, which is much higher than for either federal or state government. Residents’ trust will be the working capital of innovation in communities and local governments.

Trust creates room for thinking about and testing new solutions. It is therefore necessary that local governments understand what builds trust at the community level. From our discussions, we would suggest these are the building blocks of trust:

Transparency + Engagement + Performance + Accountability = Trust.”

Robert J. O'Neill, Jr., March 2013 PM Magazine, *Leadership and the Profession: Where from Here?* pp. 20-23.

But public trust is not the only kind of trust that a council needs to build. Building trust between local government officials themselves, as we shall see, should also be a goal of every meeting.

Five Audiences of Council Meetings

Council members should be aware of five audiences watching and evaluating their performance in public meetings.

Audience One: Citizens in the Meeting Room

It should be clear from the goals outlined above that citizens in the room aren't just the most visible audience at a council meeting, they are the most important. These individuals deserve special attention because they care enough about the workings of their local government to be there in person, often because they are directly affected by council's actions.

Citizens appreciate councils that “have their act together” and do the people's business well. Council meetings are primetime for councils and their local governments. No one wants to be associated with any “Not Ready for Primetime” players on council. As such, the audience at a council meeting has certain expectations.

What does this audience expect? For starters, these citizens expect the room dynamics to work. This means:

- Well-placed and reasonably comfortable seats where they can easily see and hear the proceedings and come and go as suits their needs.
- Graphic presentations that are clearly visible to everyone in the room.
- A functioning sound system that permits everyone (especially the audio impaired) to hear clearly.
- A foyer area outside with a video screen, assuming the meeting is televised, helps those waiting to enter the meeting room know when their agenda item comes up.

Unfortunately, many council meeting rooms are poorly designed and seem to convey to citizens that they are superfluous to the discussion.

Meeting attendees also expect information to be presented in proper context. For every significant item on the agenda, council members and staff should ask themselves: What would I want to know if I were in the audience? This should include essential background information, alternatives to proposed actions, and reasons for decisions. Applicants and petitioners and their paid consultants, such as architects and engineers, attending for a single agenda item are citizens too, and they would like to have their time respected in setting the order of the agenda.

In addition to taking in content, the attendees should be able to follow the interactions and nuances of the meeting and, when appropriate, have a voice. Two-way communication assures citizens that council members, however they may vote in the end, understand and appreciate the viewpoints on the issues (more on citizen comment later).

Audience Two: Citizens NOT in the Room

Many people care about what happens at council meetings, but do not attend. They may read a newspaper or online report; they may watch on cable TV or online video streaming; or they may just rely on social media or word of mouth. By various means the word gets out. Even if no members of the general public attend a meeting, council members should assume the public is aware of what they said and did.

Councils need to care equally about the opinions and reactions of both the audience in the room and the audience that is not present. In fact, when a standing-room-only audience is demanding that council vote a certain way, the council needs to do what it deems best for the entire community – not just the people in the room.

Audience Three: The Media

Media attention varies with size and location of jurisdiction, but most council meetings still have reporters. For better or worse, much of what people know about council meetings is filtered through print and online press.

A natural tension exists between reporters who are looking to find whatever may be of interest to their readers, good or bad, and public officials who want to get their message across and look good in the process. Still, they need each other. On balance, the media does more good than harm for the cause of good government.

Reporters often want council members to comment on agenda items before or immediately after a meeting. Reporters often prefer elected officials' unscripted commentary so they can play off opposing points of view. So, before giving an off-the-cuff quotation to a member of the press, council members should direct reporters to prepared staff background reports and other useful written material. It's also advisable for officials to prepare to speak to the press by making a few notes on their key points ahead of time. A reputation for openness, honesty, accuracy, and insight will serve council members well in dealing with the press.

Audience Four: Local Employees

"If it wasn't hard, they wouldn't need us. If it wasn't for a thing called democracy, we wouldn't need them."

- Anonymous city staffer speaking of city council

Local employees, and volunteer board and commission members, are often not thought of as an audience, but they may be the most attentive attendees of any given council meeting. Not only because they are most likely to have a deeper understanding of the content of a meeting, but also because they have a stake in decisions that may directly impact their work. Moreover, they have most reason to care about the tone of a meeting as it reflects council's attitudes about the organization and its employees as a group.

For all the reasons outlined above, staff members have rather specific expectations of the council. They want to see behavior on the dais that makes them proud of their council and, by association, of their organization. They want council members to ask them good questions which help to bring out key information. At the same time, they want council not to surprise them with questions they cannot answer satisfactorily. It's good to ask staff members tough questions provided they've had time to prepare good answers.

In a word, staff wants to be treated with respect. VML Past President Jack Edwards, as a long time local elected official, called on his colleagues to avoid "bureaucrat-bashing" – placing blame publicly on the manager or staff members—whether they deserved it or not. It can be tempting for members to score points or deflect criticism at the expense of staff, but it's not a fair fight when staff cannot answer back. They will rarely challenge or criticize a council member publicly, but neither will they forget. The best advice for council members having difficulty with the behavior of staff during a meeting is to take the matter up with that employee's boss, usually the manager, privately.

Audience Five: Other Council Members

Members of council may not think of their fellow council members as another audience, but they may be their most consistently important constituency. No one pretends that the Congress or a state legislature is a team. The scale is far too large, and political reality far too partisan, for that. But a local governing body, even in a large jurisdiction, can and should function as a team. That means that every word spoken, every vote taken, has an impact on the function, and often the dysfunction, of the team. The five goals of council meeting outlined above are in service of building trust with the public. For that to happen, however, it is essential that trust exists among the members of the council.

Council members have every reason to expect that their colleagues will show a greater commitment to the best interests of council and community than their own personal or political interests. They expect communication before and during the meeting so that they are not surprised or confused by their colleagues' actions. They expect a congenial and collegial atmosphere in the meeting, and an occasional laugh together. They expect sincere efforts to achieve consensus, and when that is not possible, they expect respect for differences to be settled by majority rule.

The last point needs elaboration. For the majority on a split vote, sensitivity to dissenters will go a long way when the shoe is on the other foot (as it inevitably will be). Conversely, when in the minority, the temptation to not let the matter rest, to look for ways to circumvent majority rule, must be resisted. As stated in the introduction to this chapter, council power is corporate power, not individual power. Members need each other to accomplish their purposes. A win today, if mishandled, will result in a loss tomorrow. As such, wise council members are always aware that the audience most essential to their long-term success may be sitting next to them on the dais.

Key Roles in Council Meetings

The Virginia system of local government is based on legislative-executive cooperation, not a separation of powers. From the perspective of the council, five roles are key to productive meetings.

Mayor

Unquestionably, the role of first importance is the presiding officer, which, in the council/manager form of government and by state general law, is the mayor, or in the case of counties, the board chair. State law makes the mayor the “head of the local government for all official functions and ceremonial purposes” (Code of Virginia [§ 15.2-1423](#)).

Before the meeting, the mayor should represent council in helping the city or town manager, or other staff if there is no manager, set the agenda and see that staff are sufficiently prepared. Mayors should communicate with council members on complex issues head of time within the limitations and spirit of the Virginia Freedom of Information Act (FOIA). If there is a problem with the behavior of a council member in the meeting, the mayor as the leader of council needs to take the lead in addressing it; much in the same way the city manager is responsible for addressing the behavior of staff.

Mayors, whether elected directly by the voters or appointed by the council, run meetings according to the council's rules. Their role is to concentrate on meeting process over issue content. For mayors who are also voting members of the council, attending to process over content may be very hard to do. The rest of the council, however, needs the presiding officer to do that job fairly and expertly. Effective mayors manage conflict and foster cooperation among the council. If mayors let their own desire to see a particular outcome on every issue get in the way, they will do everyone – including themselves – a big disservice.

More than anyone else, mayors set the all-important tone of the meeting. They do this by listening well, demonstrating respect for the five audiences discussed above, effectively and fairly maintaining good order, and graciously performing ceremonial functions. The importance of a mayor's demeanor and skill in running a council meeting cannot be overemphasized.

City Attorney

The local government attorney is council's counsel. During meetings, the attorney assists the presiding officer with parliamentary procedure, and provides legal advice as needed on any and all matters that come before the council. Attorneys are watchdogs to guide council on open meeting FOIA requirements, and on the legal defensibility of council's voted actions.

Most local government attorneys are appointed directly by the council, not the city manager as is the case for most of the rest of the staff. So, even though they work closely and cooperatively with staff, they think of the council as their client. In an even larger sense, however, they have an ethical and professional responsibility to serve the law and the public as a whole.

Clerk of Council

Clerks are essential to good meetings. In most jurisdictions they help prepare council agendas and other documents, such as proposed resolutions and ordinances. They are responsible for timely and proper notification of meetings, public hearings and other items required by law. If a clerk fails to advertise an ordinance or a budget resolution properly, for example, council will not be able to act on that item.

Taking accurate meeting minutes is something of an art form. Maintaining the many public records produced by council, and ensuring easy public access to those records, demands detailed attention. Clerks typically manage the codification of ordinances to produce a city code. Most clerks also manage the process of council's appointments to various local boards and commissions.

The clerk is often the person who speaks most frequently with council members and is a great resource be aware of the chain of command. The clerk is typically one of the appointments made by council – but by the council as a whole, not an individual member.

Manager and Staff

While it's true that the manager and staff play a vital role in successful meetings, it's important that they not supplant or upstage the elected council. With this in mind, former Hampton City Manager Wendell White often reminded his staff, "that's why they call it a Council meeting."

Staff's primary contribution to a successful meeting comes in what it does before the meeting in preparation, and what it does after the meeting in follow up. For example, as city manager I would organize senior staff meetings around the council meeting schedule: before meetings to elicit and assign responsibility for upcoming agenda items and to discuss best approaches and timing on issues; and after meetings to ensure a staff member had been named to follow-up on every decision made by the council.

In preparation for regular meetings, managers typically offer to meet first with the mayor prior to publishing the agenda, and then with remaining members, once the agenda packet has been distributed. Often, these meetings are held two-by-two with members to comply with FOIA meeting restrictions. Council members benefit by better appreciating the decisions they will soon be facing, and the manager benefits by understanding concerns of council members and discovering gaps in staff work prior to the meeting. In this way, the council/staff team helps each other get "ready for primetime."

Well-written, thorough staff reports, which include a city manager recommendation, are a must for most items on the agenda. Staff reports become the unified input or position of the city administration for that item. Staff also transmits reports and recommendations of committees, boards and commissions – notably the planning commission for zoning and land use matters. Such reports are made available prior to every meeting not only to council, but to the press and public as required by Code of Virginia [§ 2.2-3707](#). During the meeting, it is extremely helpful if staff reports contain precisely worded recommendations, constructed so that members can use them verbatim as oral motions, if they so

choose. Typically, council members take advantage of that resource to make clear, concise and complete motions on the floor for council action.

There is a delicate balance between staff giving council all it needs to make good public policy while not allowing, in either appearance or reality, the council to ‘rubber stamp’ staff decisions. Staff presentations, usually with well-designed visual components, can greatly improve the quality of meetings; but they must never give the impression that the staff is in charge. New council members can be frustrated by the amount of executive and operational authority of the manager and staff (which is a lot) compared to the amount that they have (which is none). On the other hand, council members enjoy both their influence as elected officials, and the power of their one vote; neither of which the manager nor staff possess. Appreciating that difference helps everyone play their role better.

Speaker at the Podium

The fifth role is often overlooked, but it is an important part of most meetings. The person at the speaker’s podium may be an invited guest asked to make a presentation to council, or a distinguished visitor to the community. Or, that person may be the chair of one of council’s appointed boards and commissions presenting a report and recommendation. Most often, the person at the podium is an ordinary citizen who desires to speak to, or to petition, his or her governing body.

Whether during formal public hearings, or in “open forums” for public comment, citizen speakers are often the least predictable and most likely to have an impact. Council members should listen carefully to all speakers, making eye contact that lets them know their presence is appreciated and they are being heard. (See “Public Hearing and Citizen Comment” section below for more on making the most of citizen speakers.)

Types of Council Meetings

Derived both from state law and from evolving practice, council meetings come in many flavors.

Annual or Organizational Meeting

As prescribed by state law, governing bodies convene an annual or organizational meeting in July for cities and towns that have elections in May, or in January for localities that have their elections in November, as well as for all counties (Code of Virginia [§ 15.2-1416](#)). At that time governing bodies establish the days, times and places of their subsequent regular meetings.

At the organizational meeting, councils elect the mayor and vice-mayor, unless those officers are elected directly by popular vote. Upon election by the council, the new mayor immediately takes up the role of presiding officer. Organizational meetings are also a good time for the council to confirm the rules of procedure by which it will govern itself, consistent with state law and local charter, and to consider and adopt a code of ethics. It is good practice for council to take the opportunity to affirm their direct appointees — clerk of council, city attorney and city manager (and others depending on the locality) — thus establishing the locality’s senior governmental team going forward.

Some governing bodies are organized to use council committees extensively, others use them rarely. Committees fall into two categories: standing committees which operate continuously, and special committees which are formed to undertake a specified task and exist only as long as is needed to complete that task.

An organizational meeting is the closest thing a local government has to an inauguration. If preceded by the public swearing-in and seating of newly elected council members, and if orchestrated with appropriate decorum and ceremony, these meetings become significant milestones in the life of the city or town. Pride in community and in local democracy, and a sense of new beginnings, should be celebrated.

Regular Meetings

State law requires a minimum of only six regular meetings per year, but most city councils meet twice a month. (Some will be disappointed to learn that the law sets no upper limit on the number of meetings!) A majority of towns meet monthly, although some meet twice a month, and a few meet every other month. Regular meetings typically have on the agenda only those items ready for a council decision. Until the essential facts are known and the time is ripe, general discussion of local issues or problems is better done at work sessions or retreats.

The time of day to hold regular meetings is often controversial. Many councils meet in the evening for the convenience of the public, but others find the late afternoon better for all. Overly long meetings, especially meetings which extend into late hours of the night, can lead to poor decisions and strained relations.

All council meetings begin as open public meetings, require advance public notification of agendas and agenda packets, and require minutes to be taken—all as prescribed in FOIA. Only a limited number of topics—mostly dealing with personnel matters, public property disposition and legal advice—may be discussed in that portion of the meeting closed to the public. (The FOIA guide published annually by VML has more details.)

Regular meetings may be opened with a simple call to order and taking of the roll, or with more formal opening ceremonies, such as the pledge of allegiance to the national flag and/or an invocation.

For open meeting and notice purposes, FOIA has broadened the definition of what constitutes a “meeting.” In addition to all of five meeting types presented here, FOIA defines a meeting “as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three of the constituent memberships, wherever held, with or without minutes being taken, whether or not votes are cast” (Code of Virginia [§ 2.2-3701](#)). The intent is to prohibit an effective majority of members from conducting council business outside a publicly noticed and open meeting. Note that group emails and text messages run the risk of having the same effect. Thankfully, the city or town attorney provides members with guidance on applying the law to specific situations.

Special or Emergency Meetings

Special meetings on specified matters may be called by the mayor, or by any two members of council, unless provided otherwise by local charter (Code of Virginia [§ 15.2-1417](#)). The clerk of council is required to deliver in person written notice to each council members and city attorney, unless notice is waived by all members. Moreover, unless all members are present, and all agree, only the item specified in the notice may be considered at the special meeting.

Special meetings may be called for emergency purposes, such as action on a disaster resolution for the locality. Public notice of special meetings is given contemporaneously with the notice given to council members. During a state-declared disaster, some rules are suspended. Your attorney will be the best person to advise on this.

Adjourned Meetings, Work Session and Retreats

Regular meetings, without further public notice, may be adjourned from day-to-day, from time-to-time, or from place-to-place, but not beyond the time fixed for the next regular meeting (Code of Virginia, [§ 15.2-1416](#)). The purpose is to allow uncompleted business at the regular meeting to be completed. This mechanism permits council to schedule work sessions, retreats, joint meetings, town hall meetings and other meetings necessary to complete its business. Alternatively, these other meetings may be called separately as regular or special meetings.

Work sessions may be paired with regular meetings. In a more informal setting, work sessions facilitate council discussion that may lead to better decisions when voted actions are taken at the regular meetings. Work sessions also may be used on an ad hoc basis to delve deeper into complex issues. They are also common during budget preparation season, typically in the late winter/early spring timeframe.

Retreats are extended work sessions aimed at tackling challenges beyond day-to-day business. Often, retreats focus on improving council’s processes, such as conflict resolution and trust building, as opposed to the content of local

issues. When retreats do take up issue content, the focus should be long range, for visioning and strategic planning, as opposed to routine business.

Retreats are open public meetings. Going out of town may enhance council team building and dialogue, but they may also invite criticism for impeding citizen attendance. As an alternative, council could consider a retreat location that remains in town, but in a more comfortable and less formal venue rather than the council’s normal meeting space, and outside normal workdays, such as on a Saturday or holiday.

Joint Meetings and Town Halls

Council may find it advantageous to meet in nontraditional ways. These include periodic joint meetings with other public bodies and town hall meetings. They may be in addition to, or even in lieu of, regularly scheduled meetings. Regardless of what form these meetings take, they are still legally considered meetings of the council. So, they should be called to order and adjourned as with any council meeting and include proper legal notice and minutes.

Joint meetings could be with a planning commission, economic development authority or other board or commission appointed by the council; or with several bodies meeting together. Joint meetings may be between independent governing bodies – normally between the city or town and its adjoining county, or with an independently elected school board. Such meetings can be an effective means of promoting good communication and common vision for the locality. Volunteer board and commission members appreciate council’s attention (which can go a long way towards maintaining or repairing good working relationships between the bodies).

The term ‘town hall’ encompasses any type of interactive and participatory meeting the council may have with its citizens. Often these meetings can be run in “charettes” style with free dialogue, perhaps “sticky dot” informal voting, instant feedback electronic polling, and other participatory techniques. Meetings like this can effectively engage the public in such topics as strategic planning and goal setting, or in determining budget priorities. They usually occur at a school or library, rather than in the council’s chamber, and may be moved around the jurisdiction from neighborhood to neighborhood. Council voting on issues rarely occurs at town hall meetings, but they can be a refreshing and effective alternative to the courtroom setting and formal procedures typically experienced in a council meeting room.

The Mechanics of Council Meetings

The best way for a council member to improve their personal effectiveness and, by association, the performance of the team is to learn the ins and outs of how council conducts its business.

Meeting procedures: Establishing the rules of the road

Meeting procedures come from Virginia’s constitution and laws, from local charters and ordinances, and from locally adopted rules or bylaws. Many jurisdictions compile the council’s operating policies and procedures in a single document or manual.

Written and formally adopted council procedural guidelines are very helpful. The scope of such guidance may be seen in the following examples:

- [*Council Policy and Procedures Manual*](#) for the City of Williamsburg
- [*Council Meeting Procedures*](#) for the City of Charlottesville
- [*Rules of Procedure*](#) for the City of Richmond
- [*Rules of Order*](#) for Loudoun County
- [*Council Procedure Memoranda*](#) for the City of Staunton

Parliamentary procedure is usually based on Robert’s Rules of Order for Smaller Bodies, but it should be tailored to fit the needs and traditions of each governing body. The key components of the rules for smaller bodies are:

- Members are not required to obtain the floor before making motions or speaking, which they can do while seated.

- Motions need not be seconded.
- There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained.
- Informal discussion of a subject is permitted while no motion is pending.
- The mayor can speak in discussion without rising or leaving the chair; and, subject to the local charter, can make motions and vote on all questions.

Setting and Following the Agenda

A carefully prepared agenda is essential to successful meetings. Agendas are typically set by the manager working with staff and mayor. They should go out several days in advance with draft minutes from prior meetings, complete background reports and information on agenda items, and draft ordinances and resolutions. Again, under FOIA, the information should be provided to the general public and the council at the same time. It is a bad idea to try to craft the wording of an ordinance or resolution, or anything more complex than a very simple motion, during the meeting.

An agenda for a regular meeting should typically include only those items ready for decision. That said, the agenda is a planning and guiding document, not a binding agreement if the majority wants to deviate from it. Nevertheless, members will generally find it in their interest to abide by it.

The “Parkinson Law of Triviality” (C. Northcote Parkinson, 1957), while hyperbolic, wisely contends that boards devote too much meeting time to unimportant details while crucial, complex matters go by under-considered:

“The time spent on any agenda item is in inverse proportion to the sum of money involved,” and, a corollary “the length of the meeting is inversely proportion to the length of the agenda!”

Just because an item is on the agenda, does not mean it requires much discussion. One tool to move the council through perfunctory or non-controversial items quickly is to use a “consent agenda,” or “consent calendar” in which staff identifies all consent items as a group, which the council then approves by a single vote. However, any member may remove an item from the consent agenda before the vote for separate discussion and vote. Too many routine items on the agenda may indicate that council needs to delegate more administrative decisions to the manager and staff.

Over the last decade many local governing bodies have gone paperless. The typical practice is to issue iPads or similar devices to council members on which they download agendas and all agenda related documents. Members can easily read and make notations electronically on their agendas before the meeting, and then bring their iPads for use during the meeting. The savings in copy costs alone soon pays for the devices. Once through the learning curve, few council members would want to revert to paper agendas. Please note, however, that paper copies must still be available to the public at the meeting.

Quorums and Voting

Having a majority of council members present at a meeting constitutes a quorum. Voting must take place in an open meeting. Voting by secret or written ballot, or by telephone or other electronic means, is prohibited (Code of Virginia, [§ 2.2-3710](#)). Virginia law, however, now provides that a member unable to attend a meeting for reasons such as sickness or travel may participate remotely not more than twice per year when a quorum of the council is physically present at the normal meeting location.

The Virginia constitution requires that on the final vote on any ordinance or resolution, the name and vote of each member must be recorded. Normally, a simple majority carries a voted action, but to sell public property, the Constitution requires a three-fourths majority of all council members.

The Virginia Conflict of Interests Act (Code of Virginia, [§ 2.2-3100](#) et. seq.) sets forth rules whereby a member must declare a conflict of interest that disqualifies him or her from taking part in discussions and from voting on a particular issue before the council (VML’s [FOIA/COIA guide](#) has more details). The law provides that, should such

disqualification from voting leave fewer than the number required by law to act on a matter, then the remaining members have authority to act by majority vote. The intent of this and similar provisions is to ensure the governing body is not hamstrung from governing due to conflicts of interest.

Public Hearings and Citizen Comment

Public hearings with advance public notice are required by state law to give any citizen the opportunity to speak to the council before it acts on specific matters such as:

- Adoption or amendment of zoning or subdivision ordinances, or comprehensive land use plans.
- Rezoning of property
- Adoption of budgets and setting tax rates
- Sale or lease of public property, or closing of streets and alleys

Public comment opportunities (sometimes called “open forums”), in addition to formal hearings, are times reserved for citizens to address council on any topic they choose. Open forums may be held at the beginning of the meeting, or at the end, balancing the public’s convenience with council’s need to accomplish its scheduled business.

Unfortunately, hearings and open forums can be frustrating to citizens who want to express their views and then question and have a dialogue with council members. Increasingly some citizens want to speak prior to the council’s vote on every item on the agenda. Hearings and open forums can also be frustrating for council members when citizens use them repeatedly to merely to grandstand.

The courts have recognized council meetings as “limited public forums.” The public does not have a right to speak on every issue. Courts have upheld reasonable time limits on speakers, which are normally in the range of three to five minutes. Restrictions on content of speech, such as prohibitions of “personal attacks,” have found support in the courts, but are difficult to enforce. Allowing dialogue between council members and citizens during a regular meeting can lead to extended, counterproductive arguments. Some councils have restricted lawfully the number of times one person can speak on the same issue in a defined period, such as three times per year.

Council meetings are, well, a meeting of *council*. The council makes the rules, balancing the value of direct public participation during the meeting with the value of the exercise of representative democracy by elected officials.

The suggestions below apply to the conduct of a formal public hearing and other citizen comment period. On behalf of council, the mayor should:

- Open the public hearing or open forum, indicating citizen comment is welcome, and setting forth the rules.
- Invite speakers to use “Speaker Cards” to register with the clerk before speaking, giving their name and address.
- Require speakers at a public hearing to speak only to the subject of the hearing.
- Set a time limit, typically 3 to 5 minutes, and stick to it.
- Allow no one to speak twice until everyone else has spoken once.
- Ask speakers to avoid repetition by simply expressing support for a previously stated position.
- Ask if one person can speak for a group favoring the same position, offering extra time for such a speaker.

Regular meetings are not the only opportunities to benefit from direct citizen engagement. As described above, interactive town halls and other participatory community meetings also enable two-way communications. Additionally, online forums are effective tools to invite public comment on particular issues while allowing the local government to respond to comments. Online forums have the added advantage of enabling dialogue *between* citizens on the issue.

Documenting and Sharing Meetings

Council adopts policy mostly in the form of ordinance and resolutions and preserves its proceedings for history in its minutes. Beyond that, information technology has come into play in a big way. Never before has the business of council been more open and more easily accessible to the public than it is today.

An **ordinance** is a local law, comparable to a state or federal statute. It sets policy and regulates behavior, remaining in continuous effect until amended or repealed. An ordinance typically contains a *title* summarizing its purpose and content, an *ordaining clause* pronouncing what is being legally enacted, and an *effective date*. Some charters require that ordinances be adopted on two readings at two successive meetings. State law (Code of Virginia [§ 15.2-1427](#)) requires that for the final vote on any ordinance and resolution, the name of each member of council and how he or she voted must be recorded.

Local ordinances are typically codified by a firm specializing in that work to produce a document called either a *city or town code*, or the *charter and code of ordinances of the city or town of x*. Typically, local codes are no longer printed, but exist only in electronic form online, freely accessible to all.

A **resolution** is less formal than an ordinance and used primary for administrative and routine matters, such as setting meeting dates, honoring citizens, authorizing awards of bid, accepting grants, and making appointments. Some ordinances are required, however, and your local government attorney will have the best advice on this.

Some localities require the use of either an ordinance or a resolution for the council to take *any* action, except matters dealing with parliamentary procedure during a meeting. Other localities make much wider use of adopted **motions** to conduct and document council business. In such cases it is important that action on motions be precisely captured in the council's minutes with the vote of each member recorded.

Whether for ordinances or resolutions, a proposed or draft version of the documents should be available to the council in writing *before* being voted upon. Typically, ordinances in the form of **proposed ordinances** are prepared by staff or the attorney and distributed as part of the agenda packet prior to the meeting. The same is true for draft resolutions, and even draft motions, that contain any degree of detail.

Once adopted by the council, the **minutes** of every open meeting (generally prepared by the clerk) are the official record of the council's proceedings. As public records, FOIA requires that minutes be made available for reproduction to any member of the public.

Most localities now make all agendas, reports to council, ordinances and resolutions, PowerPoint presentations, minutes – all of it – available on the jurisdiction's website. Additionally, many localities record video of their meetings and broadcast them on cable television and/or stream them online.

Software systems by firms such *Granicus* and *Board Docs* allow all meeting documents to be linked and indexed to the video stream of the meeting. Anyone at any time can view any portion of a past meeting and see every document that the council saw at that point in time. These systems even allow council members to receive public comments on each agenda item before (and even during) meetings, visible on every member's iPad or other tablet, along with the all the other agenda materials provided by staff.



About the Author: Jackson C. Tuttle, II was the City Manager in Williamsburg from 1991 until his retirement in 2015. Prior to that, he was the City Manager in Gulf Breeze, FL. The author is deeply indebted to Ms. Mary Jo Fields, Mr. William M. Hackworth and Dr. Jack D. Edwards for their work in chapters 3, 7 and 8, respectively, in the July 2004 Fifth Edition of the *Handbook*.

CHAPTER 6

Working as a Team: Managing Conflict and Cycles of Council Leadership

By Jack Tuttle

Chapter 5 made the case that teamwork is essential for the governing body to be effective. This chapter expands on that theme by looking at **managing conflict** and **team building**. We will also look at the **cycles of council leadership**, which is a model for understanding all of council's work as a set of perpetual and interrelated cycles which go on for as long as the local government lasts.

Working as a Team

It can't be overemphasized how important it is for a local government council to function as a team. While it is a legislative body, a local council is fundamentally different from a state legislature in terms of both scale – normally just five to seven people – and interpersonal relationships. Council members and their families live in relative proximity to one another; they share the common history and aspirations of a community. With this in mind, let's look at how members of council can approach conflict, team building and unified leadership.

The Normalcy and Necessity of Conflict

Council members routinely have conflicts with one another. They differ in political philosophy and positions on the issues of the day; they differ on the relative importance of community needs and the priority of programs to address those needs; they differ in assessing performance of staff and on the effectiveness of services; they differ on how much to tax and how much to spend. Moreover, personalities can clash. While this is true in any group situation, councils are especially prone to these types of conflicts given the assertive personality traits it takes to run for public office.

On the other hand, most elected officials are pros at maintaining positive interpersonal relationships. They are attuned to the feelings of others and they are good at influencing others to see things their way. So, it is likely that the governing body contains both the predisposition for conflict, and the internal capacity to manage and resolve it.

Clearly then, conflict is normal; and it is also necessary, even essential, to the effectiveness of representative democracy. Various and opposing points of view need to be articulated and considered; alternative ideas and approaches to problem solving need to be challenged and debated.

A lack of healthy conflict may signal a council which keeps up appearances of harmony, but never gives the community genuinely cohesive leadership. Conversely, unhealthy conflict comes in many forms. Some councils have a loner onboard who never joins the team, who remains isolated by choice. Other councils deal with open fighting born of personal animosity between two members. Some councils are characterized by extreme factionalism where a majority freezes the minority out of the conversation. For these reasons and more, the health of the council team cannot be left to grow like wildflowers; it must be tended like a garden. Moreover, given the unending cycle of elections, building – and rebuilding – the team never stops.

Toward a Healthy Council Team

Building a great council team takes deliberate action. This action may take the form of periodic formal, facilitated retreats aimed at improving the process of governing. It may take the form of informal process with the mayor and more senior members modeling good team behavior to reinforce the council's culture. Usually, it requires both formal and informal activity.

Additionally, it must be decided who, if anyone, besides the members of the council should be part of the team. In most places, and most of the time, the team should include the manager and the attorney. It may also include other senior employees who are on the staff leadership team for the locality, but it is important that the council's team not be too large nor be outnumbered by non-elected staff.

Team building is particularly difficult for an elected body for several reasons. Most obviously, the voters, not the team itself, decide who gets to be on the team and for how long. Also, an elected official is free to not participate at all. Moreover, the kind of frank discussion required to be truthful and vulnerable is clearly inhibited in a public meeting.

Nevertheless, the governing body which wants to grow as a team will take the time and find a way to work on it. Their first goal should be to build mutual understanding and trust within the team. A good place to begin is by sharing personal histories. Surprisingly, many council members simply do not know much about each other as people, even though they may have been acquainted for years. They might begin by asking one another questions such as:

- What is your 'story,' those details that help explain who you are as a person?
- What motivates you to serve on the council?
- What are your highest aspirations for the community?

As a group, they will also ask themselves *process* questions, such as:

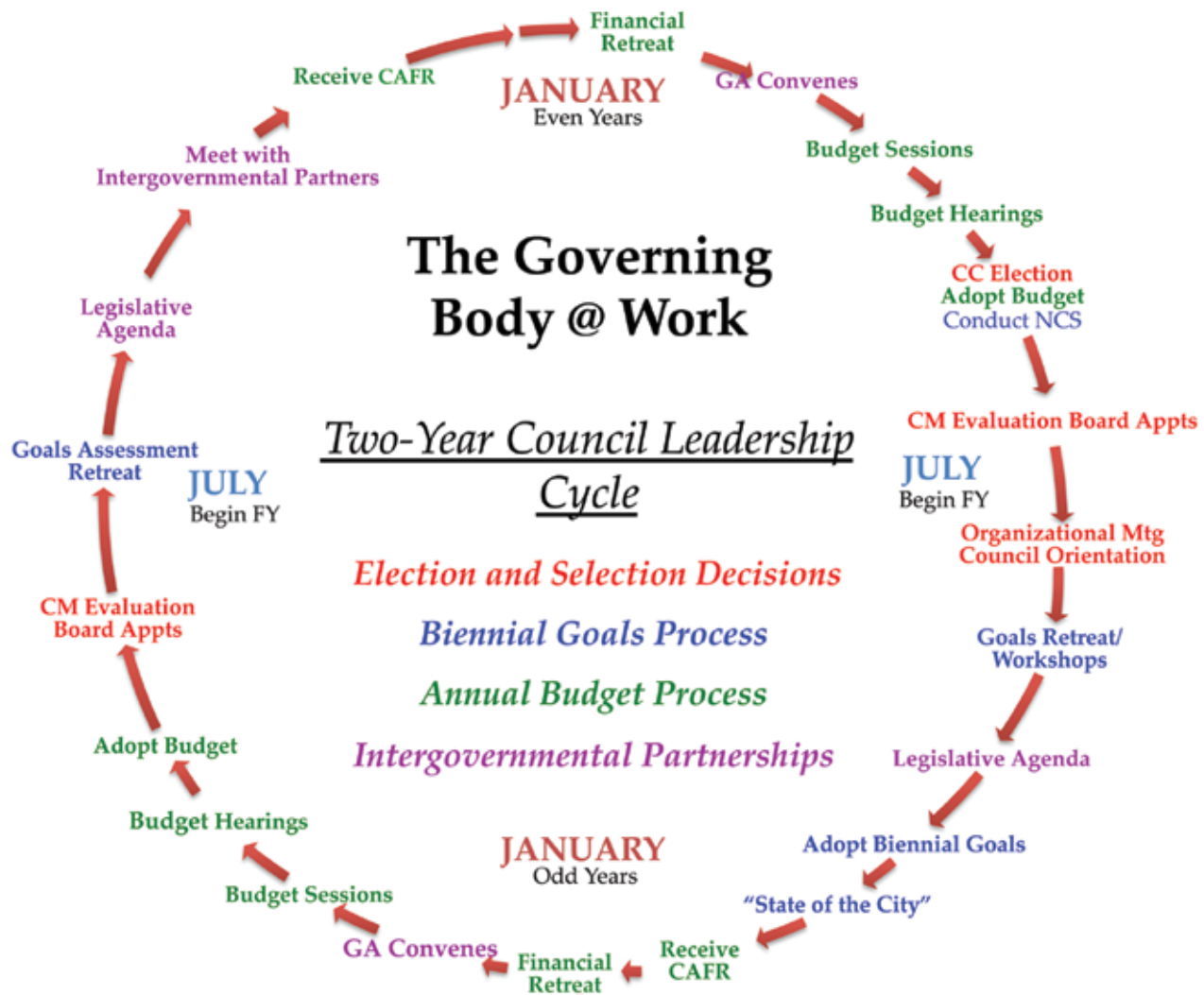
- How well do we conduct our meetings?
- What inhibits us from being a more effective team?
- Are we committed to our processes for setting priorities and making public policy?
- Have are we committed to follow through once our goals are adopted?
- How well are we assessing results and outcomes?

Patrick Lencioni's book, *The Five Dysfunctions of a Team* offers an insightful description of what blocks and what builds team effectiveness. In the context of a city council, here are Lencioni's five tests of a truly cohesive team:

- They trust each other.
- They engage in conflict around ideas, not personalities.
- They commit to decisions made by the group
- They hold one another accountable for delivering on those plans.
- They focus on achieving results collectively.

The success of a council team is ultimately found and proved on the ground. Somehow, this thrown together group has to quickly produce a shared vision of the future, to make ever more precise plans for fulfilling that vision, to organize the ways and means to execute its plans, and to change life in their community measurably for the better.

The Cycles of Council Leadership



The **Cycles of Council Leadership** is a never-ending and reoccurring process of making good public policy and driving outstanding governmental performance: setting strategic goals, appropriating resources, aligning partners, and assessing results.

The focus of the governing body's work is meeting-by-meeting, but those meetings fit into a larger policy-making framework.

The model presented here incorporates the major cyclical leadership activities of a hypothetical council. This model is based on a two-year policy making cycle with May elections in even numbered years with four-year staggered terms. Of course, the model could be easily reconfigured for November elections, and/or for a four-year all-seats election cycle. Regardless, new elections, and the reorganization of the governing body which follows, make a good starting point.

A Walk through the Model

Election and Selection. Once elected, the council meets to get organized, select its leadership and adopt its rules – all actions concerning “election and selection.”

New council member orientation with manager and staff – including training provided by VML – takes place close to the same time as the organizational meeting. This is also the time to appointment council members and staff to serve on various committees and regional bodies for the next two years.

Additional parts of recurring election/selection activity are appointing citizens to fill vacancies on various city boards and commission and the city/town manager’s annual evaluation.

Biennial Goals Process. The council provides for ongoing and reoccurring strategic planning as part of its “Biennial Goals Process.” This includes an annual council goals retreat, interactive public forums, citizen meetings on goal development, and the formal adoption of goals. The goal setting process wraps up with a “State of the City” event to report on the accomplishment of the last set of goals, and to declare the council’s priorities for the future. In the “off” year, council again holds a goals retreat, but this one is primarily to assess progress and make mid-course corrections. I suggest that immediately after each election, council should conduct a professional citizen survey to gauge the public’s opinion on the performance of their local government. This is shown in the model as “Conduct NCS,” that is, specifying use of the standardized National Citizen Survey.

Annual Budget Process. The adopted Biennial Goals set the priorities which drive budget decisions for the next two years – from receipt of the Comprehensive Annual Financial Report (CAFR) to budget adoption each year.

Intergovernmental Partnership. Finally, the model recognizes recurring annual joint meetings with partner jurisdictions or agencies, such as the adjoining county or the school board. It also recognizes recurring legislative activity — setting a legislative agenda (also driven by strategic biennial goals) and conferring with members of the General Assembly before and during their annual Session.

Additional cyclical activities could be layered on, but the point is that a working governing body needs a disciplined and well-conceived process in order to build a better, stronger community.

Conclusion

To close, and to summarize lessons gleaned from both Chapter 5 and Chapter 6, here is a personal council member checklist of *Ten Keys to an Effective Governing Body*:

1. Do I uphold effective governing *process* as essential to good policy outcomes?
2. Do I prepare well for every meeting, am I “Ready for Primetime”?
3. Do I respect the letter and spirit of FOIA and COIA?
4. Do I communicate with council colleagues and the manager to neither surprise nor confuse them during meetings?
5. Do I choose my public remarks carefully, speaking only when I have something important to say?
6. Do I act more as a colleague than competitor with other council members?
7. Do I show respect for staff (and everyone else), while expecting excellent staff work?
8. Do I take the long view, forgoing short term advantage to achieve long term success?
9. Do I value the success of my local government more than my own political future?
10. Do I adhere to high ethical standards as a trustworthy local official?



About the Author: Jackson C. Tuttle, II was the City Manager in Williamsburg from 1991 until his retirement in 2015. Prior to that, he was the City Manager in Gulf Breeze, FL.

CHAPTER 7

Sovereign Immunity: Protection Against Some Lawsuits in Exercise of Authority

By Michelle Gowdy

What is Sovereign Immunity?

Sovereign immunity is a legal doctrine that offers government and its employees protection against some lawsuits. In particular, sovereign immunity offers some protection from tort liability, which is when someone unfairly causes another to suffer loss or harm.

The case of *Messina v. Burden*, 228 Va. 301, 321 S.E. 2d 657 (1984) summarizes the doctrine of sovereign immunity as “rule of social policy, which protects the state from burdensome interference with the performance of its governmental functions and preserves its control over state funds, property, and instrumentalities.” The case goes on to say that sovereign immunity protects the public purse, protects against vexatious lawsuits, encourages citizens to assume important governmental positions by alleviating employees’ fear of being sued, and promotes the orderly administration of government.

CAUTION: Sovereign immunity is not an easy topic to discern in the Commonwealth; it is ever evolving and there are numerous exceptions to the rules. There is nearly constant political pressure at the state and federal level to limit sovereign immunity. Always consult your attorney.

Statutory immunity applies to three areas:

1 – Recreational Facilities (Code of Virginia [§ 15.2-1809](#)), which provides that counties, cities and towns are immune from simple negligence in the operation of beaches, pools, parks, playgrounds, skateboard facilities, and recreational facilities. Towns and cities are liable for gross or wanton negligence in the operation of these facilities.

2 – Water Control Facilities (Code of Virginia [§ 15.2-970](#)), which provides that counties, cities and towns are immune from suits arising out of the design, maintenance, performance, operation or existence of dams, levees, seawalls, or other structures, the purpose of which is to prevent the tidal erosion, flooding or inundation of the locality.

3 – Landowners Allowing Recreational Use of Land (Code of Virginia [§ 29.1-509](#)), which provides immunity for landowners or “any other person in control of land” from liability for negligence regarding land used for recreational purposes. For example, statutory immunity would apply to maintenance of privately owned property providing beach access.

There are different layers of protection under sovereign immunity depending on the function in question. A hierarchy of the degrees of immunity for specific functions covered by sovereign immunity, as well as functions that are not covered, are outlined in Appendix 1 and Appendix 2 at the end of this chapter

Sovereign immunity also differs depending on what type of governmental entity is being considered: State, County or Locality (i.e. cities and towns).

State

The Commonwealth of Virginia has absolute immunity and is simply immune from most tort suits. However, the state can waive this immunity if it so desires.

Counties

Counties are “political subdivisions” of the Commonwealth and therefore most county attorneys argue that these jurisdictions are entitled to the same level of immunity as the Commonwealth. As such, counties have a higher degree

of immunity than cities and towns. “Counties are not liable for tortious injuries caused by negligence of their officers, servants and employees.” *Mann v. Arlington Cnty. Bd.*, 199 Va. 169, 173-174, 98 S.E.2d 515, 518 (1957). It is worth noting that the courts have said that county boards act in two capacities: legislative and administrative. In the administrative capacity, there is only qualified immunity.

Also important to note, Code of Virginia § 15.2-1243 *et. seq.* only applies to counties. This section of the Code outlines the requirements for a demand to be presented to the Board of Supervisors prior to filing an action as well as the appeal process.

Towns and Cities: Governmental functions vs. Proprietary functions

Cities and towns have two functions, one governmental and the other proprietary (this distinction is not applicable to counties). While cities and towns have some degree of sovereign immunity for actions related to *governmental* activities, they do not have immunity for actions related to *proprietary* functions. “A locality is immune from liability for failure to exercise or for negligence in the exercise of its governmental functions.” *City of Chesapeake v. Cunningham*, 268 Va. 624, 604 S.E. 2d 420 (2004). (emphasis added).

Unfortunately, there is no bright line that demarcates which functions of a city or town are governmental and which are proprietary; determining which is which requires looking at the characteristics of the function. Further, always keep in mind that gross negligence – the conscious and voluntary disregard of reasonable care – removes negates sovereign immunity options.

Governmental functions: *City of Chesapeake v. Cunningham* (268 Va. 624, 604 S.E. 2d 420 (2004)) held that governmental functions are “powers and duties performed exclusively for the public welfare.” Courts have held that localities are immune from tort liability based on allegations of negligence in the planning and designing of roads or streets, hospitals (some functions), ambulance, garbage, emergency street-cleaning, and mental health services.

Proprietary functions: Examples of proprietary functions include routine maintenance of existing streets and routine maintenance of sewer drains. Per the *Chesapeake* opinion: “If the function is a ministerial act and involves no discretion, it is proprietary.”

Oddly, snow removal offers a great example of the differences between a governmental function and a proprietary function since it can fall into either depending on the conditions under which the service is performed. Emergency snow removal has been found to be a governmental function because the government was “responding to emergency weather conditions in opening streets to vital public services.” *Bialk v. City of Hampton*, 242 Va. 54, 405 S.E. 2d 619 (1991). However, other cases suggest that there is a time when the emergency no longer exists, and it becomes a proprietary function. See *Woods v. Town of Marion*, 245 Va. 44, 425 S.E. 2d 487 (1993).

Please be aware that this is an ever-changing body of law, so your attorney is in the best position to give you sound advice on distinguishing between a governmental function and a proprietary one.

Exceptions to Sovereign Immunity

The exceptions to sovereign immunity are fairly straightforward. The first is contractual claims. If you enter into a contract and breach it, it logically follows that you are liable. Similarly, if the act is intentional or grossly negligent

Streets and Sidewalks Explained.

Cases involving streets and sidewalks are usually reviewed by looking at these types of questions: What type of defect was the issue? Was it minimal, open and obvious? Did the locality have notice of the defect? Minimal defects as well as open and obvious defects typically do not rise to the level of negligence; however, there are instances where contributory negligence is assessed. Consider the following:

“A locality has a positive and nondelegable duty to keep and maintain its streets and sidewalks in repair and in safe condition for public travel.”

- from *Votsis v. Ward's Coffee Shop*, 217 Va. 652, 231 S.E. 2d 236, 237 (1977).

“A plaintiff must show more than that a defect on public property has come into being and caused plaintiff's injury.”

- from *City of Va. Beach v. Roman*, 201 Va. 879, 883, 114 S.E. 2d 749, 752-753 (1960)

(conscious and voluntary disregard of reasonable care) then there is no legal protection.

A public nuisance is also an exception to sovereign immunity, but a little more challenging to discern than breach of contract or gross negligence. According to one *Taylor v. City of Charlottesville*, 240 Va. 367, 372, 397 S.E.2d 832 (1990), a public nuisance is a “condition that is a danger to the public.” In this case, the “public nuisance” was a road built by the city that ended at a cliff over a stream. The road lacked guardrails or warnings. The city received complaints about the road’s danger, but no action was taken. Then, on a dark night, a car plunged into the stream.

The courts have further found that the public nuisance must be either unauthorized by law or created or maintained negligently. *Chapman v. City of Virginia Beach*, 252 Va. 186, 475 S.E.2d 798 (1996).

Immunity for Officers and Employees

Numerous doctrines and statutes discuss immunity for officers and employees. It is recommended that once you receive notice of a lawsuit, discuss the matter with your attorney to determine whether you, as an individual, need separate representation.

Also, Code of Virginia [§ 15.2-1405](#) “Immunity of members of local governmental entities; exception” should be consulted in the event of a lawsuit.

Typically, persons who are in the highest levels of government – governors, mayors, judges, legislative bodies, etc. – have been accorded absolute immunity. There is at least one such case in which even a planning commissioner was accorded legislative immunity.

Case law has solidified the fact that county, city, and town employees, as well as school board employees, may be immune in some functions of their work. The Virginia Supreme Court has established a four-part test for providing an employee sovereign immunity. *James v. Jane*, 221 Va. 43, 53, 282 S.E.2d 864 (1980).

1. **What is the nature of the function the employee performs?** The function must be a vitally important public function.
2. **What is the extent of the governmental entity’s interest and involvement in the function?** The employing governmental entity must have official interest and direct involvement in the function.
3. **What is the degree of control and direction exercised over the employee?** The governmental entity must exercise control and direction over the employee.
4. **Did the alleged wrongful act involve the exercise of judgment and discretion?** The act cannot have been only ministerial.

The cases vary greatly with the application of this test (especially with regards to #4 above). Ask your lawyer to review the cases that are relevant to the specific facts in your case. There are numerous examples of official immunity being extended to officials such as police officers, jail and animal control employees, snowplow operators and garbage truck drivers, but the best advice is to rely upon your local legal counsel.

State law affords statutory immunity to a number of officials, including members of the community policy and management team (CPMT) and family assessment and planning teams (FAPT), volunteer firefighters and emergency medical technicians, and persons rendering immediate assistance at an accident, fire, etc. (the Good Samaritan statute). Again, your local counsel is the best authority on the issue of which positions are covered by statutory immunity.

How to know when your locality is sued: Notice of a claim

Code of Virginia [§15.2-209](#) is the vehicle for the locality to be told that it may be sued. The title of the code section says it all: “Notice to be given to counties, cities, and towns of tort claims for damages.” Various aspects of the notice warrant consultation with your attorney, including the timeliness of the notice, to whom the notice was provided and the specificity of the notice.

Should you or your locality be sued, there are several things to consider. First, notify your insurance company and determine whether it will provide a defense for the case. Second, you need to preserve all the evidence in your possession, including council or board packets, text messages, emails, etc. Also remember that you should not talk with the person who is filing suit unless your attorney instructs you to do so.

Finally, remember that sovereign immunity is just one of the tools that a lawyer can use when handling lawsuits against a locality. Do not be afraid to discuss settlement options with your attorney and make the best decision as a steward of the taxpayer's money.

Risk Management

No locality wants to be sued or cause undue harm to its employees. As such, risk management tools should be implemented to help protect your employees and the public. Risk, in the sense we are discussing here, is commonly defined as “the exposure to the chance of injury or loss; a hazard or dangerous chance.”

Governing bodies are responsible for addressing risk management including periodic reviews of the training and materials being used by the locality. The manager or chief administrative officer should have the daily responsibility of managing risk in your locality.

Risk Mis-Management: A cringe-worthy true story

Following a hurricane that caused a substantial amount of damage, a small locality gave chainsaws to any employee who wanted to help clear the roads so that emergency services could get through. However, most of the employees were not trained how to use chainsaws. Moreover, the locality did not provide protective gear like chaps, safety glasses, or reflective vests. Luckily, no one was hurt, but the employees were understandably concerned for their safety. Shortly thereafter, the locality began work on its first comprehensive safety manual – which unsurprisingly included the proper use of chainsaws! The locality also obtained the appropriate protective gear.

The types of things that require risk management include safety, security, housekeeping, inspections, health and wellness, and incident reporting. Risk management practices must take into account a large number of potential negative outcomes, everything from slip and fall injuries because a floor is wet and not marked, to car accidents caused by unqualified personnel; from staff with diabetes or heart conditions tasked with inappropriate schedules or work environments to injuries caused by a lack of protective gear. These are examples of the many actions that can open a locality up to a costly lawsuit. Sound risk management can help mitigate these costs.

Virginia Risk Sharing Association (VRSA) is extremely helpful in working on risk management issues and can provide safety manuals and corresponding training. VRSA encourages every locality to have risk management tools in place (www.vrsa.us). Public Risk Management Association also provides risk management resources and training (www.primacentral.org).

Insurance

Let's briefly go over the types of insurance that a locality may have to demonstrate how important it is to maintain a safe work environment.

Public Officials' Liability. This insurance protects elected and appointed officials, local government and employees from lawsuits arising from alleged wrongful acts. The types of claims covered range from zoning denials to employee issues. Typically, the coverage includes the costs of defending against the claim. Keep in mind, however, that as an elected official there may be times when you will want a personal attorney/adviser as well.

General Liability Coverage. This type of insurance deals with claims of negligence that result in injury, both property and personal, to non-employees. This could include a slip and fall, false arrest, libel, etc. Typically, the cost of defense is included in the coverage.

Automobile Liability and Physical Damage. These types of coverage are more-or-less self-evident from the title, but it is important to note that for automobile liability coverage the vehicle must be driven with permission. Also, it is good to know that the minimum limits will most likely not be adequate, so you should review these with your carrier(s). In my experience, public safety vehicles often need to use this coverage (I won't tell you how many claims I have seen for vehicle doors because a public safety person was backing up with the door open or hit the ballasts on the side of a garage door!)

Two other things to mention: First, be sure to have clarity as to who can ride in vehicles owned by the locality in both your policy and your rules. For instance, can your child ride in the car? Can your spouse? Are there time constraints on driving the vehicle? Can you stop at the grocery store? Second, work with your carrier to develop guidelines for what an employee should do if they are in an accident. Who from the locality does the employee call, does there need to be drug and/or alcohol testing, etc.

Workers' Compensation & Employers' Liability. Workers' Compensation and Employers' liability coverage is mandatory for local governments with three or more employees. The goal of this insurance is to protect local government from its own employment-related incidents. Workers' Compensation applies to work-related injuries or diseases and Employers' Liability applies to other employment related incidents that are not covered by workers' compensation.

Work with your carrier to create a policy for reporting incidents as well as to understand what the insurance carrier's rules are on reporting incidents.

In addition, you should review the Line of Duty Act which affects public safety employees.

Flood. If the locality owns property in a flood zone, then you will have to work with FEMA (Federal Emergency Management Agency) to obtain insurance through NFIP (National Flood Insurance Plan). There are specific guidelines and rules that FEMA will provide.

You will be provided annually with decisions regarding insurance coverages, limits and providers. Often, you can receive discounts on your insurance premiums by demonstrating sound risk management efforts.

Fidelity/Crime. No one likes to think that an employee would steal, but unfortunately it is better to be safe than sorry. Fidelity/Crime insurance typically covers loss of money or negotiable securities by both employees and non-employees.

There are several other types of insurance policies that are available, so what you choose to use is dependent on your needs and tolerance for risk. Tailoring the policies to your locality's needs is important to avoid spending money unnecessarily.

Assessing Risk

Unfortunately, in our litigious world, risk management must be taken very seriously; one big claim can bring financial ruin to a locality! It is imperative to continuously review your locality's training and rules compliance to keep everyone healthy and safe!

Among the first steps in assessing your locality's risk is to conduct an audit to assess facilities, review programs and policies, and ascertain what types of risk management training are currently being offered. This will allow your locality to start at a baseline. Next, consult with your insurance carrier(s) to determine how to best manage your risk. Do you need protective equipment? Training? Infrastructure improvements (i.e. level floors)? After that, develop a schedule to implement your risk managements strategy so that your locality can demonstrate a commitment to addressing any identified deficiencies.

Most insurance carriers also will assist with the training and manuals that are needed. Types of training to consider include:

Safety Coordinator	Workplace violence
Playground Safety	Driving
Hearing conservation	Back Injury Prevention
Slip and Fall	Hazardous Waste
Special Event Liability	Confined Space
Weight loss	Property Loss Prevention
Fall Protection	Sidewalk Safety
Blood borne pathogens	Power Tool use



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APPENDIX 1

Functions covered by sovereign immunity (in order of degree of immunity from most to least)

Governmental Function	Examples of Function
Police	Operation of the force
Jails	Operation of the jail
Firefighting	Includes interviews and some destruction of property for safety
Water Service for Fire Protection	Provision of a water supply
Emergency Response	Tree removal from a street responding to disaster
Snow and Ice Removal	See above
Animal Control	Capture and impound of stray animals
Health and Sanitation Regulation	Preservation of the public health and care of the sick
Hospitals	Public hospital is not liable for the torts of its servants and agents, <i>Maia's Adm'rs v. Eastern State Hospital</i> , 97 Va. 507, 34 S.E. 2d 617 (1899)
Health Facilities	Nursing home services, Independent living facility
Ambulance Service	Irrelevant that a nominal fee is charged
Day Care	By social services
Garbage Removal	Public health function
Landfill	Operation and maintenance thereof
Planning, Designing and Implementation of Local Water, Sewer and Stormwater Drainage Systems (not maintenance or operation)	Maintenance and operation are proprietary functions
Planning	For public facilities and improvements
Streets and Sidewalks	Planning and designing such
Traffic Signals and other Traffic Control Devices	Determination of need and placement of such
Public Transportation	Local bus, common welfare of residents
Building Code Enforcement and Inspections	Demolition of a building as a public nuisance
Public Buildings – Operation and Maintenance	Elevator accident
Libraries	Provide a public benefit
Purchase of Land	Condemnation for a public purpose
Legislative Acts	Includes planning commission

APPENDIX 2

Functions not covered by sovereign immunity

Water	Operation of water department (inadequate experience)
Sewer	Maintenance and operation of a sanitary sewer system
Electric or Gas Utility	Operation of such
Rental of Local Property	Landlord-tenant relationship
Airport	Operation of / maintenance of runways
Swimming Pool	Operation of (but see VA §15.2-1809)
Parking Garage	Operation of such

CHAPTER 8

Legal “Quirks”

By Walter C. Erwin

[Title 15.2](#) of the Code of Virginia dealing with Counties, Cities and Towns is full of little-known sections that if overlooked can cause problems for localities. Whenever I look at Title 15.2 I am reminded of the words in a line from the song “That’s What the World Is Today” by the Temptations – Title 15.2 is simply a “Ball of Confusion.” This chapter will focus on the Code of Virginia sections of Title 15.2 that deal with: (a) the various advertising requirements that are necessary to hold the public hearings to adopt a budget, approve a rezoning application, etc., and (b) the difference between ordinances, resolutions, motions, and proclamations. Being aware of the various advertising requirements is important. Failing to follow the required notice provisions makes an ordinance that is adopted by a local governing body void. Similarly, failing to give an action of a local governing body the proper label can result in a legal challenge.

Advertising Requirements

The following is a list of some of the more common advertising requirements. The sections of the Code of Virginia that are listed should be reviewed in their entirety for the complete notice requirements (e.g., to determine what information must be included in the notice, etc.); this chapter only provides a summary of the various notice requirements.

Annexations (voluntary) – [§ 15.2-3204](#) of the Code of Virginia provides that before instituting an annexation proceeding a city or town shall publish a copy of the annexation notice and ordinance “at least once a week for four successive weeks in some newspaper published in such city or town, and when there is no newspaper published therein, then in a newspaper having general circulation in the county whose territory is affected.”

Bonds Issuance – [§ 15.2-2606\(A\)](#) of the Code of Virginia provides that before authorizing the issuance of bonds, the governing body shall hold a public hearing and notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality and the public hearing shall not be held less than six, nor more than twenty-one days, after the date the second notice appears in the newspaper.

Boundary Line Adjustment (voluntary) – [§ 15.2-3204](#) of the Code of Virginia provides that before adopting an agreement to adjust local boundary lines, the governing body shall advertise its intention to approve such an agreement at least once a week for two successive weeks in a newspaper having general circulation in its locality, and such notice shall include a descriptive summary of the proposed agreement.

Budget Adoption – [§ 15.2-2506](#) of the Code of Virginia provides that before adopting a budget, the governing body shall hold a public hearing to receive public comments on the proposed budget and notice of the public hearing shall be published once in a newspaper having general circulation in the locality at least seven days prior to the date set for public hearing. Any locality not having a newspaper of general circulation may provide for notice by written or printed handbills, posted at designated public places.

Budget Amendment – [§ 15.2-2507](#) of the Code of Virginia provides that before amending an adopted budget by an amount that exceeds one percent of the total expenditures shown in the adopted budget, the governing body must hold a public hearing and notice of the public hearing must be published once in a newspaper having general circulation in the locality at least seven days prior to the public hearing.

Certain Fees and Levies – [§ 15.2-107](#) of the Code of Virginia provided that before imposing or increasing fees and levies for public utilities (such as water and sewer rates) or zoning and subdivision fees, the governing body must hold a

public hearing.

- (a) Notice for a public hearing to impose or increase public utility fees must be published once a week for two successive weeks in a newspaper of general circulation and the second publication shall not be sooner than one calendar week after the first publication ([§ 15.2-1427](#) of the Code of Virginia).
- (b) Notice for a public hearing to impose or increase zoning and subdivision fees must be published once a week for two successive weeks in a newspaper of general circulation and the public hearing must be held not less than five days or more than 21 days after the second advertisement appears in the newspaper ([§ 15.2-2204](#) of the Code of Virginia).

Charter Amendments – If a locality decides to hold a public hearing on a proposed charter amendment, [§ 15.2-202](#) of the Code of Virginia provides that notice of the public hearing must be published once in a newspaper having general circulation in the locality at least ten days prior to the public hearing.

Comprehensive Plan, Zoning Ordinances and Amendments — [§ 15.2-2204](#) of the Code of Virginia contains the notice requirements for land use matters. This is a lengthy and complex statute which requires various forms of notice and publication requirements and should be reviewed in its entirety. The basic notice requirements of § 15.2-2204 are as follows:

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend, nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term “two successive weeks” as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. In any instance in which a locality in Planning District 23 has submitted a timely notice request to such newspaper and the newspaper fails to publish the notice, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

Condemnation Proceedings – [§ 15.2-1903](#) of the Code of Virginia provides that before adopting an ordinance or resolution to initiate a condemnation proceeding, the governing body shall hold a public hearing, but the § does not set forth the advertising requirements for the public hearing. This is an area in which the governing body should consult with the local government attorney to determine what type of notice should be given for the public hearing.

I generally recommend that a locality publish the notice of the public hearing once in the newspaper at least seven days prior to the public hearing; this is the same advertising procedure that is used in a number of situations in which a locality is required to hold a public hearing (e.g., increasing taxes, selling property, adopting and amending a budget, etc.) and should be sufficient for a condemnation proceeding. But if a county decides to adopt a condemnation ordinance instead of a condemnation resolution, the county may have to advertise the proposed condemnation ordinance once a week for two successive weeks and the second publication of the notice should not be sooner than one calendar week after the first publication of the notice as provided in [§ 15.2-1427\(F\)](#) of the Code of Virginia. The publication requirements that a county must follow when adopting an ordinance are more fully discussed in the paragraph titled “Ordinance Adoption by Counties” below.

Delinquent Tax Lists – [§ 58.1-3924](#) of the Code of Virginia allows a locality to publish lists of delinquent taxes in a newspaper of general circulation in the county, city or town or to make such lists available on any Internet site maintained by or for such county, city or town.

Delinquent Tax Sales – [§ 58.1-3965](#) of the Code of Virginia provides that if a locality is going to sell real estate at a delinquent tax sale, a list of the real estate which will be offered for sale must be published in a newspaper of general circulation in the locality, at least 30 days prior to the date on which the judicial proceedings to sell the tax delinquent properties are to be commenced.

Franchises or Leases of Public Property for a Term in Excess of Five Years — [§ 15.2-2101\(A\)](#) of the Code of Virginia provides that before a city or town (§ 15.2-2101 does not apply to counties) grants any franchise, privilege, lease, easement, or right of any kind to use any public property for a term in excess of five years, the city or town shall advertise a descriptive notice of the ordinance proposing to make the grant once a week for two successive weeks in a newspaper having general circulation in the city or town. [§ 15.2-2101\(B\)](#) provides that before granting a franchise or lease for a term in excess of five years, a city or town must “receive bids” for the proposed franchise or lease.

Ordinance Adoption by Counties – [§ 15.2-1427\(F\)](#) of the Code of Virginia provides that a county may not adopt an ordinance until notice of the intention to adopt the ordinance has been published once a week for two successive weeks in a newspaper having a general circulation in the county and the second publication of the notice shall not be sooner than one calendar week after the first publication of the notice.

Counties may adopt emergency ordinances without giving prior notice; but no emergency ordinance shall be enforced for more than sixty days unless the ordinance is readopted by giving the notice required by § 15.2-1427(F).

Note: § 15.2-1427(F) does not apply to cities and towns, but some cities and towns may have provisions in their charters requiring some type of prior notice before adopting ordinances.

Precinct, Polling Place or Election District Changes – [§ 24.2-306 \(A\)](#) of the Code of Virginia provides that before making any changes to a precinct, polling place, or election district, notice of the proposed changes must be advertised once a week for two successive weeks in a newspaper of general circulation in the locality. However, § 24.2-306 does not require a locality to hold a public hearing on the proposed changes.

Vacating or Altering Public Rights of Way – [§ 15.2-2006](#) of the Code of Virginia provides that before a locality may vacate or alter a public right of way, the locality must hold a public hearing and notice of the public hearing must be published twice in a newspaper having general circulation in the locality with at least six days elapsing between the first and second publication.

Sale or Lease (for less than five years) of Public Property – [§ 15.2-1800\(B\)](#) of the Code of Virginia provides before selling public property or leasing public property for a term of less than five years, the locality must hold a public hearing. Notice of the public hearing must be published once in a newspaper having general circulation in the locality at least seven days prior to the date of the public hearing as provided in [§ 15.2-1813](#) of the Code of Virginia.

Tax Increases – [§ 58.1-3007](#) of the Code of Virginia provides that before a locality may increase taxes, the locality must hold a public hearing and notice of the public hearing must be published in a newspaper having general circulation in the locality at least seven days before the public hearing

Tax Increases as a Result of Reassessments – [§ 58.1-3321](#) of the Code of Virginia provides that whenever the reassessment of real estate results in an increase of revenue from real estate taxes that exceeds 101 percent of the previous year’s revenues, the locality must advertise and hold a public hearing.

Notice of the public hearing shall be given at least 30 days before the date of such hearing by the publication of a notice in (i) at least one newspaper of general circulation in such county or city and (ii) a prominent public location at which notices are regularly posted in the building where the governing body of the county, city, or town regularly conducts its business. Any such notice shall be at least the size of one-eighth page of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18-point. The notice described in clause (i) shall not be placed in that portion, if any, of the newspaper reserved for legal notices and classified advertisements.

While the public hearing on the increased tax revenues and the public hearing on the adoption of the annual budget cannot be held at the same time, it is common for the public hearing on the tax assessment increase and the public hearing on the budget to be held on the same day, as long as the public hearings are not conducted concurrently (e.g.

hold the public hearing on the increased tax revenues from the reassessment at 7:00 p.m. and hold the public hearing on the proposed budget at 7:30 p.m.).

What Happens if the Ad for a Public Hearing Does Not Run? Unfortunately, sometimes newspapers make mistakes, and an ad does not run or not all the ad runs. What should a locality do in such situations? There are a number of cases from Virginia’s courts holding that the failure to follow the required notice provisions, especially in land use matters, can render any ordinance adopted by local governing body void. Therefore, as frustrating it may be, if there is any type of significant defect in the notice of a public hearing, the safest course of action for the locality is to postpone and re-advertise the public hearing. Except in any instance in which a locality in Planning District 23 has submitted a timely notice request to such newspaper and the newspaper fails to publish the notice, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

Otherwise, the locality may have to undergo the time and expense of becoming involved in a legal proceeding challenging the governing body’s actions because of the deficiencies in the notice. Once again, this is an area where the locality should consult with the local government attorney to determine the best course of action.

Calculating the Days for Advertising Requirements. Sometimes questions come up as to the proper method to use when calculating days for notice of publication requirements. [§ 1-210\(A.\)](#) of the Code of Virginia can help determine the proper dates when calculating the publication dates for ads:

“A. When an act of the General Assembly or rule of court requires that an act be performed a prescribed amount of time before a motion or proceeding, the day of such motion or proceeding shall not be counted against the time allowed, but the day on which such act is performed may be counted as part of the time. When an act of the General Assembly or rule of court requires that an act be performed within a prescribed amount of time after any event or judgment, the day on which the event or judgment occurred shall not be counted against the time allowed.”

There is also a 1983-1984 Opinion of the Attorney General at page 479, which applies § 1-210(A.) in calculating the days a rezoning notice had to be published. [§ 15.2-2204](#) of the Code of Virginia provides that the advertisement of a public hearing for a rezoning must be published once a week for two successive weeks in the newspaper with not less than six days elapsing between the first and second publication. The Attorney General advised that if an advertisement for zoning amendment appears in the newspaper on Wednesday, that Wednesday may be counted as the first of the required six days before the public hearing is held and the following Monday would be counted as the sixth day.

What if it is not Possible to Hold the Advertised Public Hearing? Sometimes it may not be possible to hold an advertised public hearing because of weather or other hazardous conditions. In such a situation, is the locality required to re-advertise the public hearing? [§ 15.2-1416](#) of the Code of Virginia provides that at its annual meeting a governing body may fix the day or days to which a meeting shall be continued if a regularly scheduled meeting is cancelled because the weather or other conditions make it too hazardous to attend the meeting. If a governing body adopts such a procedure, any public hearings that were scheduled for the cancelled meeting are continued to the next meeting and no further advertisement is required.

Advertising and Holding Advisory Referendums – At times, members of local governing bodies will suggest that a locality should hold an advisory referendum on a particular issue to take the sense of the community. But the law is clear that a locality may only hold a referendum when specific statutory authority exists to hold the referendum. Referendums are not favored, because if they could, elected officials might be tempted to hold a referendum on every controversial issue they face. Virginia has always favored representative government over direct democracy, in which citizens do not make the decisions of government, they elect representatives who make such decisions.

[§ 24.2-684](#) of the Code of Virginia provides that “no referendum shall be placed on the ballot unless specifically authorized by statute or charter.” Virginia’s laws allow localities to hold referendums on such issues as: (i) whether the locality should adopt a leash law for dogs; (ii) whether a locality should allow alcohol to be sold by the drink; (iii) whether a county should issue bonds to raise funds to finance a public project; etc. But the Virginia Attorney General

has advised that there is no authority for localities to hold referendums on such issues as: (i) whether the locality should construct a new high school; (ii) whether the locality should adopt an ordinance regulating the transportation of loaded rifles and shotguns on the highways; (iii) whether the locality should terminate its membership in a planning conservation district; etc.

One area in which localities are permitted to hold referendums is to seek citizen input on a proposed charter amendment. Before a locality can request that the General Assembly amend its charter, the locality must receive citizen input on the proposed charter amendment. A locality can seek public input by holding a referendum ([§ 15.2-201](#) of the Code of Virginia) or by holding a public hearing ([§ 15.2-202](#) of the Code of Virginia).

Note: While localities face limitations when it comes to holding referendums, there are no such restrictions on holding public hearings. Public hearings are required before a locality can take certain actions like adopt a budget, amend the zoning ordinance, issue bonds, etc., but whenever a governing body would like to hold a public hearing to get citizen input on a particular matter the governing body is free to do so. Unfortunately, the Code of Virginia does not specify what type of notice should be given when a governing body decides to hold an optional public hearing. As discussed in the paragraph titled “Condemnation Proceedings” above, I generally recommend that a locality publish the notice of the public hearing once in the newspaper at least seven days prior to the public hearing; this is the advertising procedure that is used in a number of situations in which a locality is required to hold public hearing (e.g. increasing taxes, selling property, adopting and amending a budget, etc.) and should be sufficient for an optional public hearing.

Ordinances, Resolutions, Motions & Proclamations

[§ 15.2-1425](#) of the Code of Virginia provides that in the performance of its duties a governing body may adopt “ordinances, resolutions and motions.” Since the state code uses three different terms, logically there should be some type of distinction between the three terms. Unfortunately, the Code of Virginia does not define those terms. Because the statutes adopted by the General Assembly are not always clear, the courts have developed rules of “statutory construction” to be used in interpreting unclear statutes. One of the main rules of statutory construction is that if a statute does not define the words and terms that are used in a statute by giving them technical or special meanings, such words and terms are to be given their normal everyday meaning.

Using dictionary definitions: (a) an ordinance is a piece of legislation enacted by a governing body, a local law or regulation; (b) a resolution is a less formal expression of an opinion, intention, or decision by a governing body; and, (c) a motion is the procedure the governing body uses to get an item before the body so the governing body can vote on the item; but once an item has been adopted, the motion becomes an official action of the governing body. The Code of Virginia does not specifically mention proclamations, but it is common practice for the mayor of a city or town, or the chair of a board of supervisors, to routinely issue proclamations. The normal, everyday meaning of a proclamation is a formal public announcement or statement that is ceremonial in nature and is an official statement of praise and celebration. For example, the mayor may issue a proclamation: honoring the state champion football team, recognizing Nurse Practitioner Week, celebrating the Kiwanis Club 100th Anniversary, etc. Unlike an ordinance, resolution or motion, a proclamation has no legal effect.

Sometimes, statutes give a governing body some leeway in adopting an ordinance or resolution. For example, [§ 15.2-2607](#) of the Code of Virginia provides that a governing body may authorize the issuance of bonds by “ordinance or resolution.” Other times a statute will specify what type of action is to be taken by the governing body. For example, [§ 58.1-3270](#) of the Code of Virginia provides that the governing body of a county or city may adopt a “resolution” providing for the annual assessment of real estate. When a statute prescribes what type of action is to be taken by the governing body, it is a good idea to put the designated label on the governing body’s action. Otherwise, the locality may have to undergo the time and expense of becoming involved in a legal proceeding challenging the governing body’s action on the grounds that the governing body did not follow the adoption procedures required by the statute. But, the failure to use the proper label may not be fatal, the courts seem to be inclined to give the governing body some leeway when adopting ordinances, resolutions, and motions as long as a majority of the governing body voted in favor of the action.

In *Perkins v. Albemarle County*, 214 Va. 240 (1973) the Albemarle County Board of Supervisors made a “motion” to “take the necessary action to implement an annual real estate assessment” and the motion was adopted by the Board. Some citizens challenged the Board’s action on the grounds that the state code said that “the governing body of any county or city may, by resolution duly adopted” provide for an annual assessment of real estate taxes and the Board didn’t adopt a resolution, it only adopted a motion. But the Virginia Supreme Court held that “we will not linger long over a distinction without a difference. The distinction between a “motion” and a “resolution” is simply stylistic; there is no substantive difference. We look to substance. The substance of the motion authorized whatever action might be necessary to carry into effect an annual assessment system, a parturient process which obviously could not be accomplished *instantly*. Its adoption was a legislative act by a local governing body, and no matter how labeled by the layman who prepared the minutes recording it, fully satisfied the requirement of the State Code.”

In light of the *Perkins* decision, I think there is a good chance a court would give deference to any action that was voted on and adopted by a majority of the governing body whether it was labeled an ordinance, a resolution, or simply an adopted motion. But the safest course of action is for the governing body to put the proper labels on its actions in order to minimize the risk of becoming involved in expensive and time-consuming litigation.

Conclusion

I hope that this chapter proves to be a useful source of information to local officials, as well as anyone else who wants to learn more about some of the quirks and complexities that public officials face in performing their duties. Localities face a bewildering variety of advertising requirements that must be met when adopting budgets, making land use decisions, adopting ordinances, etc. It is important that public officials be familiar with those advertising requirements. The failure to strictly following the advertising requirements can result in an action of the governing body being overturned.

It is also important for public officials to be aware of the distinctions between ordinances, resolutions, motions, and proclamations. While placing the wrong label on an action of the governing body may not invalidate the action, it could result in the locality becoming involved in expensive and time-consuming litigation that could have been avoided by the use of proper terminology.

These are areas where the local government attorney can be a valuable resource to public officials. It is the role of the local government attorney to be familiar with these quirks and to help steer the locality in the right direction.



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CHAPTER 9

Budgeting

By **Betty S. Long, Stephanie Dean Davis, Victoria McNiff, and Alisande Tombarge**

Sound financial management and budgeting are essential for the effective delivery of government services. A government that shows it is thinking strategically, planning for the future, basing its spending decisions on citizen input, and managing its financial resources wisely can develop and retain the confidence of its citizens.

Depending on a locality's size, the individual responsible for preparing the budget varies. In the smallest of localities, it may be the mayor. In other localities it may be the city or town manager, and in still others it may be a budget or finance director and his or her staff.

Purpose of a Budget

The primary purposes of a governmental budget are to account for and control the use of public resources and to provide a legitimate process for the expenditure of public funds. But budgeting is more than just a device to authorize and control revenue raising and spending. It is the principal vehicle for setting fiscal and program policy. Budgets are also used to:

- Establish priorities for the local government
- Plan for the rational distribution of resources
- Establish performance objectives and desired outcomes and relate them to expenditures
- Evaluate the performance of departments and programs
- Explain to citizens the types and levels of services funded with their tax dollars
- Ensure that funds are expended in a way that meets the planned budget objectives

The economic and political changes of the last two decades have placed greater emphasis on the budget process. Resistance to higher taxes, coupled with increased demand for services, requires localities to develop budgets that are sound, understandable, and acceptable to their citizens.

The budget process is by its nature an exercise in conflict resolution and compromise. This is not bad. It reflects the fact that all players involved – elected officials, managers, department heads, budget analysts, and citizens – have a different perspective on the budget process. A natural tension exists between the desire to provide services to citizens and the need to be fiscally prudent. As such, negotiation and compromise will always be hallmarks of the budget process.

Most localities prepare two types of budgets each year:

1. **Operating Budget.** Applies to the recurring or one-time activities that are financed through current revenues. Operating budgets typically appropriate funds for one fiscal year and appropriations cease on the last day of the fiscal year.
2. **Capital Budget.** Addresses long-term physical improvements that involve longer life spans, long-range returns, and relatively high costs. Capital budgets typically appropriate funds through the life of the project.

These budgets are closely related, and each one contributes to the sound fiscal management of the community.

Budget Preparation

Budget preparation involves many technical and procedural considerations, but fortunately for the council these are the manager's responsibility. In towns where the mayor acts as the chief executive, however, the mayor is responsible for the timely submission of the budget.

A governing body's primary responsibility for budget development is to give general policy direction to the city or town manager or county administrator. The staff that prepares the budget can be likened to carpenters constructing a house. They have the technical expertise to assemble the necessary materials and produce a sound structure. They can even offer suggestions and guidance based on their experience. But the architect develops the blueprint for the house. In the case of local budgets, the governing body and the citizens assume the role of architect. It is essential that the blueprint reflect the community's priorities.

One way to ensure the budget is developed with the governing body's priorities is for the governing body to have a work session early in the budget cycle to give input on budget priorities. It is important that the manager and budget staff clearly understand the governing body's preferences regarding tax and fee policies, service and program priorities, salary adjustments for employees, and long-range goals for new initiatives. Discussing these issues at the outset will result in a smoother budget adoption process.

Other ways to ensure that the budget reflects a locality's priorities:

- Develop a mission statement for the locality and each operating agency that specifies goals and objectives, subject to the governing body's approval.
- Review the results of any citizen surveys, forums, or other types of citizen contact that have occurred throughout the year.
- Review specific policies adopted by the governing body throughout the year.
- Review recommendations of citizen boards and commissions.
- Review existing financial policies adopted by the governing body and review the results of the previous year's fiscal activities as provided in the Comprehensive Annual Financial Report.

The community's long-term solvency is a key factor for the governing body to consider as it maps out a course for the future. Sometimes the manager and the budget staff may have to interject a cautionary note to this effort. For example, the desire to fund major improvements or new programs should be tempered by a realistic assessment of future revenue growth. Similarly, one-time revenues or other windfalls should not be used to build an operating budget that cannot be sustained over time.

Maintaining an appropriate level of fund balance, dependent on the locality's financial condition, should be a priority of the government. The governing body and staff should consider consulting with a professional local financial advisor on the appropriate level of fund balance. Fund balance policies should be adopted to ensure cash flow stability over a fiscal year, maintain or increase the locality's credit rating and to support unpredictable revenue shortfalls. Use of fund balance to finance operations should be resisted unless the balance has grown beyond an appropriate level. In this circumstance, fund balance usage should be matched with non-recurring expenditures (capital projects, one-time expenses) and not be used to fund personnel or recurring expenditures.

There is no consensus on the appropriate level of fund balance but after the Great Recession in the 2000's, the Government Finance Officers Association recommends at least two months of operating expenses in reserve dedicated as unassigned fund balance (Roughly 15-17 percent of total operating expenses).

Operating Budget

Legal Requirements

The legal requirements governing budget preparation and adoption are set forth in the Code of Virginia ([Title 15.2 Counties, Cities, Towns](#)). The key provisions can be summarized as follows:

Uniform Fiscal Year. The fiscal year of every city, town, county, and school division begins July 1 and ends June 30, regardless of any charter provisions to the contrary.

Required Contents of the Budget. The Code, which specifies the minimum information to be included in the budget, requires only that the budget show, for each expenditure item:

- Amount appropriated and expended during the preceding fiscal year
- Current fiscal year's appropriations and expected expenditures
- Proposed expenditures for the coming fiscal year and any increases or decreases that are proposed

The budget must be accompanied by:

- A statement of the contemplated revenue and disbursements, liabilities, reserves, and surplus or deficit of the locality as of the date the budget was prepared
- An itemized and complete financial balance sheet for the preceding fiscal year

Many local governments exceed these minimum requirements by including narrative descriptions of programs, discussions of goals and objectives, and quantitative performance measures.

Reserve for Contingencies. Under state law, the budget may include a reasonable reserve for contingencies.

Dates for Budget Submission & Adoption. State law requires all officers and heads of departments, agencies, and commissions to submit to the governing body, on or before April 1 of each year, an estimate of the amount of money needed in the upcoming fiscal year. If the estimates are not submitted, the clerk of the governing body or other designated person must prepare the estimate. As a practical matter, this means the estimates must be submitted well in advance of April 1, so that a coordinated, comprehensive budget request can be submitted to the governing body. The governing body must approve the budget and fix a tax rate by July 1. However, because state law requires that the school budget be adopted either by May 15 or within 30 days of receiving the estimates of state aid for education, cities and towns that operate school divisions must adopt their budget in time to meet the earlier school deadline.

Public Hearing. At least one public hearing must be held before adopting the budget. Notification of the hearing and a synopsis of the budget must be published at least one week before the hearing. The hearing on the local and school budgets must be held at least one week before the budgets must be approved.

Tax Rates. Any proposal for a tax increase must be published in a newspaper at least seven days before adoption, and a public hearing must be held before adopting the tax increase. When the reassessment of real property results in the total real property tax levies increasing by more than 1 percent, a locality must reduce its real property tax rate to produce no more than 101 percent of the previous year's real property tax levies. However, a locality may set the real property tax rate at a level that exceeds 101 percent of the prior year's levies *if* it first publishes a notice of its intent in the newspaper seven days prior to a public hearing on the proposed tax rate. The public hearing may be held at the same time as the budget hearing.

Need for Appropriation. No funds can be expended until the governing body has made an annual, semi-annual, quarterly, or monthly appropriation for such contemplated expenditures. Furthermore, unless otherwise specified by law, the governing body is not required to appropriate funds raised by general taxes for any purpose other than to pay the principal and interest on bonds and other legal obligations arising under contracts executed or approved by the governing body.

Appropriations for Public Schools. The appropriation for public schools shall not be less than the cost apportioned to the governing body for maintaining an educational program meeting the Standards of Quality.

Budget Amendment. During the fiscal year, the budget may be amended to increase the total amount appropriated. However, if an amendment equals 1 percent of the total revenue shown in the currently adopted budget a notice of public hearing must be published seven days prior to the public hearing and public meeting date.

Charter Provisions. The governing body may elect to comply with the Code provisions governing local budgets rather than those contained in its city or town charter. There should not be substantial conflicts between these two documents.

Budget Process

In some respects, a budget is always a work in progress. The governing body's consideration of issues and programs throughout the year has implications for both current and future budgets. As a result, budgeting is essentially a year-round activity, punctuated with periods of intense activity. While the administration is developing plans for the coming fiscal year, it is closing the books on the previous fiscal year and monitoring the expenditures for the current fiscal year. A budget calendar is a key ingredient in managing this process.

The sample budget calendar in the “Resources” section of this chapter shows a suggested sequence of events for developing capital and operating budgets. No specific timetable has been designated because the size of a locality and the complexity of its operations greatly influence the time required to complete the cycle. Large localities in Virginia begin their budget process in the summer, while small localities may not begin until the following spring. In establishing its own time frames, a locality must keep in mind the legal requirements spelled out in the preceding section.

Forecast of Revenues & Expenditure. Because of increasing pressures on local budgets, the preliminary stages of budget development have received more attention than ever before over the last several years. Before the manager can issue budget instructions to department heads, a preliminary forecast of revenues and expenditures must be undertaken. The manager can estimate whether revenues are likely to exceed expenditure requirements by:

- Considering the governing body's policy guidance
- Identifying major new costs that will occur in the coming fiscal year
- Making assumptions about inflation and local economic conditions
- Estimating revenue growth for the next one or two years

Based on this information, the manager can develop and issue budget instructions that will facilitate the development of a balanced budget. Often the budget instructions will set target expenditure amounts for each department. The budget requests submitted by each department often include not only information about reductions in service that may be required to meet the budget target, but also requests for budget increases like additional staff or equipment. The challenge for the budget officer and the manager is to weigh these competing needs and decide which ones to include in the proposed budget that goes to the governing body for its consideration.

While the budget officer is evaluating the departmental budget requests, the finance officer will need to reevaluate previous revenue estimates in light of more recent experience. After reviewing this information, the manager may decide to make further additions or deletions to the budget.

Another factor that complicates the budget development process is uncertainty about state funding. The governor is required to submit his budget recommendations to the General Assembly no later than December 20. By early January estimates of the major sources of state funding are sent to localities, but these amounts must be treated cautiously, because the General Assembly makes numerous amendments to the budget during the legislative session. The Superintendent of Public Instruction, the State Compensation Board, and the Department of Taxation are required to send to localities, within 15 days of the regular legislative session's adjournment, information about the amount of state funds to be distributed to localities. Many other state agencies provide funding to localities, but they are not required to furnish information by a certain date. In any case, the final disposition of the state budget is not known until sometime in April, after the veto session has been held.

School Budget. Concurrent with the locality's budget process, the school superintendent will prepare a recommended budget for the school board's consideration. The school board will hold public hearings on the superintendent's budget, make any changes it deems desirable, and then forward the school budget to the governing body for its consideration and approval.

The local appropriations for education can be one of the most controversial issues decided during budget adoption. Maintaining good communication between the governing body and manager, and the school board and superintendent, will minimize the potential for unproductive, divisive arguments about a locality's commitment to

education. Some governing bodies have developed policies for determining the share of local revenue that will be allocated to schools to alleviate conflict that can arise over education funding.

Work Sessions. After the manager has submitted a proposed budget to the governing body but before any public hearing is held, the governing body should have one or more work sessions with the manager and staff. Work sessions can give the members of the governing body a better understanding of the key issues in the budget and the rationale behind the manager’s strategy. They also give the members of the governing body the opportunity to ask questions, identify significant concerns, and suggest other issues they would like to see explored before the budget is adopted.

Budget Presentation & Public Hearing. Typically, the manager or department heads will also make a formal presentation of the budget that is more comprehensive than the agenda for the work sessions. This overview of the budget gives the governing body and citizens a better idea of the breadth of local government operations and the issues associated with them. The budget presentation may take place either before the public hearing begins or at a separate meeting.

Before adopting the budget, the governing body must hold at least one public hearing to give citizens an opportunity to voice their support or objections to items recommended in the manager’s budget. In a year when tax increases are recommended or major service reductions are being proposed, public reaction to the budget is likely to be quite negative. Even in years when the status quo is basically being maintained, individual citizens or community groups advocate items that have not been included. And the pressure to reduce taxes is a fact of life that virtually every elected official confronts.

Amendments & Adoption. The final leg of the governing body’s journey is amending and adopting the budget. In modifying the budget before its adoption, the members of the governing body should consider information from the public hearings, contact with their constituents, and their own personal vision of what is best for the community. The members of the governing body should also keep two key points in mind:

1. The manager is responsible for estimating available revenues. Unless new revenue is identified in the course of budget deliberations, any amendment that increases the cost of the budget will have to be funded by a corresponding decrease elsewhere in the budget.
2. Adopting the budget ordinance requires an affirmative majority vote of all members of the governing body, not just those present and voting. Compromise and negotiation will be important elements in any final budget agreement.

Appropriations Ordinance. According to general law, the local budget is for “informative and fiscal planning purposes only.” Therefore, the adoption of the budget is usually accompanied by passage of an appropriations ordinance. The appropriations ordinance is the legal instrument that distributes funds on an annual, semi-annual, quarterly, or monthly basis. In some cases, the local charter may specify that the adoption of the budget constitutes the appropriations and tax levies.

Governing Body Review

Evaluating the budget can be a daunting task, given the complexity and breadth of local government operations. The member of the governing body are advised not to get bogged down in analyzing separate line items at the expense of keeping a “big picture” policy perspective (see call out box on the following page).

Questions to ask when reviewing the budget

- Do the budget recommendations reflect the priorities of the governing body and constituents?
- Does the budget strike an appropriate balance among the many different constituencies served by the locality?
- Is the budget consistent with the long-term goals of the community?
- If tax reductions are contemplated, what effect will the reduced revenues have on the locality's ability to provide services?
- Is the proposed budget dependent on any revenue initiatives--tax or fee increases or the imposition of new taxes or fees? If so, what is the effect on the budget if the governing body does not enact the revenue measures?
- Are the assumptions underlying the revenue and expenditure estimates sound? Have all expenditures and foreseeable contingencies been included?
- Does the budget contain a reserve for contingencies that cannot be anticipated?
- Does the budget contain adequate funding for new mandates or local initiatives that must be absorbed (e.g., opening a new library, complying with recycling mandates)?
- Does the budget include programs or services that are not essential and therefore could be eliminated to provide funds for more pressing needs?
- What major programs are funded by the locality, what are the performance objectives associated with these programs, and what are the resources required to support these programs?
- Is it possible to identify and understand the trends in the largest line-item expenditures in the budget?
- Can any significant swings in expenditures from year-to-year be explained?

Budget Execution

The manager and staff are primarily responsible for budget execution, although the governing body will oversee the locality's fiscal condition through periodic reports on actual revenues and expenditures. Monitoring revenues and maintaining control of expenditures have two important functions: (1) preventing a budget deficit and (2) accomplishing the policy and program goals contained in the budget.

One tool commonly used by the manager to control expenditures is establishing allotments. Allotments divide the annual appropriation into smaller amounts that can be spent within a specified period (i.e., monthly, quarterly, semi-annually) during the fiscal year. The use of allotments can control the rate of spending during the fiscal year, and it requires department heads to develop a work plan consistent with the availability of funds.

With or without allotments, monthly monitoring of revenues and expenditures is an essential part of the budget execution process. Although this data may be of limited value during the first few months of the fiscal year, due to lags in reporting and lack of adequate history, the information will become increasingly important as the year progresses. Any weaknesses in revenue collections or unanticipated expenditures will signal a possible need for corrective measures to maintain a balanced budget. The revenue and expenditure experience of the current fiscal year will also become an important consideration in planning for the next fiscal year.

Although monitoring and control of expenditures is one of the basic tools of financial management, recent years have seen a major shift in thinking about this aspect of budgeting. As governments encourage their employees to become more entrepreneurial, rigid adherence to old ways of maintaining control are not so effective. Some localities have stopped using allotments to control the budget, choosing instead to place more responsibility on department heads for monitoring and controlling their own expenditures. Others have eliminated line-item budgets altogether, giving complete discretion to the department head by requiring only that the total appropriation not be overspent, and that agreed-upon performance goals are met. Each locality must consider its own circumstances and determine whether the advantages of maintaining relatively tight controls outweigh the disadvantages of unduly tying the hands of department heads.

Another major change beginning to appear in local government is abandoning the “use it or lose it” approach to budgets. This approach dictates that most agencies lose whatever funds have not been spent by the end of the fiscal year – thus creating an incentive to spend all available funds, no matter what. In addition, the “use it or lose it” approach does not account for the overall financial condition of the local government. For example, overspending by the police department due to an emergency needs to be covered by expenditure savings in other departments, revenue surpluses (if there are any at year-end) or use of fund balance. Allowing for normal expenditure of funds throughout the year and then assessing the results of operations after the fiscal year ends results in better financial performance. Many localities will request “carryforward” items from departments at the end of the fiscal year. Those carryforward items will be considered after the results of financial operations are known and may be funded from a surplus that adds to the unassigned fund balance levels over and above financial policy targets.

Capital Budget

All communities, regardless of size, need to consider their needs for capital improvements. A primary responsibility of local officials is to preserve, maintain, and improve a community’s stock of local buildings, roads, bridges, schools, parks, water and sewer lines, and equipment. All of these require significant financial investments that must be weighed against competing demands for funds.

Often the practice is to wait until the need for a capital expenditure is essential, i.e., an emergency arises, or action is required to comply with a federal or state mandate. This approach does not contribute to prudent management of a community’s resources, and it also can result in significant tax increases to pay for the needed improvements. While small communities may think they lack the staff support and expertise to undertake a formal capital budget process, even a very simple evaluation of capital needs can produce important benefits for the community.

The capital budget presents the governing body with a different challenge from that of the operating budget. The challenge is to develop a multi-year plan that addresses adequately the physical or infrastructure needs of the community. In the case of more established localities, the major concern is maintaining aging buildings, roads, bridges, and water and sewer systems. Growing localities must focus more on ensuring that facilities are adequate for a rapidly increasing population.

A capital budget based on a sound capital improvements program (CIP) is vital to the long-term health of a community. In its most basic form, the CIP is a five-year schedule of capital improvements, in order of priority. The CIP lists each capital item approved by the governing body, the year in which it will be purchased or started, the amount to be spent in each year, and the proposed method of financing. The CIP includes future projects for which financing has not been secured or legally authorized. As a result, the “out-years” of the CIP are subject to change. The first year of the CIP is typically referred to as the capital budget. The capital budget is a legal document that appropriates money for projects included in the first year of the CIP and authorizes the necessary funding mechanisms to pay for them. It is often incorporated into a locality’s operating budget adoption process. In essence, the capital budget is the link between the CIP and the annual budget and appropriations process.

A formal capital planning process that encourages all interested constituencies and local departments to participate helps to minimize criticism and objections to major capital projects. The CIP is an important tool for shaping a community’s future; ideally, it should reflect citizens’ views on optimal levels of growth and their willingness to pay for it.

A sound capital program must realistically assess the jurisdiction’s ability to afford the projects it contains. This includes not only the cost to construct the facility, but also the cost of maintaining and operating it. The capital budget has significant implications for a locality’s operating budget. Cost estimates for all capital projects should include projected changes in work-force requirements, utility costs, and risk management considerations, to name just a few items.

Responsibility for Preparation

While the CIP process can be organized in various ways, it is essential that it be coordinated from a single point. The Code of Virginia [§ 15.2-2239](#), says the planning commission may, and at the request of the governing body shall, prepare and annually revise a capital improvements program based on the comprehensive plan of the locality, for a

period not to exceed the ensuing five years. The CIP is to be submitted to the governing body or manager; it shall address the commission's recommendations regarding capital projects for the next fiscal year, including the cost of the projects and how they will be financed to include life cycle costs. It also requires the commission to consult with the manager, department heads, and interested citizens in preparing the CIP, and to hold public hearings.

CIP preparation can be centralized in the finance office with staff coordination between the operating and capital budget or the planning office with staff coordination on capital projects and then sent to the finance office for coordination with the operating budget.

Where a planning commission does not exist, the best approach may be to form a CIP committee. The committee could include members of the governing body, the public works director and other key department heads, finance or budget officer, planning official, school official, civic and business leaders, and the general public.

The individual in charge of coordinating the CIP process should also ensure that the CIP considers the plans of nearby local or regional entities (e.g., adjoining localities or counties, special service districts, state agencies, federal facilities).

Planning for the CIP

Long-range planning should precede the development of a CIP. The types of long-range planning include the following.

Development of a Comprehensive Plan. The Code requires that every governing body in the Commonwealth adopt a comprehensive plan. The plan projects physical land use in the locality and recommends policies for its control. The implications of proposed capital improvements should be considered in light of the goals of the comprehensive plan.

Long-Range Work Programs. Each local department should develop a work program that attempts to identify the services it expects to provide over a 5- or 10-year period, and what capital projects would be required to be able to deliver those services.

Long-Term Fiscal Policy. The manager should develop, for the governing body's adoption, a fiscal policy that identifies obvious limits to the community's ability to finance capital improvements, and also alternative financing mechanisms that may be considered acceptable for financing capital projects.

Steps in the CIP Process

Important steps in the development of a CIP include:

- Establish a budget calendar that is coordinated with the calendar for the operating budget (see sample budget calendar in the “Resources” section of this chapter)
- Consider population and other demand factors that influence the needs for capital facilities. The Weldon Cooper Center for Public Service at the University of Virginia (www.coopercenter.org) is one source for demographic information
- Inventory existing facilities
- Review projects by the engineering, finance, and planning staffs, culminating in review by the manager
- Evaluate the planning commission or other designated entity, including a public hearing
- Prepare a draft CIP plan, including a plan for financing the projects, and transmission of the draft to the manager
- Final review by the manager
- Have the governing body review the CIP
- Approve a capital budget that reflects the first year of the CIP

Contents of a CIP

The CIP generally includes a message from the planning commission explaining how it arrived at its priorities. It should also include:

- A summary schedule of expenditures and financing by year
- The text of the ordinance or resolution by which the governing body accepts the CIP as an official plan and the basis for the capital budget
- A fiscal analysis explaining the projections of revenues and expenditures assumed in the program, including any presumed long-term debt
- Basic information on the individual projects

Governing Body Consideration of the CIP & Capital Budget

The governing body should consider the CIP as thoroughly as it does the operating budget. The governing body should hold a work session to become fully acquainted with the CIP, and to have an opportunity to hear from department heads and the planning commission regarding proposed projects. At least one public hearing also should be scheduled. A formal action (resolution or ordinance) is used to adopt the CIP.

The capital budget should include a list of project code numbers, titles, and brief descriptions; the proposed expenditures and proposed sources of financing for the coming budget year; and any special governmental action (tax ordinances, bond authorizations, appropriations) needed to secure the revenue requested to support the capital budget. The capital budget is approved in the same manner as the operating budget and is implemented through an appropriations ordinance for the next fiscal year. The adoption of the operating and capital budgets will occur at the end of the budget process, although the governing body already may have tentatively approved the CIP.

Note that there is a significant difference between the actions taken with the CIP and the capital budget. The CIP is a declaration of intention over a five or six-year period that is not legally binding, while the capital budget appropriation is an authorization to spend public funds for specific purposes.

If the governing body decides to amend the capital budget, it should also amend the CIP. Although proposals for amendments to the approved capital budget may sometimes be unavoidable, they should be treated with caution. Otherwise, the priorities reflected in the CIP could be undermined by piecemeal decisions that do not consider the considerations used initially to develop the CIP.

Financing Capital Projects

Financing strategies for capital projects differ from those of ongoing operating expenses because of the sizable one-time costs and prolonged life cycles typical of capital projects. Most local governments are unable to fund fully their capital budget with current revenues. A key element of the capital budget is a financing plan that spells out how the projects will be paid for. A number of different methods are available, each with its own advantages and disadvantages. Localities often will rely on some combination of these funding strategies.

Pay-As-You-Go Financing. The cost of the project is paid for with current income, which includes taxes, fees, user charges, and interest earnings. Using this approach, projects can be undertaken only as the money becomes available. This works best where capital needs are modest, and the operating budget has sufficient capacity to set aside funds for capital projects. This is one of the most likely funding strategies for a small community, because it avoids the interest costs associated with long-term debt financing, as well as the high cost and additional complications of issuing debt. However, the amount of money available in the operating budget in any given year probably will not cover fully the cost of planned capital projects. Localities can try to address this by allocating several years' appropriations to a reserve fund for capital projects, thus accumulating sufficient resources for costly projects. This approach may take the form of an annual appropriation of some specified amount that is treated as a routine expense in the operating budget. Another route is to earmark a certain percentage of either property tax proceeds or other specific revenues to fund capital activities. Interest earned on the capital project reserves can provide an additional source of revenue. The most significant disadvantage of the pay-as-you-go approach is that localities may find it difficult to accumulate

the amount of funding needed to address priority projects. The development of a capital improvements program that clearly identifies the community's long-term needs and what it will cost to pay for them is one way to highlight these issues and build the case for setting aside sizable sums in the operating budget to build the capital reserve fund.

A criticism of pay-as-you-go financing is that it does not spread the cost of capital projects to future residents who will benefit from them. Instead, the cost is borne fully by current residents. This argument may help persuade elected officials to consider other forms of financing that help spread capital project costs over the useful life of the project.

Debt Financing. Capital projects also may be financed by borrowing funds through the issuance of debt. The most appropriate use of debt financing is for expensive capital facilities with long, useful lives, so that bond repayment occurs over the period during which the facility will be used.

The Public Finance Act (Code of Virginia §§ [15.2-2600](#) to [15.2-2663](#)) authorizes local governments to borrow money and issue bonds for a variety of public purposes. The act permits the local governing body to elect to issue bonds either under the provisions of the act or under the provisions of any charter or special or local act applicable to the governing body. However, any referendum requirement contained in any charter or local or special act takes precedence over the act.

While the specific power of Virginia localities to borrow money is granted by law and, in the case of cities and towns, by charter, the constitution places certain limits on this power. Cities and towns may incur debt without a referendum, but they are subject to a debt limitation, which cannot exceed 10 percent of the assessed valuation of the real estate in the locality. Some local charters, however, require a referendum. (The debt of counties in most cases must be approved by the voters in a referendum, but it is not subject to any limitation in amount.) Some localities have chosen to adopt voluntarily more restrictive debt policies than those required by state law.

The types of debt commonly issued by local governments include the following:

General Obligation Bonds. These bonds are instruments of indebtedness issued by local governments and secured by the full faith and credit and general taxing power of the issuer. They are frequently used by local governments to finance the costs of non-revenue-producing projects, such as schools, courthouses, government office buildings, jails, libraries, parks, and roads. A local government is required by law to levy taxes on all property of the locality subject to taxation sufficient to pay the principal and interest on general obligation bonds.

Revenue Bond. Revenue bonds are debt instruments issued by local governments and secured by the pledge of a specific source of revenues. If the pledged revenues are insufficient to pay the bonds, the bondholders generally have no recourse against other revenues or assets of the issuer. Revenue bonds are frequently used to finance revenue-producing projects, such as water and sewer systems, solid waste disposal facilities, and toll roads. The issuance of revenue bonds does not count against a locality's debt limit. However, the issuer of revenue bonds is required to make a series of covenants concerning the facility that will make the documentation of revenue bonds much more complex than for general obligation bonds.

Short-Term Debt. Debt issued to address the short-term borrowing needs of local governments is referred to as "notes." Typically notes have a maturity of seven years or less. Notes are issued to provide temporary financing for capital projects or to provide for short-term cash flow deficits.

The types of short-term debt related to capital projects are typically referred to as Bond Anticipation Notes (BANs) or Grant Anticipation Notes (GANs). BANs are issued to provide interim financing at lower interest rates during the design and construction of a project or to avoid entering the long-term bond market during periods of high interest rates. They may be issued as either general obligation or revenue bonds. Virginia localities are authorized to issue BANs in anticipation of the sale of bonds for the purpose for which the bonds have been authorized and within the maximum authorized amount of the bond issue. BANs must mature within five years of the date of their original issuance.

The timing of receipts from federal and state grants for capital projects usually does not match the need for funds to pay the cost of the projects. Some local governments issue GANs to provide the short-term financing necessary for the

construction of the project until the grant payments are received. GANs are normally issued as a revenue obligation secured by the grant receipts and are not the general obligation of the issuer.

Lease Financing. In recent years more local governments have turned to lease financing as an alternative to traditional bond issues. For some time, leasing has been a popular method for financing the purchase of personal property, such as fire trucks, school buses, computers, and telephone systems. In addition, some localities use lease-purchase financing for some capital projects. Leases can be divided into two categories, depending on whether the intent is to transfer ownership of the property to the lessee.

Other Ways to Issue Debt

Virginia has created various entities that are empowered to sell bonds and use the proceeds to make loans and purchase bonds of local governments. These entities are referred to as “bond banks,” and they facilitate the marketing of bonds that may be too small to market individually or that could not have been marketed individually due to the weak credit or lack of market recognition of the issuer. Bond banks often use letters of credit, insurance, or credit enhancements provided by the state to improve the pooled credit of the local borrowers. Bond banks available to Virginia localities include the following.

Virginia Public School Authority. This authority issues revenue bonds and uses the proceeds to purchase bonds issued by Virginia local governments to finance capital projects for public schools.

Literary Fund. This is a perpetual fund in which money is collected from a number of sources and used to make loans to local school boards for the purpose of constructing, altering, or enlarging school buildings. Literary Fund assistance is very limited.

Virginia Resources Authority (VRA). This bond bank, created in 1984, now covers a wide range of infrastructure financing options for local governments. Types of financing available through VRA include bond programs for water, wastewater, and solid waste projects; the Virginia Water Facilities Revolving Fund; the Virginia Water Supply Fund; and interim financing mechanisms available to approved borrowers.

Industrial Development Authority. This is another type of entity that may issue debt. The governing body of any city, town, or county is authorized to create by ordinance an industrial development authority as a separate political subdivision for the purposes set forth in the Industrial Development and Revenue Bond Act (Code of Virginia §§ 15.2-4900 through 15.2-4920). Authorities may assist in financing industrial facilities, pollution control facilities, and facilities for use by a local government, to name just a few

Public-Private Transportation Act (PPTA). This act allows private entities to enter into agreements to construct, improve, maintain, or operate transportation facilities. Private entities include any natural person, corporation, limited liability company, partnership, joint venture, or other private business entity. A public entity means the state and any of its agencies or authorities, including cities, towns, and counties and any other political subdivision except public service companies. A transportation facility is a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, or vehicle parking facility.

Public-Private Education Facilities & Infrastructure Act. This act establishes a process by which private entities can build or renovate qualifying projects if approved by the appropriate public entity. Qualifying projects include any educational facility; any building or facility for principal use by any public entity; any improvements to enhance public safety and security of buildings principally used by a public entity; utility, telecommunications, and other communications infrastructure; and recreational facilities. Public entities include the state; cities, towns, and counties, or any other political subdivision; and any regional entity that serves a public purpose. The bill requires that school boards obtain the approval of the local governing body before proceeding with a project.

VML/VACo Finance & Pooled Bond Program. This pooled financing arrangement allows Virginia local governments to pool their financings with other local borrowers in order to share issuance costs, negotiate long-term and volume-discounted preferred pricing, and participate in bond issues of sufficient size to achieve attractive pricing.

Auditing & Reporting

The Audit

The manager is responsible for monitoring expenditures during the fiscal year to prevent either overspending or spending for unauthorized purposes. However, the governing body is responsible for the external review of expenditures that occurs after the fiscal year has ended. The purpose of the audit is to determine the legality of disbursements and the financial condition of the locality. It can give government officials valuable insights into their operations and assure users of local government financial statements that the data contained in them are reliable. State law requires all cities and counties, and those towns having a population of 3,500 or over or operating a school system, to have all their accounts and records (including those of their constitutional officers) audited annually as of June 30. The locality must contract with an independent certified public accountant no later than April 1 of each year to perform the audit. The accountant must present a detailed written report to the governing body at a public session by the following December 31. The report may recommend necessary or desirable improvements in the accounting system. In the event that a locality fails to obtain the required audit, the Auditor of Public Accounts (APA) may either undertake the audit or engage the services of a certified public accountant and charge the full cost of the service to the locality.

To promote harmonious working relationships while maintaining the independence of the auditor, many local governments have implemented audit committees. These committees help define the scope of the audit, manage the process of selecting the auditor, and allow for follow-up on management comments delivered by the auditor. The treasurer or other chief financial officer of every locality required to have an audit must file an annual statement of receipts and disbursements with the state Auditor of Public Accounts on or before December 15. If a locality fails to submit the required information, the state auditor may either perform the work necessary to obtain the information or hire a certified public accountant to do the work. In either case, the Auditor of Public Accounts may charge the locality for the cost of obtaining the information.

Annual Financial Report

The audit may serve as the locality's annual financial statement. The Government Finance Officers' Association recommends that the statement be a comprehensive annual financial report (CAFR), which includes both audited general-purpose financial statements and audited individual fund statements, with both introductory and statistical sections. The reports should be prepared to conform with generally accepted accounting principles (GAAP) for governments. The GAAP criteria have been established to meet the basic informational needs of a wide variety of potential users of financial statements.

One key schedule in the annual financial report is the Combined Balance Sheet. This table shows what the government owns and what it owes. The difference between the two is its net worth, or fund equity. In other words, the balance sheet provides a snapshot of the government's assets, liabilities, and fund equity on a given date.

Another important table in the financial report is the Combined Statement of Revenue, Expenditures, and Changes in Fund Balance. This statement tells the reader the amount and sources of revenue for the year, the amount, and purposes of expenditures for the year, and what effect the difference between revenues and expenditures had on fund equity. This statement can be equated to a profit and loss statement in the private sector.

Fiscal Distress Monitoring

In 2018, the General Assembly passed [Item 4-8.03 \(Chapter 2\)](#) that set forth the requirements and parameters for Virginia's early warning monitoring system focused on identifying local government fiscal distress. Fiscal distress is defined as a "local government's situation where the provision and sustainability of public services is threatened by various administrative and financial shortcomings." The fiscal distress methodology is based on a variety of key financial ratios and results in a ranking of local governments from high to low distress. Localities identified as at-risk for financial distress may be contacted by the APA staff for further information. The Auditor of Public Accounts is responsible for the development of the report on fiscal distress and is required to provide information to the Governor, Chairs of the House Appropriations and Senate Finance and Appropriations Committees, annually. The report is available online at the Auditor of Public Accounts website.

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Resources

Sample Budget Calendar

Note: Italicized items refer to capital budget only.

Who	What
Budget/Finance Officer	Develop preliminary forecast of revenues and expenditures.
Manager/Governing Body	Hold work session to discuss resource constraints and preliminary budget priorities.
<i>Manager</i>	<i>Invite department heads to develop proposals for capital improvements program (OP).</i>
<i>Department Heads</i>	<i>Submit OP proposals.</i>
<i>CIP Committee</i>	<i>Meets with department heads to discuss proposed OP projects.</i>
<i>CIP Committee</i>	<i>Develop master schedule of all proposed projects and financing plan.</i>
<i>CIP Committee</i>	<i>Submits OP recommendations to manager.</i>
<i>Manager</i>	<i>Submits recommended OP to planning commission and governing body.</i>
<i>Manager/Governing Body</i>	<i>Hold work session on proposed CIP.</i>
<i>Planning Commission</i>	<i>Holds public hearing on proposed CIP.</i>
<i>Governing Body</i>	<i>Consider resolution adopting CIP.</i>
Manager	Issue operating budget instructions and worksheets. Hold work session with department heads and other personnel involved in budget preparation.
Department Heads	Submit budget requests to manager/budget officer.
Manager/Finance Officer	Refine revenue estimates.
Budget Officer	Evaluate department operating budget requests.
Manager/Budget Officer	Meet with department heads to discuss manager's preliminary recommendations/denials.
Manager	Finalize recommended operating budget and submits to governing body.
Manager/Governing Body	Hold work session on manager's recommended operating budget.
Governing Body	Hold public hearings on proposed operating and capital budgets.
Governing Body	Amend proposed budgets.
Governing Body	Set tax rate and adopt operating and capital budgets.
Budget Officer	Prepare budget allotments.
Manager/Budget Officer	Implement and monitor budget

Related Agencies & Publications

Auditor of Public Accounts

www.apa.state.va.us

PO Box 1295

James Monroe Building

101 North 14th Street, 8th Floor

Richmond, VA 23218

804.225.3350

Publications include the annual *Comparative Report of Local Government Revenues and Expenditures*, available online at <http://www.apa.state.va.us/Local%20Government.aspx>

Virginia Department of Taxation

www.tax.virginia.gov

Office of the Commissioner

1957 Westmoreland Street

Richmond, VA 23230

804.367.8031

Publications include *Local Tax Rates (annual)*, available online at www.tax.virginia.gov/local-tax-rates. *Assessment Sales Ratio Study (annual)*, available online at www.tax.virginia.gov/assessment-sales-ratio-studies.

Virginia Government Finance Officers' Association

www.vgfoa.org

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804.648.0635

International City Management Association (ICMA)

www.icma.org

777 North Capitol Street, NE, Suite 500

Washington, DC 20002-4201

202.962.3680

ICMA publications include:

- Bartle, John R., *Management Policies in Local Government Finance*. Sixth Edition. 2013.
- Bland, Robert L., and Michael R. Overton. *A Budgeting Guide for Local Government*. Fourth Edition. 2019.
- Marlowe, Justin, et al. *Capital Budgeting and Finance: A Guide for Local Governments*, Second Edition. 2009.

Order online at <https://bookstore.icma.org/print-publications-cl.aspx>.

Governmental Finance Officers Association (GFOA)

www.gfoa.org

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The association's Elected Officials' Guide series includes booklets on:

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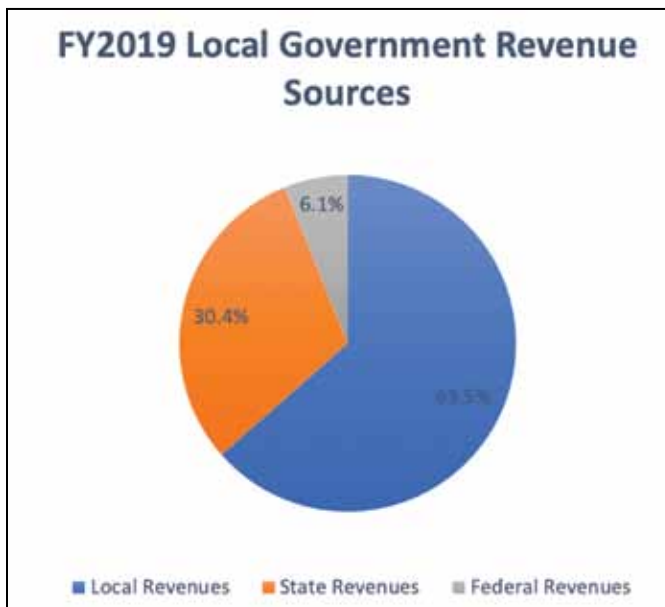
CHAPTER 10

Revenue Sources

By Betty S. Long, Stephanie Dean Davis, Victoria McNiff, and Alisande Tombarge

Council members need to understand available revenue sources to make proper decisions about the level of services their locality can deliver and the long-term financial commitments it can afford. It is essential to understand not only where the money comes from but also what authority council possesses to raise revenue. It has become increasingly important in recent years for council members to have a firm grasp of these issues as the demand by residents for more services collides with aversion by residents to new revenue measures.

Over the past 15 years, local governments have experienced challenges related to local revenues source vulnerability and shrinking state and federal aid. The Great Recession of 2008 significantly impacted real property assessed values resulting in decreases in property tax revenue, the largest revenue source for Virginia local governments. Then, in 2020 the COVID-19 pandemic brought significant losses for meals and transient occupancy taxes. Those local governments that were most reliant on those sources of revenues struggled to balance their budgets. The economic lessons for local government from these two significant events are that local governments must diversify their revenues sources to the fullest politically acceptable extent possible allowed by State Code and ensure adequate reserves (fund balance) to mitigate the impact of economic events on local budgets.



State & Local Tax Structure

Local governments finance their operations with revenues they generate from their own taxes and fees, and from revenue received from the state and federal governments. In addition, there may be some unexpended balances that are carried forward from the prior fiscal year that can be used to help fund the budget.

In fiscal year 2019, Virginia's cities, counties, and largest towns collected more than \$35.1 billion in revenues, generated by local, state, and federal sources.

Authority to Tax

The locality's authority to tax comes from the Constitution of Virginia, the Uniform Charter Powers Act, and other state legislation. [Article X](#) of the Constitution

of Virginia states that real estate, coal and other mineral lands, and tangible personal property (except rolling stock of public service corporations) are to be taxed by local governments only. The 1998 General Assembly enacted legislation that significantly affects how local governments collect personal property taxes (i.e., car taxes), but it does not legally affect local authority to levy the tax.

In addition, the Uniform Charter Powers Act lists broad taxing powers that localities can exercise (Code of Virginia, [§ 15.2-1104](#)). This section states that cities and towns have the power to "raise annually by taxes and assessments on property, persons and other subjects of taxation, which are not prohibited by law" the funds needed to finance government. Using this authority, many localities have levied taxes on cigarettes, lodgings, meals, and admissions. It is important for elected officials to remember that Virginia is a "Dillon Rule" state which means that any local authority to tax, or other activities, must be approved by the State in the form of a statute, law, Code of Virginia, or other action. Local government officials should consult their attorney to ensure legal authority to amend, increase, or establish a new tax, fee or other revenue generating tool.

Types of Local Revenue

The table included in the “Resources” section at the end of this chapter lists the various taxes, fees, and other revenues available to local governments; it shows clearly how most of these sources are capped. Real property taxes alone account for almost 51 percent of local revenues for counties and cities combined; and when all four categories of local property tax are combined, the total is more than 65 percent. (Comparative data showing the taxes and rates imposed by all local governments in Virginia is published annually by the University of Virginia’s [Weldon Cooper Center for Public Service](#) in a report entitled *Tax Rates in Virginia Cities, Counties, and Selected Towns*.)

Local Taxes

State Code allows local governments a variety of local tax options. The largest revenue source is general property tax and includes real property tax, personal property tax, machinery and tools tax, merchants’ capital tax and revenue generated from penalties and interest. In FY2019, localities received \$14.7 billion in general property taxes, representing 65 percent of local revenues.

Real Property Tax. The Constitution of Virginia grants local governments the sole right to tax real estate. Further, it requires that (1) all property shall be taxed; (2) all taxes shall be uniform on the same class of subjects; and (3) all assessments of property shall be at fair market value.

The real property tax is the single largest source of local government revenue. All cities and counties and many towns in Virginia levy it. While virtually no taxes are popular with residents, several aspects of the real estate tax make it an easy target for complaints. Unlike sales or meals taxes, which are levied at convenient points in a transaction, the property tax is based on real estate assets and therefore requires that the ownership and value of taxable real estate assets be determined. This means property must be reassessed periodically.

Further, for many people, the property tax bill may require a large lump sum payment, making the tax highly visible. By contrast, sales and meals taxes are levied during transactions and become routine and less visible. Finally, the disparity that sometimes exists between the value of the real estate and the income of the taxpayer brings more scrutiny by the taxpayer. Because of the limitations on local government taxing powers, however, local dependence on the property tax is likely to continue.

The amount of revenue generated by real property taxes depends on the total assessed valuation and the tax rate. By state law, real property is to be assessed at 100 percent of the fair market value (although 100 percent assessment is rarely achieved due to the time lag between actual sales and the locality’s assessment period). The assessment of real property is a local responsibility. For this task, many cities hire professional assessors or use a board of assessors; others rely upon the commissioner of revenue (although the commissioner must consent to be the assessing officer). The Constitution of Virginia sets out two exceptions: The State Corporation Commission assesses the real and personal property of all public service corporations, and the Department of Taxation assesses the real and personal property of railroads and pipeline companies. These assessment methods are intended to ensure that these properties are valued uniformly throughout the state.

Cities are generally required by law to reassess every two years (Code of Virginia, [§ 58.1-3250](#)), although cities of less than 30,000 population may assess every four years. Town property is generally reassessed by the county in which the town is located. Counties reassess every one-to-six years.

Once a property has been assessed, the courts presume the assessment is valid. The burden is on the taxpayer to show that the property is assessed at other than fair market value, that the assessment is not uniform, or that it was otherwise not equalized. This presumption is challenged in the General Assembly often, so please verify with your local attorney. The taxpayer may contest the assessment by filing an appeal with the commissioner of revenue, if that official assesses real estate, or with the board of equalization if a professional assessor or board of assessors made the assessment. The board of equalization is a three- to five-person board typically appointed by the circuit court to hear complaints about real estate assessments. The board may increase or decrease assessments. Localities also have the option of appealing assessments to the commissioner of revenue or the board of equalization. The Department of Taxation is required to offer advisory aid and assistance to the board in equalizing the assessments of real estate and tangible personal property.

There is no upper limit on the tax rate that localities can impose on real property. In addition, state law allows real property taxes to be levied on several types of special service or special assessment districts. Any locality may, by ordinance, create service districts within the locality to provide additional services above those delivered in the locality as a whole. Typical service districts are for expansion of water or sewer.

Various provisions in the constitution and the Code of Virginia exempt certain types of property or allow local governments to offer some form of tax relief. ~~All the~~ Although most tax relief programs are by local option, which means that the locality decides (1) whether to forego the revenue it would otherwise collect, and (2) how, within state guidelines, to structure the relief programs, there are some that are state mandated.

Tax relief programs include:

Local Option

- Real property tax relief plans for the elderly and disabled
- Land-use value assessments for agricultural and other types of open-space real estate
- Substantially renovated or rehabilitated property
- Tax relief for property used for pollution control, solar energy, or energy conservation
- Property exempted by legislative action

State Mandated

- Real property tax exemption for the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, who occupies the real property as his or her principal place of residence.
- Real property tax exemption for the primary residence of a veteran who has a 100 percent service disability, or for the surviving spouse of a veteran who was eligible for the exemption or for the surviving spouse of a service member killed in action.

The General Assembly formerly had a role in granting of property tax exemptions for charitable organizations. However, a constitutional amendment approved by the voters in 2002 and implemented by the General Assembly in 2003 and 2004 turned this authority over to localities. State law (Code of Virginia, [§ 58.1-3651](#)) outlines the process localities must follow to exempt the real and personal property of a tax-exempt organization from local property taxes. Under certain limited conditions, local governments may impose service charges on otherwise tax-exempt property sometimes referred to as payments in lieu of taxes (PILTs). The service charge relates to the cost of providing police, fire, and refuse collection services to the exempt property.

Tangible Personal Property Tax. The Constitution of Virginia grants localities the exclusive right to tax tangible personal property. The personal property tax is the second largest source of revenue for localities, including the amount received in the form of state reimbursement. The tax is applied to items such as motor vehicles, business furniture and fixtures, boats, recreational vehicles, and farming equipment. Local governments set their own rates for the tax. Assessment should be at fair market value. Assessment ratios and valuation methods vary throughout the state. Over time, the General Assembly has established more than 30 classifications of personal property. These classifications give local officials the option of using a different method of arriving at the taxable value for a given class of property.

The tax is imposed where the property has situs (i.e., the physical location of the property where it is normally garaged or kept on Tax Day, usually January 1st). Localities have the option of prorating the tangible personal property tax on vehicles, which means that the property is assessed for the portion of the tax year in which the property has situs in that jurisdiction.

Under the Personal Property Tax Relief Act (PPTRA) of 1998, beginning in fiscal year 1999 the way local governments collect revenue due from the personal property tax changed significantly. A portion of the personal property tax on personally owned vehicles is now paid by the state on behalf of the taxpayer. Local governments continue to send out their personal property bills as usual, but the amount owed by the taxpayer is adjusted based

on the amount the state will pay to the locality on a taxpayer's behalf. The state reimburses the locality for the state's share of the tax relief.

At the time the legislation passed, it was expected that over a five-year period the state would assume 100 percent of the property tax bill on the first \$20,000 of a vehicle's value. As a result of lower-than-expected state revenue growth and higher-than-forecasted costs, however, the state did not achieve the 100 percent reimbursement level. In fact, legislation adopted in 2004 caps the state reimbursement. Since FY2005, each locality receives a flat reoccurring appropriation for car tax reimbursements, which means the state's percentage share of car tax relief decreases every year as vehicle costs, and their attendant assessments, increase, and local governments must make up the difference to keep the state's promise to its citizens.

Local governments retain the authority to raise tax rates or to collect from the taxpayer any amount that the state has failed to appropriate to meet its obligations. Many local governments, however, have been reluctant to raise the personal property tax on motor vehicles. Also, with the changes pursuant to the 2004 legislation, local governments may have unforeseen difficulty with future cash flow issues resulting from the legislation to be adopted in 2005. Beginning in tax year 2006, a locality's percentage share from the state is based upon its actual share of the state reimbursements from tax year 2005. Each locality receiving a state reimbursement must reduce its rate on the first \$20,000 value so that the sum of local tax revenue and state reimbursement to the locality approximates what the locality would have received based on the local valuation method and the local tax rate before the tax rebate became law.

Localities can use one of three methods to apply PPTRA tax relief:

1. Reduced rate method
2. Specific relief method that provides the same percentage of relief for all qualifying vehicles
3. Specific relief method that provides a declining percentage of relief as the vehicle's value rises.

Most localities use the specific same relief method (#2).

The changes described above apply only to the personal property tax levied on personally owned vehicles. They do not apply to recreational vehicles, business vehicles, other types of business personal property, or machinery and tools (described below).

Effective January 1, 2021, the state has also mandated the exemption from taxation of one motor vehicle owned and used primarily by or for a 100 percent service-connected, permanent, and total disabled veteran of the Armed Forces of the United States or the Virginia National Guard (Code of Virginia, [§ 58.1-3668](#)).

Machinery & Tools Tax. The Machinery & Tools Tax is a form of personal property tax. A key difference is the requirement (Code of Virginia, [§ 58.1-3507](#)) that machinery and tools used in manufacturing, mining, processing, et cetera must be valued either by depreciated cost or by a percentage of original total capitalized cost excluding capitalized interest. The machinery and tools tax rate may not exceed the rate imposed on tangible personal property.

Local Sales & Use Tax. The Local Sales & Use tax is levied by every city and county in Virginia at the maximum rate of 1 percent. It is collected by the state along with the state sales tax. The local 1 percent is then returned to localities based on point of sale. One-half of each county's 1 percent sales tax is shared by the county and its towns, based on the ratio of the town's school-age population to that of the entire county. Effective October 1, 2020, the state's sales tax was changed to 4.3 percent with a 2.5 percent rate on food and personal hygiene items. Of the 4.3 percent, 2.275 percent is remitted to local school divisions for K-12 funding and 2.025 percent is retained in the State's general fund. Several areas in the State have an additional regional or local tax. If the additional sales tax is for school construction must be approved by voter referendum.

Consumer Utility Tax. The Consumer Utility Tax is a local option tax that localities may impose on consumers of the utility service or services provided by water or heat, light and power company or corporation. The tax on residential customers is capped (localities charging a higher rate prior to July 1, 1972, have been "grandfathered in," or

allowed to keep a higher rate). There is no limit on the rates imposed on non-residential customers.

In the case of towns, the town's consumer utility tax on heat, light, or power preempts the county tax if the town provides police, fire, or water and sewer services, or if the town is a special school district under a town school board.

Communications Sales and Use Tax. In 2006, the General Assembly eliminated the E-911 tax and replaced it with a flat 5 percent rate for communications services. The tax is collected by the communications service provider, remitted to the Department of Taxation, and then distributed to local governments on a percentage basis.

Rights-of-Way Fee. Cities and towns may by ordinance impose a public rights-of-way use fee that is collected through providers of local exchange telecommunications services. The amount of the fee is based on an amount per access line (individual phone lines in homes or businesses). This fee replaces any other rights-of-way charges that local governments could collect from telecommunications providers, other than cable companies.

Utility License Tax. Every city, town, or county is authorized to impose a license tax on public service corporations providing telephone, telegraph, or water utility services. County utility license taxes do not apply within the limits of an unincorporated town if the town also imposes the tax. The tax is capped at a rate not to exceed one-half of 1 percent of the gross receipts resulting from sales to consumers in the respective locality.

Business, Professional, & Occupational License (BPOL) Tax. Any county, city, or town may levy a local license tax on businesses, trades, occupations, and professions, although some types of businesses are exempt from the tax. There are four different BPOL classifications:

1. Contractor
2. Retail
3. Business Services
4. Professional Services

Each classification has a maximum tax rate that has been set by state law. Any locality whose rates are above the statutory maximum must reduce its rates over time until they are within the statutory limits.

Localities that do not impose a BPOL tax may levy a Merchants' Capital Tax. Generally, cities and towns rely on the BPOL tax, while about half of the counties impose the Merchants' Capital Tax.

For counties, the license tax does not apply in any town within the county that has a similar tax, unless the town's governing body makes provision for the county tax to apply. The only exception to this arises when a county imposes a Merchants' Capital Tax, and the town imposes a BPOL tax on retail merchants. In those cases, the merchant pays both taxes.

Along with the personal property tax, the BPOL tax has been one of the fastest growing sources of local revenue. In fact, the BPOL tax ranks among the top five revenue sources for local governments. However, the BPOL tax has also been one of the most controversial local taxes.

BPOL tax administration is heavily prescribed by the state. The local ordinance imposing the tax must be substantially similar to provisions in state law. State law prescribes issues such as how gross receipts are defined, what determines the situs of gross receipts, and what the state appeal process is for a business that does not agree with the local tax official's decision.

The ordinance also requires local governments, depending on population, to exempt from the tax those businesses whose gross receipts fall below a certain amount. In lieu of the tax, the locality may collect a fee from the business. However, in no case may the locality collect both a fee and a license tax from the same business.

Franchise Fee. The 2007 Virginia Communications Sales and Use Tax eliminated several taxes including the cable television system franchise tax. As contracts with cable television system providers expire, the tax will be eliminated and replaced with the state tax.

Meals Tax. The Meals Tax is a special sales tax added to the price of certain prepared foods and beverages at the time of purchase. Counties, cities, and towns are granted the authority to levy a meals tax not to exceed six percent of the amount charged for food and beverages. A town may preempt the county from imposing the county tax within the town boundaries. The 2020 General Assembly session eliminated the need for a voter referendum for counties to impose the tax and gave equal taxing authority to counties.

The significance of the Meals Tax as a source of local revenue varies considerably among jurisdictions.

Transient Occupancy Tax. The Transient Occupancy Tax is based on the charge for lodging in hotels, motels, boarding houses, and travel campgrounds. It may be imposed by local ordinance. This tax is in addition to the state and local sales tax. Cities and towns are authorized to impose this tax with no rate limitations, while counties are capped at a rate of 2 percent. However, counties may increase their transient occupancy tax up to five percent, but the additional tax must be used for travel and tourism related expenses. Certain counties and regions are permitted to levy higher taxes for tourism related expenses. As with the meals tax, a town may preempt the county from imposing the county tax within the town boundaries. As would be expected, localities with a high volume of tourist or business travel are the primary beneficiaries of this tax. In jurisdictions that have few of these travel-related businesses, the revenue from this tax is negligible.

In 2017, the General Assembly approved legislation related to pop-up bed and breakfasts known as “airbnbs” and short-term rental properties. The law allows local government to adopt an ordinance to establish a local registry of short-term rental properties and collect state sales tax plus other applicable local taxes on short-term rentals made through such websites as Airbnb.com.

Beginning September 1, 2021, the retail sales and use tax and transient occupancy taxes on accommodations will be computed upon the basis of the total charges or the total price paid for use or possession of the room. Where a hotel or motel contracts with an online travel company to facilitate the room sale and the online company charges the customer for the room and an accommodations fee, the OTC would be deemed the dealer for the transaction and would be required to separately state the taxes on the invoice and to collect the taxes on the entire amount paid for the use or possession of the room. This clarifies the computation and remittance of the taxes.

Cigarette Tax. Any *locality* is authorized to levy taxes upon the sale or use of cigarettes. Any county cigarette tax imposed shall not apply within the limits of any town located in the county where the town imposes a town cigarette tax unless the town’s governing body allows for the county tax. The maximum local rate allowed is limited by state code.

Admissions Tax. Cities and towns may collect an admissions tax based on a percentage of the amount charged for admission to an event. Events to which admissions are charged are classified into five groups and can be found in Code of Virginia [§ 58.1-3817](#). A locality may impose the same rate or a different rate on each of these classifications. Only a handful of counties have been given the authority to levy an admissions tax. The revenue-generating capacity of the admissions tax depends on the number and type of facilities located within the jurisdiction, which may explain why it is not widely imposed.

Motor Vehicle License Tax. Cities, towns, and counties may levy a license tax on motor vehicles, trailers, or semi-trailers or a local decal fee. The tax may not exceed the state license plate fee imposed by the Commonwealth on these same vehicles. Most local governments do not issue a separate decal and include this tax on the annual personal property billing.

Daily Vehicle Rental Tax. The Department of Motor Vehicles (DMV) collects a local tax on daily rental vehicles, in lieu of these vehicles being subject to the personal property tax. The revenue from this tax is distributed by the DMV to the locality where the vehicle was delivered to the renter. Effective in fiscal year 2022 the tax rate is 7 percent for companies renting ten or fewer vehicles on sharing platforms whereas companies with larger vehicle fleet have a rate of 10 percent.

Severance Taxes. Severance taxes are excise taxes levied on the production of natural resources when “severed” or taken from the earth. They are levied on persons engaged in severing the resources, and the amount of the tax is based on the gross receipts from the sale of the resources. The specific taxes allowed are coal and gas severance taxes, a coal and gas road improvement tax, and a mineral lands tax. There are various restrictions on how the revenues collected from these taxes may be spent. Only a handful of cities and counties impose these taxes because the pertinent natural resources are not located in most jurisdictions in the state.

Bank Stock Tax. Any city, town, or county may impose a tax on the net capital of any bank located within its boundaries. The rate is capped at 80 percent of the state tax rate, which is \$1 per \$100 of net capital.

Other Taxes. Two local tax sources available to cities and counties but not to towns are the recordation tax on deeds (tax on deeds admitted to record) and the tax on wills and administrations (tax on the probate of wills and administration).

Other Local Revenue

Service Charges. Service charges are an increasingly significant source of local revenue. Statewide they are now the third largest source of local revenue, exceeded only by real property and personal property taxes. Service charges are likely to continue as an important source of local revenue, since taxpayers appear to be less resistant to service charges or user fees that are directly linked to a particular service than they are to general tax increases. Examples of service charges that have become more common are refuse collection and recycling fees.

Typically, the notion behind service charges is that they are set at a level sufficient to recover all or most of the costs associated with the service. Whether imposing a service charge is sound policy depends in part on (1) the costs that will be incurred to administer and collect the user charge, and (2) whether the charge for service precludes low-income residents from gaining access to basic services.

Permits, Privilege Fees, & Regulatory Licenses. Localities may regulate certain activities to maintain acceptable community standards, ensure the public’s health and safety, prohibit unwanted practices, or curb public nuisances. The amount of the license or permit fee should cover the costs of regulating the activity, including processing applications, collecting fees, performing required regulatory or oversight functions, and covering legitimate overhead costs.

Fines & Forfeitures. Revenue from these sources comes primarily from the activities of the police department and the court system.

Revenue from the Use of Money & Property. Local governments earn interest from investing idle funds, leasing local property, and auctioning stolen, abandoned, or surplus property.

Miscellaneous Sources. Miscellaneous revenue sources include annexation payments for loss of net tax revenues, service charges on tax-exempt property, and gifts and donations from private sources.

Revenue from the Commonwealth

State aid is sent by the state to local governments to pay for services that the state requires local governments to provide. The requirement to provide particular services carries a local price tag as well. Most forms of state aid require some kind of match by local governments. In some cases, the match is substantial. Further, in many cases, such as education, local governments fund the service well beyond the required local match.

State aid is an important source of revenue for local governments, but it is essential to remember that most state aid is not discretionary money that localities may use any way they wish. State aid is distributed to localities through a complex web of state agencies and formulas. Because state aid to localities (excluding car tax reimbursements) accounts for about 45 percent of the state’s general fund budget, efforts to reduce state spending are always of concern to local governments. Invariably they result in some form of aid to localities being reduced.

Some of the major sources of state aid are described below (for additional information, see the “Resources” section at the end of this chapter). Revenue from the state comes in the form of grants for the shared costs of state-required programs, revenue sharing, competitive grants, loan programs, and capital assistance.

Categorical Grant / Cost Sharing

Under this category, program-specific aid is available to all localities that meet the qualifying criteria. The programs may be ongoing, or they may be specific short-term or one-time projects. In many cases local matching funds are required. State funds either may be provided up front or reimbursed to the locality based on actual, approved expenditures. Although these funds are referred to as “state aid,” in fact they often represent payment to a locality for delivering services that the state has required.

Education. By far the single largest source of categorical state aid to localities is for education. Most of this funding is based on the formula used to calculate basic aid for the Standards of Quality. Local governments must match the state funding based on their composite index, which is a measure developed by the state as a proxy for ability to pay. Soon after the General Assembly adjourns each year, the Superintendent of Public Instruction sends data to each school division showing an estimate of the state funding they can expect to receive in the next fiscal year. The actual amount received will depend on the average daily membership of the school division.

Constitutional Officers. Another significant source of state aid for cities and counties pays a portion of the cost for constitutional officers – sheriffs, commissioners of revenue, treasurers, commonwealth’s attorneys, and circuit court clerks. State funding typically covers all or a part of the cost of salaries, and local governments pay for most of the non-personnel costs. Funding for constitutional officers has decreased in recent years, and cities and counties are paying an increasing share of the costs of these offices.

Transportation. All cities, those towns with populations of 3,500 or more, and Arlington and Henrico counties receive funds from the state to maintain urban streets. This funding is dependent on the number of line miles in the jurisdiction. The formula is updated annually.

Human Service Programs. Another major source of state aid to localities is the state and federal “pass-through” money that supports an array of social services and health, mental health, mental retardation, and substance abuse services. Each of these has different local match rates associated with them; some are mandated programs, while others are optional.

Revenue Sharing

In a few instances local governments receive funding from the state that can be used for general government purposes. These funds are subject to appropriation by the General Assembly and are often targeted for reductions when state revenues lag behind projections. Localities are not required to spend the state aid in a particular way. Examples include the following:

HB 599 Funds. This state aid (named after the legislative bill that enacted it) goes to all localities in Virginia with a police department, provided they meet certain criteria. It is the most significant general revenue-sharing program funded by the state. The amount of money received by each jurisdiction is based on a statutory formula. This program was enacted as part of a legislative package in 1979 that resulted in large cities losing the right to annex.

Recordation Tax. Cities and counties receive a portion of the state’s share of recordation tax proceeds. The amount they receive is based on the number of deeds recorded in that jurisdiction.

ABC & Wine Profits. Per state code, Cities, counties, and towns shall receive a portion of ABC (Alcoholic Beverage Control) profits and wine tax revenues. ABC net profits are distributed so that one-third goes to the state general fund, and two-thirds to localities based on general population. The formula used for the wine liter tax distributes 44 percent to localities based on general population, 44 percent to the state general fund, and 12 percent to ABC for operating expenses.

Also, ABC is required to reimburse the state general fund from its net profits, prior to distribution to localities, for expenses incurred by the Department of Mental Health, Mental Retardation and Substance Abuse Services for care, treatment, study, and rehabilitation of alcoholics. The amount of reimbursement is set in the appropriations act and may vary annually.

However, since 2009, the state has effectively eliminated all sharing of state profits with localities in annual budget language

Competitive Grants. This type of aid is available for specific purposes on a limited basis. Because funds are usually limited, grants are generally awarded through a competitive process based on predetermined criteria. To qualify for the grant money, local matching funds may be required. Typical projects that may be eligible for grant funding include general aviation airports and pollution control facilities.

Capital Assistance and Loan Programs. In a few instances the state provides direct financial assistance for capital costs. Loan programs represent a nominal amount of state aid to local governments. They are available only for certain purposes (e.g., water and wastewater facilities, school construction). This money is not true aid since localities must repay the amount borrowed; however, the borrowing terms available through the state are sometimes more favorable than the locality could obtain otherwise.

The Virginia Resources Authority is a pooled financing program that serves local governments. More information can be found at www.virginiaresources.gov.

Virginia Public School Authority operates several financing programs for public education. More information can be found at: www.trsvirginia.gov/Boards-Authorities/Virginia-Public-School-Authority.

Other pool financing programs are available to local governments including the VML/VACO Finance pool program. More information can be found at: www.valocalfinance.org.

Revenue from the Federal Government

Federal support for local governments has declined over the years with states and local governments funding a larger portion of services to citizens. However, in 2020, the nation and the world faced a global pandemic that significantly affected individuals, companies, and industries and all levels of government. As a result of the Coronavirus (or COVID-19) pandemic, the federal government passed legislation to support individuals, businesses, and governments to ensure economic stability.

In March 2020, Congress passed the Coronavirus Preparedness and Response Supplemental Appropriations Act (CARES Act) that provided of \$2.2 trillion dollars in stimulus funding for the following:

- \$367 billion loan and grant program for small businesses
- Expansion of unemployment benefits to include benefits increased by \$600 per week for a period of four months
- Direct payments to families of \$1,200 per adult and \$500 per child for households making up to \$75,000
- Over \$130 billion in grants to hospitals, health care systems, and providers
- \$500 billion fund for loans to corporate America
- Cash grants of \$25 billion for airlines (in addition to loans), \$4 billion for air cargo carriers, \$3 billion for airline contractors to support payroll
- A ban on stock buybacks for large companies receiving government loans during the term of their assistance plus one year
- \$150 billion in loans to state and local governments.

In December 2020, Congress passed an additional \$900 billion in relief including policy actions such as extension of unemployment benefits, additional funding for businesses, and additional stimulus payments to individuals.

State and local governments sought stimulus funding to support operations due to declining tax revenues and associated expenditure reductions to no avail until the March 2021 when Congress passed the American Rescue Plan Act of 2021 (ARPA) that provided \$1.9 trillion in COVID-relief funds. Of the three stimulus packages, ARPA is the only legislation that provided direct grant funding to state and local governments. At the time of this writing, funding has been approved but not distributed to local governments. Preliminary guidance for the stimulus funding indicates that states and local governments can utilize this money for pandemic related costs, infrastructure improvements such as water and sewer systems, and broadband expansion.

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Resources

Municipal Revenues, Related Agencies & Publications

Auditor of Public Accounts

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Publications include the annual *Comparative Report of Local Government Revenues and Expenditures*, available online www.apa.virginia.gov/APA_Reports/LG_ComparativeReports.aspx.

Virginia Department of Taxation

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Publications include:

- *Local Tax Rates* (annual), available at www.tax.virginia.gov/local-tax-rates
- *Assessment Sales Ratio Study* (annual), available at www.tax.virginia.gov/assessment-sales-ratio-studies
- *Rulings of the Tax Commission* (periodic), available at www.tax.virginia.gov/laws-rules-decisions

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Publications include *City Fiscal Conditions* (annual) and other periodic publications on city finances.

Open Data Portalwww.data.virginia.gov**Information on Tax, Funds & Finance**
www.virginia.gov/services/government/tax-and-finance

Table: Taxing Authorities Available to Local Governments & State-Imposed Restrictions

Tax	Local Government with Authority to Levy	State Code Section	Any Restrictions?
Taxes on Property			
Real Property	Cities, counties, & towns	§ 58.1-3200 through § 58.1-3389	Unrestricted
Tangible personal property ('car tax')	Cities, counties, & towns	§ 58.1-3500 through § 58.1-3521	Yes
Machinery & tools	Cities, counties, & towns	§ 58.1-3507	Yes
Merchants' capital	Cities, counties, & towns	§ 58.1-3509 and § 58.1-3510	Yes
Short-term rental property	Cities, counties, & towns	§ 58.1-3510.5	Yes
Taxes on Individuals			
Sales & use	Cities & counties; <i>not towns</i>	§ 58.1-605	Yes
Motor vehicle license	Cities, counties, & towns	§ 46.2-752	Yes
Utility - consumers	Cities, counties, & towns	§ 58.1-3814	Yes. The Virginia communications sales and use tax replaced the local consumer utility tax on land line and wireless phones and cable television service except where grandfathered in.
Meals	Cities, counties & towns	§ 58.1-3833 and § 58.1-3834 (counties) § 58.1-3840 (cities & towns)	Yes
Cigarettes	Cities & towns; certain counties (Fairfax & Arlington)	§ 58.1-3830 and § 58.1-3840 (cities & towns)	No limit on cities & towns; Fairfax & Arlington may levy up to 5 cents per pack or the amount levied under state law.
Transient occupancy (lodging)	Cities, counties, & towns	§ 58.1-3819 (counties) and § 58.1-3840 (cities & towns)	No restrictions on cities & towns; several restrictions on county rates & dedication of revenues.

Continues on next page

Tax	Local Government with Authority to Levy	State Code Section	Any Restrictions?
Admissions	Cities & towns; certain counties	§ 58.1-3817 and § 58.1-3818 § 58.1-3840 (cities & towns)	No restrictions on cities & towns; several restrictions on county rates & application.
Recordation	Cities & counties	§ 58.1-3800	Yes
Probate	Cities & counties	§ 58.1-1711 through § 58.1-1718	Yes
Taxes on Businesses			
Business, professional, & occupational license	Cities, counties, & towns	§ 58.1-3700 through § 58.1-3735	Yes. In addition, counties cannot levy in towns that use the tax without town permission.
Daily rental property	Cities, counties, towns	§ 58.1-3510.4	Yes
Coal severance	Cities & counties	§ 58.1-3741	Yes
Gas severance	Cities & counties	§ 58.1-3712	Yes
Coal & gas road improvement	Cities & counties	§ 58.1-3713	Yes
Oil severance	Cities & counties	§ 58.1-3713.3	Yes
Utility license	Cities, counties, & towns	§ 58.1-3731	Yes.
Alcohol license	Cities, counties, & towns	§ 4.1-205	Yes.
Bank franchise	Cities, counties, & towns	§ 58.1-1200 through § 58.1-1217	Yes. Rates are ‘capped’ at 80% of state rate; county tax does not apply in towns.
Cable TV franchise	Cities, counties, & towns	§ 15.2-2108	Eliminated, Virginia Communications Sales and Use tax replaced
Communications sales & use	State tax distributed by the Virginia Department of Taxation to localities based on a percentage derived from their participation in the local taxes that this flat rate tax replaced.	§ 58.1-645 through § 58.1-662	Replaced several locally levied taxes: the consumer utility tax on land line and wireless telephone service, the E-911 tax on land-line telephone service, a portion of the BPOL tax, the local video programming excise tax on cable television services, and the local consumer utility tax on cable television service.

CHAPTER 11

Economic Development

By staff of the Virginia Economic Developers Association

What is economic development?

Economic development is more than just headlines about new companies relocating to your community, new jobs being created, and increased investment generated. At its core, economic development is about activities that foster economic prosperity that leads to a better quality of life for people in all regions of the Commonwealth. It also provides the revenue which funds necessary public services. Virginia's communities are as diverse as the geography that defines the Commonwealth. This diversity means that different communities have different approaches to economic development programs depending on their size, resources, and other unique elements.

But, despite their diversity, most economic development programs have five basic components: Business Retention & Expansion; Entrepreneurial Development; Investment/Attraction; Workforce/Talent Development; and Tourism/Placemaking. The focus on each of these components will vary from locality to locality and from region to region.

Business Retention & Expansion. It is always easier to retain and grow the businesses that already exist in a community than it is to attract new businesses. In fact, a higher percentage of new jobs and capital investment comes from retaining existing businesses. Business retention is not only cost-efficient, it also can create “business champions” for a community, leading to additional growth opportunities.

Entrepreneurial Development. Starting or nurturing new businesses can lead to many benefits for a community. This is true for both large and small businesses as small business owners typically have a vested interest in the well-being of the community and are civic-minded.

Investment/Attraction. Recruiting businesses or business expansions from competing communities outside the Commonwealth can increase the size of the local economy as well as diversify the tax and employment base. This is the most high-profile type of economic development.

Workforce/Talent Development. Over the past decade, the importance of labor – both its availability and quality – has become a top driver of corporate site location strategy. Local communities play a vital role in workforce development through their education and retraining systems and by being attractive places for people to live, work, and raise a family.

Tourism/Placemaking. The foundation of a healthy economy begins with placemaking, which often is closely aligned with tourism efforts. Placemaking enhances the quality of life for both residents and visitors to a community. This is increasingly true as people can work from remote locations and choose to live in communities that offer an ideal mix of amenities to enjoy when not working. Thus, developing the assets that make a community unique is an essential element to economic development.

Why local governments should invest in economic development

It is vital that the Commonwealth of Virginia and its localities invest in programs with a positive return on investment that help create new jobs to make Virginia more competitive. These investments improve the state's quality of life, and fiscal stability, and ensure that Virginia's position in national business climate rankings remains strong. Additionally, Virginia must continue to engage global business leaders to maintain awareness of the state as a great place to do business.

At both the local and state levels, government serves a fundamental role in facilitating job creation and investment by both maintaining and enhancing a pro-business climate. Governments also buttress economic development activities through marketing and site development efforts. Policy issues such as transportation, education, and local land use also play a role.

In a nutshell: choices made by government entities drive the local business climate that makes it attractive to business prospects. This climate, fostered by all levels of government, is essential to economic prosperity, a broadened tax base, and enhanced economic stability and quality of life. Furthermore, economic development leads to increased tax revenues for state and local governments, thus providing the funds to support other essential government services.

Economic development is a team sport

There are many economic development stakeholders involved in the process of strengthening a community's economic competitiveness, growing (and retaining) current businesses, and attracting new projects to Virginia. The economic development ecosystem includes public and private sector practitioners at the state, regional, and local levels. The Virginia Economic Development Partnership (VEDP), the state's economic development arm, works closely with regional and local economic development organizations to improve economic competitiveness and increase project activity. There are also 18 regional economic development organizations across Virginia and over 100 local economic development partners, that work with the state to promote Virginia's assets and strong competitive position.

Other state agencies, such as the Department of Housing and Community Development (DHCD) and the Virginia Department of Small Business and Supplier Diversity also support community revitalization and entrepreneurial activities. Entities such as Virginia Housing and the Virginia Resources Authority (VRA) help finance housing and other vital infrastructure. Finally, allies at the Virginia Department of Transportation (VDOT), the Virginia Community College System (VCCS), the state's four-year colleges and universities, the Department of Environmental Quality (DEQ), the Virginia Department of Rail and Public Transportation (VDRPT), and others play important supporting roles in economic growth activities. All these assets offer a deep pool of skilled workers, access to both domestic and international markets through our ports and airports, attractive cost of doing business, a business-friendly environment, and sites matching industry needs.

In addition to economic development practitioners, core partners such as local and regional chambers of commerce, utilities, railroads, and trade associations (among others) play a vital role in supporting the economic development process. To be successful in economic development, all levels of public and private sectors need to collaborate, partner, and invest in Virginia's economic competitiveness to create an environment ripe for job creation and capital investment by companies across target industries.

Tools for competitiveness

Virginia must maintain and strengthen its economic development toolbox, including existing incentives, sound tax and regulatory policies, the State's marketing program, and support for programs that revitalize communities. Virginia has historically taken a conservative approach to using these tools and they have generated new revenue opportunities for the state and its localities. These tools continue to be essential in remaining competitive regionally, nationally, and globally.

In addition to offerings at the state level, a wide variety of tools are available for local economic development efforts. Every community does not need to use every tool – they should be bundled based on the direction provided by the plan and strategy developed by each community. The major categories of economic development tools are described below.

Economic/Industrial Development Authorities

Localities are authorized by the Industrial Development and Revenue Bond Act ([§§ 15.2-4900-4920](#)) to establish their own economic or industrial development authority (IDA/EDA). Once established, the authority has expansive powers to raise funds, develop land, and provide other services related to economic development. Localities interested in creating an EDA/IDA must do so through a government ordinance ([§ 15.2-4903](#)). Many communities have created EDAs/IDAs to streamline economic development efforts, raise additional funding for economic development, and develop stronger processes to attract and retain businesses.

Funding

Research has shown a correlation between the availability of economic development resources and achieving high-impact economic goals. At a minimum, strong local funding supports the capacity to hire and retain staff. This is true for both the number and quality of staff due to the flexibility to offer more competitive salaries. Funding also enables a local government to increase its marketing capabilities.

Staffing

According to research, having an experienced, full-time, economic development staff is linked to economic growth and job creation in a community. For this reason, shifting from a volunteer or part-time staff to an organization with at least one full-time staff person is the most important step a local government can take to support economic development in their community. Expert consensus recommends the following for economic development organizational staff structure:

- Most organization staff should be full-time hires that dedicate 100 percent of their time to economic development.
- Minimum of 1-2 staff to perform key organizational functions (such as strategy development, business attraction/marketing, business retention efforts, placemaking, entrepreneurship, and partnership coordination).
- Organizations pursuing additional initiatives should have 2+ total staff, depending on the number and scope of initiatives.

Professional expertise is another essential element in a strong organization. The core functions of an economic development organization (outlined in more detail below) can constitute a full-time job, even when excluding the pursuit of additional strategies or initiatives. An experienced chief economic developer can enhance and streamline these organizational functions.

Incentives

State Incentives. Virginia primarily makes its case to companies on its total value proposition and typically provides incentives in competitive situations. Generally, Virginia is competing with other southern states that have comparable business climates. At the state level, performance-based grant programs or grants are awarded based on metrics or milestones achieved by the company. There are four types of incentives that the state uses to attract companies:

1. **By Right** – These grants are awarded automatically to all companies or projects that meet eligibility criteria. (Examples: Data Center Sales and Use Tax Exemption, Enterprise Zone, Major Business Facility Job Tax Credit)
2. **Discretionary: Executive Branch Approval** – These grants are administered by agencies that have some discretion over grant recipients and amounts awarded. These projects and/or companies must meet certain eligibility criteria. These programs may target specific industries, geographies, or projects based on eligibility requirements. (Examples: Commonwealth Opportunity Fund, Virginia Jobs Investment Partnership, Tobacco Revitalization Opportunity Fund, Virginia Talent Accelerator Program)
3. **Discretionary: MEI Approval** – These grants are awarded on a case-by-case basis and there is generally no discretion over recipient(s) of the grant. Any discretionary incentive offer that exceeds \$10M either independently or in combination with a by right incentive will be reviewed by the Major Employment Investment (MEI) Commission.
4. **Custom Performance Grant Programs** – These grants are generally awarded to communities to improve infrastructure, such as industrial parks and broadband access. (Examples: Brownfields Restoration, Virginia Business Ready Sites Program, GO Virginia)

Local Government Incentives

Local government incentives vary by locality and can range from direct payments to tax incentives.

Regarding tax policy, local governments levy a variety of taxes on the business community, including BPOL (business, professional, and occupational license), business personal property, real estate, commercial utility, transient occupancy, car rental, and other smaller taxes. In addition, localities levy a 1 percent local option sales tax which is collected by the state and returned to the locality. Business-based taxes represent as much as half of all taxes collected in some localities.

Local governments have significant control over which taxes are levied and the tax rates applied. While the Commonwealth sets upper limits on many taxes, the rates are usually established locally. Localities may establish new or separate categories for both BPOL and business personal property taxes. There is no requirement statewide for

local governments to levy any of these except for real estate and personal property taxes, although most communities try to broaden their tax base by taxing business through these permitted mechanisms.

Within the context of the tax structure, however, opportunities exist to create some competitive advantages through rates and special categories. For example, a community may want to reduce the business personal property rate for a certain category of equipment if they can create a competitive advantage by doing so. A similar approach can be used for special categories of business as they relate to BPOL taxes. Although there are constitutional prohibitions from abating or rebating real estate taxes, some exceptions are allowed for abatements of the increased value resulting from qualified commercial rehabilitation. Localities can also make grants to companies in amounts approximating an increase in property taxes, but such grants are subject to appropriation by the local government body and typically flow through a local EDA/IDA.

Geographic areas also can be identified for special treatment to attract investment and jobs. The Commonwealth permits the establishment of enterprise zones (with gubernatorial approval) and local technology zones that allow differential tax treatment within a local governmental unit. Localities can set different rates and provide other competitive advantages within targeted areas through these tools, which have specific regulations and program guidelines that must be followed. Other geographically specified areas for special treatment designated at the federal level are Community Development Block Grant target areas, HUB (Historically Underutilized Business) Zones, EDA Economic Development Districts, Opportunity Zones, and New Market Tax Credit areas. All of these are targeted toward lower-income areas in need of business-related investment.

Using the tax code to create competitive advantages is complex and not to be done without legal advice and serious consideration of the objectives. If the net effect is only to reduce tax rates overall, without creating jobs or enhanced revenue, then using tax policy in this way may not be advantageous to a local government. On the other hand, if it is done in the context of a clear and well-designed economic development plan and strategy, tax policy can be an effective tool.

Small Business Assistance & Financing

Business assistance is a general term for a wide range of programs or projects designed to aid small business growth. The Virginia Department of Small Business and Supplier Diversity (SBSD) is the state agency devoted to assisting existing businesses in the Commonwealth. Many other resources are also available for business development. For example, small business development centers (SBDCs) provide counseling, training, and often financing for business creation or expansion. Community development corporations (CDCs), minority enterprise business investment corporations (MESBICs), and other nonprofit corporations can be formed to raise capital and to make investments in new and expanding businesses. Small business incubators can provide a combination of direct assistance, space, and financing for the creation of new businesses. Although the federal government offers the bulk of the funding for many of these resources, local funding often augments or matches federal participation. Local governments play a key role in supporting these institutions, which serve as a resource for entrepreneurs.

Several state financing programs can be tapped through the Virginia Small Business Financing Authority (VSBFA) to provide capital for new or expanding businesses. At the federal level, the Small Business Administration (SBA) offers a number of loan guarantee programs available through local banks or community-based nonprofits. Few local governments provide direct business financing, although some participate in loan-leveraging programs using federal and state funds. The principal financing vehicle for economic development at the local level is through qualified industrial development bonds.

Infrastructure

To maintain Virginia's competitiveness, we must ensure that we have fast and reliable ways to move people, goods, energy, and information to every corner of the Commonwealth. In a global economy where businesses are making investment decisions between multiple localities, states, and countries, the quality and availability of sustainable infrastructure is often a deciding factor. Infrastructure investments must be made in a way that benefits all, as a part of Virginia's economic development strategy.

One of the most significant tools a local government can use to encourage economic development derives from its ability and obligation to provide crucial infrastructure. Most communities have a capital facilities plan, designed to pay for utilities, schools, and other public investment, such as projects aimed at supporting economic development. A clearly articulated plan and strategy can serve as the basis for investment decisions.

Direct investment in infrastructure can be a powerful economic development tool because its timing, scope, and purpose can all be directed at specific job-related projects such as a new plant or a business expansion. Connections can be made between the project costs and the return on investment. Local governments may receive infrastructure funding from a variety of sources including federal, state, and local economic development authorities.

Site Development

Having project-ready sites is a key element of attracting new businesses. Major companies looking to move or expand often need large tracts of prepared land for a project. A “project ready” site should have completed due diligence, been granted the necessary environmental permits, be zoned appropriately, and be able to connect all the necessary infrastructure within 12-18 months. Increasing a locality’s number of “project-ready” sites requires significant investment with local governments often collaborating on a regional basis to develop larger sites or business parks that may not have been possible to develop independently. To develop sites that are not “project ready,” local officials share information with partners at the regional and state levels to generate support and identify funding options. Localities can then apply for funding options at the state level, such as GO Virginia (GOVA) and Virginia’s Business Ready Sites Program (VBRSP) are then with input from stakeholders.

To ensure that sites have a chance of attracting businesses, local governments take careful inventory of their sites and include any relevant data. That information is then posted on the local government’s economic development website, as well as catalogued in VEDP’s VirginiaScan database for greater exposure to companies and site selectors. Virginia law also allows for the development of a Regional Industrial Facility Authority (RIFA) to allow multiple communities pool assets and jointly share in the tax proceeds resulting from joint development. Jointly developed projects can also benefit from the Virginia Collaborative Economic Development Act created as part of GO Virginia to tap the personal income tax proceeds resulting from jobs created through joint activities.

Building Development

Similar to an available sites program, an available buildings program leverages “shell” buildings that major businesses or multiple businesses can move into. Sometimes, the local government owns the building and makes physical improvements to the space. As with sites, local governments maintain a roster of available buildings in local records, host information about available buildings on their website, classify the building according to attractive transportation and demographic characteristics, and proactively market the buildings to developers.

Innovation & Entrepreneurship

To support entrepreneurship, local governments have three general strategies: increase the number of entrepreneurs operating in the community, improve the performance of emerging enterprises, or improve the skill level of entrepreneurs.

Support for entrepreneurs should be responsive to the stage of each enterprise. To determine the best way for local governments to support entrepreneurs in the community, they should first work to understand the entrepreneurial support system already in place, and what entrepreneurial businesses need. They look at nonprofits, educational institutions, the local chamber of commerce, and state programs such as SBSB to see programming, financing, and infrastructure already available in the community. Next, they reach out to entrepreneurs to understand what their major barriers are and what additional support entrepreneurs need. This support can include providing physical space like an incubator building, providing training and technical assistance, connecting entrepreneurs to markets, or facilitating mentorship with established business owners in the community. Once local governments understand the strengths and weaknesses of their community’s entrepreneurial ecosystem, they can craft and execute a strategy for the economic developer to add value by addressing the gaps. Local governments often collaborate with partners that are already focused on innovation and entrepreneurship in the community to expand programs that are already in place or develop complementary supports.

Many communities give special attention to nurturing the development of small, minority, veteran, and women owned businesses, and provide these types of businesses with assistance with financing and identifying public procurement opportunities.

Most often, local governments work to support innovation and entrepreneurship by providing or developing some combination of the following:

- **Physical infrastructure.** Many communities create business incubators that provide space for a new business to get started. This often eliminates the significant financial burden of paying rent and gives businesses a central location for accessing technical expertise.
- **Technical assistance.** This can come in the form of zoning changes, loan guidance, workshops, or market research to help facilitate growth.
- **Financial support.** Access to capital is one of the main hurdles small businesses must overcome. Local governments often partner with other organizations, such as banks, major firms, or nonprofits to provide a capital source for entrepreneurs.
- **Connections to mentors.** Research indicates that some of the most effective support entrepreneurs can receive is mentorship from experienced entrepreneurs. Local governments can facilitate mentorship with successful small businesses in their community.
- **Mentoring programs.** Local governments can establish a program that connects entrepreneurs to firm executives in their region. This will require reaching out and cultivating relationships with firms to develop a structure for the mentorship process to begin.

Marketing

Marketing is not always considered a natural role for government and yet, in economic development, marketing is fundamental. While marketing is typically associated with lead generation and business attraction in economic development, it is equally valuable to market to existing businesses and residents. An authentic marketing program will be able to identify what makes the local community unique to live and work in while also highlighting specific, tangible assets for businesses to utilize in the community. Strong consistent outreach to existing businesses demonstrates your local government's commitment to their success and ongoing interest in maintaining their business in your community. Identification of these features is the cornerstone of an economic development marketing program, with creation of appropriate promotional materials following this identification.

Marketing should be developed to make the strongest connection to the audience. Given the increasing complexity of segmented marketing, regional marketing capabilities can help local governments reach the broadest audience possible. If they choose to leverage regional bodies for marketing, localities should still provide input regarding which assets they wish to market.

Any locality interested in sharing information on economic development beyond their boundaries should have an economic development website. The website is your front door to the world and should provide timely, accurate, and comprehensive information about a community, its sites, its workforce, and other facts and data important to corporate decision makers. This information should include the unique features of the community as well as the valuable assets they have already identified. Economic development lies in the intersection of the private and public sector and economic development marketing should reflect this duality.

Economic development marketing should also be aligned with and complementary of the community's tourism marketing. Tourism marketing is often funded through local transient occupancy taxes and such messages can augment various quality of life and other positive attributes of a community.

Placemaking

Communities that want to attract to new businesses, boost tourism, improve quality of life, uplift community pride, and/or maintain community character should consider placemaking. Placemaking refers to the intentional process of creating an emotional connection to a public space. It has emerged as an economic development program largely in response to the shifting preferences of "knowledge workers" but has always had significance to local and regional

economies. Local governments and community leaders can appropriately engage in placemaking by providing leadership to the community, incorporating the community’s larger brand, facilitating real estate development projects, and fostering equitable growth.

Several studies have found that measures of “vibrancy,” such as density, diversity, connectivity and transit, public service provision quality, walkability, and amenities are connected to higher employment and increased income in cities. Placemaking efforts range in cost, however most effective programs start small (such as remodeling a city block rather than revamping the whole downtown) and are often narrow in their focus (such as repainting building fronts or adding art to an alley). Successful programs also build around city assets, such as a university, public space, or a thriving business area. Further improvements to these assets will accentuate the effort’s success and build momentum for more programs – all the while connecting people to people, and people to place.

Communities that pursue placemaking as a strategy often take the following steps:

- **Take an inventory of infrastructure and assets.** Local leaders focus on understanding the abilities and skills of people in the community, stories and attributes, and other community strengths to determine how placemaking can enhance those assets.
- **Leverage existing funding and projects.** Supporting projects that already have momentum help accelerate their impact. Governments do this by providing resources (i.e., staff or financing) in a collaborative manner or by promoting the projects. Additionally, they coordinate by adding placemaking initiatives that complement those projects (e.g., building a park next to a newly revitalized street).
- **Collaborate with multiple stakeholders in the community.** Leveraging other interested parties (especially Planning Districts) to pool resources and spread the word about your effort greatly enhances the capacity for that effort.
- **Leverage planning expertise in determining strategic investments in placemaking.** Governments often work with experts to determine value-add projects that fit into the community’s vision. These experts can be internal, new hires, or contracted persons that can support the initiation and implementation of a project to enhance or modernize existing spaces in the community.
- **Establish a sustainable funding mechanism for long-term projects.** Business leaders, nonprofits, and local government often work together to establish funds for long-term enhancement projects, such as beautification, neighborhood improvement, and funding for cultural activities.

Talent Attraction & Workforce Development

Talent Attraction

Human capital development – from healthcare to education to workforce development – will be the single most important determinant of Virginia’s future economic growth and the key to unlocking the full economic potential of Virginia’s smaller metros and rural regions.

An annual survey of corporate real estate execs in the U.S. commissioned by *Area Development* illustrates the shift. In its 2008 survey, execs ranked “availability of skilled labor” as the sixth most important site-selection factor. In 2018, they ranked it no. 1.

There is ample evidence that talent considerations have come to dominate the site-selection criteria of companies as they choose where to place new traded-sector, job-creating business investments.

In response to this emphasis on human capital, economic developers have started programs that focus on attracting talent to their community. This trend is coinciding with larger demographic shifts: rising costs of living in large cities pushing younger adults out and generational shifts in location preferences.

This strategy is a good fit for localities looking to diversify their talent base

or fill a specific talent need for a major industry. Like workforce development, local governments should design talent attraction based on analysis that identifies talent needs not being met by the current workforce. Once that analysis has been conducted, communities can solicit feedback from business leaders to develop a talent recruitment and retention strategy.

Target demographics will have vastly differing priorities when making decisions about where to relocate. Two primary decision points that hold true across most demographics are the availability of jobs and the cost of living. Both features offer strong starting points from which to base your pitch material (should they apply to your locality). The pitch you make to attract talent will be directed to its target audience and should draw a clear connection from the qualities a locality already has to the stated preferences of the target audience. Those qualities may range from specific occupation preferences to quality-of-life features and other local assets. For example, Development Counsellors International conducts a semi-regular survey on the factors that Millennials consider when relocating. Prior to the COVID-19 pandemic, those preferences were for affordable housing and lower crime rates.

Workforce/Talent Development

The importance that companies place on the labor market when making decisions about where to invest in locations cannot be overstated. Having a workforce/talent strategy is important for many economic development goals, including business attraction and retention, expanding entrepreneurship, and improving economic outcomes for disadvantaged communities. In certain sectors in recent years, the quickening pace of innovation now demands more flexible methods of skills training and retraining. As a result, workforce initiatives can be complex and resource-intensive, requiring high levels of coordination with a variety of critical stakeholders.

Because of this complexity, communities often analyze local labor market information to inform workforce programs or before providing any projected workforce needs to other workforce program developers (such as community colleges). Relevant labor market information encompasses the skills and demographics of a locality's current labor pool (which may extend past local political boundaries) as well as the skills and competencies needed by existing businesses and industries/occupations identified for high growth. Understanding the difference between the talent a community already has and the target skills different industries and occupations need is the first step in designing a workforce/talent program that capitalizes on other economic development efforts.

There are three main steps to achieving the understanding needed to design an effective workforce/talent program. First, meetings with private sector stakeholders early in the analysis phase will highlight their most needed skills and assist the locality in designing a training curriculum that encapsulates those needs. It's important to remember that local labor market information may extend behind the jurisdictional lines of just one community; in fact, site selectors frequently include workers within a 60-minute drive time in their assessment of available workforce. Your second step should be to determine which of those gaps can be most effectively filled by your economic and workforce development efforts. Finally, once workforce development needs have been analyzed, communities should engage their workforce development leaders to encourage adoption of the target workforce development program. The scope of each of these programs will be distinct and tailored to the specific need they are trying to support. Occupations that do not require advanced degrees but are in high demand are coordinated with, and integrated into, the community college system, or even the K-12 school system.

To support competitive job creation projects in traded sectors, VEDP offers two programs:

The Virginia Jobs Investment Program (VJIP). This program provides grant funding and consultative support to eligible companies for recruitment and training assistance. VJIP supports new or expanding companies in the state and is one of our key discretionary incentive programs funded by the Commonwealth to support new job growth and capital investment.

The Virginia Talent Accelerator Program (VTAP). Launched in 2019, VTAP provides companies with world-class training and recruitment solutions as a discretionary incentive for new job growth and investment. VEDP will work with companies to create and provide training and recruitment services fully customized to the company's unique jobs, processes, equipment, and culture. Working in partnership with the Virginia Community College System (VCCS) and higher educational institutions, these resources to support the incoming workforce are provided at no cost to the company.

About the authors: The Virginia Economic Developers Association (VEDA) is the voice in Virginia for shaping economic development public policy and a primary source of strong and effective education and networking for economic development professionals.

Resources

Economic Development, Agencies & Publications

Virginia Agencies & Organizations

Regional Economic Developers Organizations: www.goveda.org/page/REDO

University Based Economic Development: www.goveda.org/page/HigherEd

Virginia Department of Small Business & Supplier Diversity Assistance:

- Business Development and Outreach
- Virginia Small Business Financing Authority: www.sbsd.state.va.us
- Certification Division

Virginia Department of Housing and Community Development: www.dhcd.virginia.gov

- Community Development Block Grant Program
- Virginia Growth and Opportunity Program (GO Virginia)
- Virginia Main Street Program

Virginia Economic Developers Association: www.goveda.org

Virginia Economic Development Partnership: www.vedp.org

- Division of International Trade
- Virginia Scan

Virginia Innovation Partnership Authority: www.cit.org

Virginia Resources Authority: www.virginiaresources.gov

Virginia Small Business Development Centers: www.virginiاسبdc.org

Virginia Tourism Authority: www.virginia.org

Publications

Virginia Municipal League and Virginia Economic Developers Association.

Economic Development 101 Guide: **forthcoming**

Virginia Economic Development Partnership. Virginia Economic Review: www.vedp.org/virginia-economic-review

CHAPTER 12

Planning & Zoning

By George Homewood, Planning Director for the City of Norfolk

If you fail to plan, you are planning to fail! – Benjamin Franklin

...or, as the old military “7 P’s” adage puts it: *Proper Prior Planning Prevents Pitifully Poor Performance*

While these aphorisms are generally associated with personal behaviors, group dynamics and businesses, they also apply to communities and local governments. And, because communities and local governments are complicated and complex, the degree of planning needs to be both robust and longer term. While financial and fiscal planning are critical components of local governance, this chapter focuses on the physical planning of communities and the tools available to implement such plans. Planning gives localities the means and opportunity to establish unique and targeted community development goals and objectives, and to enact the policies, ordinances, and programs necessary to attain them. The planning process also gives community residents an opportunity to participate, thus increasing the likelihood that the result reflects the community’s ideas and ideals.

Introduction

Because planning is so critical to the success of communities, the Code of Virginia mandates that all localities have both a comprehensive plan and a subdivision ordinance. Towns may rely on the comprehensive plan and subdivision ordinance of the county of which the town is a part, but most often it is in the best interest of the town to develop at least its own comprehensive plan. [Title 15.2, Chapter 22](#) of the Code of Virginia, provides the authorities for planning in every city, county, and town in the Commonwealth. Some provisions are “must do” items such as the requirement for a comprehensive plan and a subdivision ordinance while others are proscriptions that preclude a locality from adopting or enforcing certain rules, regulations, or ordinances. These are frequently called prescriptive provisions. However, the majority of the provisions in Title 15.2, Chapter 22 are enabling provisions wherein a locality may, or may not, choose to avail itself of the authority granted. It should be noted that many of the enabling provisions are constrained in that they may only be used in a certain way or are subject to certain safeguards or standards. One important distinction is that in the Commonwealth, planning and zoning enablement is drawn on the general policy powers conferred on the locality by both the Virginia Constitution and the Code of Virginia. Addressing the public health, safety, and general welfare needs of all Virginians is the fundamental basis for which Virginia has mandated that all local governments plan for the future. The declaration of legislative intent Code of Virginia [§ 15.2-2200](#), is both broad and overarching:

This chapter is intended to encourage localities to improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry, and business be recognized in future growth; that the concerns of military installations be recognized and taken into account in consideration of future development of areas immediately surrounding installations and that where practical, installation commanders shall be consulted on such matters by local officials; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

This outcome-based approach to enunciating physical planning goals for which localities are expected to strive is a broad mandate to use not only the tools specified in subsequent sections of state code, but also to look beyond for new and innovative tools to accomplish some or all these outcomes. These include form standards and form-based codes, visioning and visualization, performance zoning, what-if analysis, and other recent innovations. While none of these relatively new tools and techniques is called for in state code neither are they prohibited and, thus, all are available and potentially valuable in achieving the required outcomes noted in [§ 15.2-2200](#). In fact, it is this somewhat

unique flexibility in the Code of Virginia that has allowed for needed evolution in the planning process in the Commonwealth.

Planning began in Virginia with the founding of Jamestown in May 1607. The Virginia Company sent a plan for the fort and settlement with the leaders of the colony. Ever since, many – and perhaps most – successful communities in our Commonwealth, from Middle Plantation (later Williamsburg) to Reston, have benefitted from a strong plan that was largely adhered to over time.

Planning is a process by which a community attempts to deal with present conditions and provide for future needs. Though most often associated with guiding future land development, local government planning efforts also include such activities as planning for public and private infrastructure, public facilities and service needs, historic preservation, climate change, environment and energy, economic development, housing, and hazard mitigation. Increasingly, plans and the planning process must incorporate diversity, equity, and inclusion as foundational elements.

An 8-step planning process is shown below:

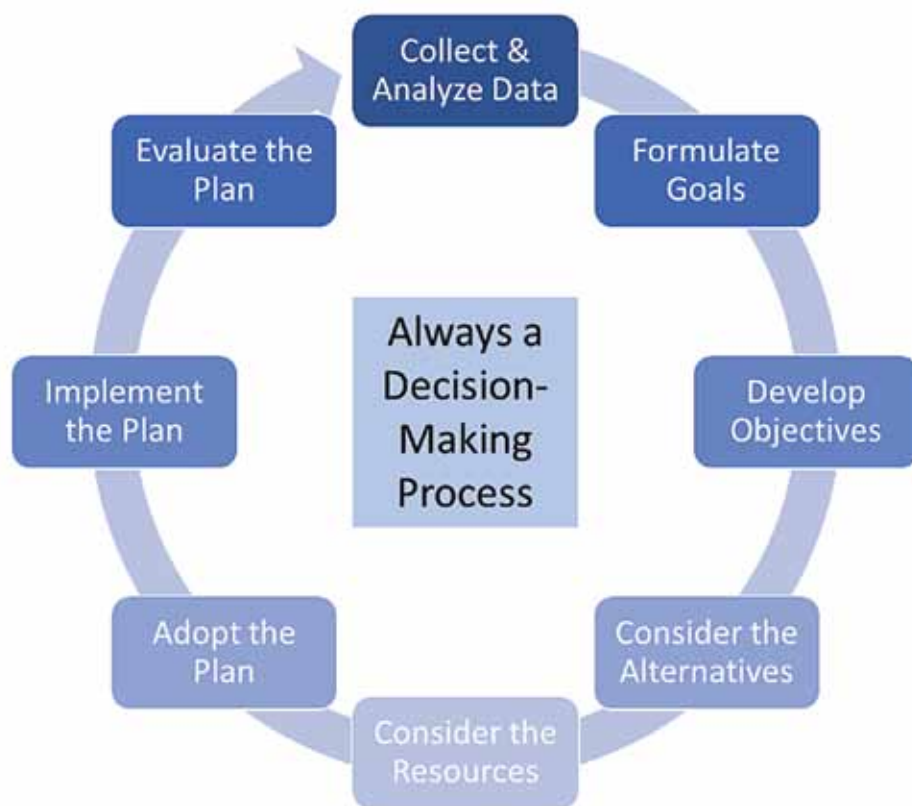


Figure 1 Stylized Planning Process (Source: George M Homewood, FAICP)

One of the keys to successful planning is to continually evaluate the outcomes – if they are not what is expected or desired, perhaps changing the plan is appropriate. However, plans must be given some reasonable amount of time to mature. The goals, objectives and strategies of local plans are all about how to achieve the future the community desires.

This chapter begins with the local comprehensive plan and then moves to the available implementation tools beginning with those that are required or used extensively and concluding with those that have limited application or are impractical as enabled.

The Local Comprehensive Plan

Perhaps the only constant in our communities is change. Localities that plan for change can determine whether changes exert a positive or negative influence. Planning is used to guide and coordinate the changes the locality expects; however, planning is also very beneficial when confronted by unexpected changes (such as a global pandemic)

because alternatives to the norm will have already been considered. The document that captures a locality's plans for change most often takes the form of a comprehensive plan. Some localities refer to this document as a general plan or a long-range plan, but whatever it is called, the meaning is the same and every jurisdiction in the Commonwealth must adopt one.

The Code of Virginia [§ 15.2-2223](#) begins:

The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

The Code of Virginia gives the local planning commission (which every locality must have) the responsibility of preparing the local comprehensive plan. While the planning commission may oversee the process, preparation of the comprehensive plan is nearly always a staff-driven effort that frequently involves one or more consultants. Moreover, successful planning processes always find meaningful ways to engage the public. Increasingly, significant effort occurs to ensure those that are not typically represented in local government processes are included. Also, since the planning horizon for comprehensive plans is typically 20 years or longer, it is important to seek out younger members of the community as they are the ones with the most at stake. Several award-winning plans have engaged students engaged in government and other civics coursework.

Typically, before beginning the comprehensive plan, an analysis establishes baseline existing conditions. Future trends are also identified to define where a locality is, how it got there and where it is heading if trends continue unabated. The Code of Virginia describes this as follows:

In the preparation of a comprehensive plan, the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

The Code of Virginia includes numerous elements that are required for comprehensive plans and the list has grown longer over time. Currently included in this list are:

- Transportation Plan (all modes must be considered and a map or maps of proposed improvements with cost estimates must be included)
- Affordable Housing (including construction, rehabilitation, and maintenance to meet current and future needs)
- Broadband (including needs of businesses and residents)
- Urban Development Areas (designation formerly required, now optional)
- Transit Oriented Development (cities of 20,000+ population: counties of 100,000+ population)
- Coastal Resource Management (limited to “Tidewater Virginia”)
- Strategies to Combat Sea Level Rise and Recurrent Flooding (limited to Hampton Roads PDC)

The required elements each have language establishing specific aspects to be considered or provided for in the comprehensive plan document.

In addition, there is a long list of recommended topics/elements to be considered. While these are not specifically required, nearly all are routinely considered by most jurisdictions:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas.
2. The designation of a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal or waste disposal areas, and the like.

3. The designation of historical areas and areas for urban renewal or other treatment.
4. The designation of areas for the implementation of reasonable measures to provide for the continued availability, quality, and sustainability of groundwater and surface water.
5. A capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable.
6. The location of existing or proposed recycling centers.
7. The location of military bases, military installations, and military airports and their adjacent safety areas.
8. The designation of corridors or routes for electric transmission lines of 150 kilovolts or more.

Indeed, there is nothing that a locality is precluded from studying or considering in its comprehensive plan or any subsequent amendments to it.

There is no set formula for a local comprehensive plan because every locality is different, and plans need to fit the community for which they are developed. Coastal communities have different opportunities and needs from those of the Piedmont which are themselves different from the Appalachian highlands. And while there are similarities within geographic regions, there are also unique aspects that must be captured in comprehensive plans for them to be effective. Some localities focus on their history, others on their economic base, others on their scenic beauty. In any case, a successful, implementable comprehensive plan begins with a foundation of what is achievable.

In Virginia, comprehensive plans are general in their approach and effect. There is no concurrency requirement (as is found in some states) wherein no change in land use or the physical arrangement of a locality that is not envisioned in the comprehensive plan may occur. In the language of the Code of Virginia, *the comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature.*

The advantage of a general approach is that the plan can be aspirational in a way that moves the community in the intended direction without forcing things best left for the future to be put into place immediately.

Once adopted, the comprehensive plan is the legal and policy foundation for all decision-making in matters involving land use planning and the physical arrangement of public and private infrastructure. Also, once adopted, the comprehensive plan must be reviewed no less than on 5-year intervals to determine if any amendments are needed. The review need not be a rewrite of the plan; instead, an analysis of the effectiveness of the strategies in moving the community toward the established goals is generally sufficient for a decade. Given that the development of a complete comprehensive plan takes years, reviews to keep it up to date are important.

The local planning commission is vested with the role of “champion” of the adopted comprehensive plan. Its subsequent actions and recommendations should be based in considerable measure on the contents of the comprehensive plan. Further, [§ 15.2-2232](#) of the Code of Virginia requires that any proposed public improvement not shown or included within the comprehensive plan shall be subject to a public hearing and determination by the local planning commission that the facility is consistent with the comprehensive plan – this is often referred to as a “2232 Review.”

Subdivision Ordinance

Subdivision regulations are one of the state-mandated planning tools. Each local government in Virginia must adopt and enforce a subdivision ordinance to assure that the division or platting of land into lots occurs in an orderly and safe manner that does not unduly burden either the locality or the Commonwealth. A subdivision ordinance establishes the subdivision process and procedures, layout and design requirements, street and other public improvement requirements, surety guarantees for public infrastructure improvements, and the plat preparation requirements and standards. Other than a handful of localities in Virginia that have not adopted zoning, the subdivision ordinance also requires that newly created lots meet the size and dimensional requirements of the zoning district in which they are located. In Virginia, land may be divided only by recording a plat prepared in accordance with the local subdivision ordinance and approved by the local subdivision agent. There remain lots which were divided by deed or will before the requirement for subdivision ordinances and plats came into being, however that is no longer an acceptable process.

The Code of Virginia defines a subdivision as the division of a parcel of land into either three or more lots or into parcels of less than five acres each for the purpose of transfer of ownership or building development. Many Virginia localities, including nearly all cities and towns, have broadened the definition of subdivision to include any change in parcel lines and any lot creation. Doing so ensures that all lots created meet certain minimal standards such as access, availability of water and wastewater services, and proper chain of title proving ownership and thus the right to divide the parcel. Also, with the greater use of Geographic Information Systems (GIS) by localities across the Commonwealth, having strict platting requirements helps maintain the accuracy of the data within the GIS thus preserving the investment made by the locality in acquiring the system and populating the data.

There are certain mandatory components of subdivision ordinances in the Commonwealth. Among them are:

- Plat standards meeting the requirements of the Virginia Public Records Act (see Code of Virginia [§ 42.1-76](#)).
- Requirements for placing corner pins and monuments for each lot and curve radius.
- Coordination of streets with respect to location, widths, grades, and drainage within the subdivision and with both existing and future adjacent or contiguous subdivisions (this provision often leads to the creation of “stub streets” intended for future extension and which can become quite controversial at the time extension occurs).
- The requirements for public utilities and other public improvements including the surfacing requirements for public and private streets.
- Provisions for drainage and flood control (including within dam break inundation zones).
- Provisions related to identifying soil types and characteristics.
- Provisions for adequate light and air.
- Provisions for the dedication and acceptance of streets, utilities, and other public improvements for public maintenance thereafter.
- Provisions for easements within which public and private utilities are located including easements allowing extensions into future development.
- Provisions for sureties and maintenance requirements including the process for the release of sureties.

In counties, “family subdivision” (see Code of Virginia [§ 15.2-2244](#)) provisions are required to be a part of subdivision ordinances to reasonably permit *a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner*. There is a limited ability to modify the allowance; however, family subdivisions frequently represent a substantial loophole in a county’s ability to affect the type of growth and development envisioned in the comprehensive plan – or even in the zoning ordinance. Counties increasingly are placing limits on the use of family subdivision provisions to ensure that the lots being created truly are for the purposes envisioned by state code. Included are front-end and back-end holding periods, private road standards that mirror VDOT public road standards, maximum limits on the number of parcels that can be created using family subdivision provisions and the use of enforceable conditions on the transfer of lots outside of the family.

The subdivision of land is generally viewed as a by-right ministerial act. This means the local governing body has no role in the review and approval of the proposed subdivision. Typically, only the staff, and, in some localities, the planning commission will review proposed subdivisions to assure conformity with the subdivision ordinance and any related requirements. Since there is little to no discretion in the approval of subdivisions, the Code of Virginia contains many detailed and specific processes, procedures and the like that either may or must be used by the locality.

For plat features requiring state agency approval the agency (most often this is VDOT but in areas where septic systems are prevalent, also VDH) has 45 days to complete their review. Staff and/or the Planning Commission have 60 days to complete the review of a subdivision submission or re-submission.

Ensuring unfettered access to lots is one of the key provisions found in subdivision ordinances. Frequently, this means that new roads are created as part of the subdivision process and in many fast-growing localities, subdividing new lots with individual lot access from existing collector and higher order roads is prohibited or severely limited. In counties, the design standards of the Virginia Department of Transportation (Access Management, Secondary Street Acceptance

Requirements, etc.) are a significant design consideration. Increasingly, counties require that new private roads also meet current VDOT road design standards. Cities generally have their own street standards and requirements.

Zoning Ordinance

The zoning ordinance is the best known – and often the most reviled – tool in the implementation toolbox. The comprehensive plan provides the legal underpinning for the zoning ordinance which is to say that the zoning plan should follow the comprehensive plan. And, unlike the local comprehensive plan, zoning is much more heavily regulated by the Code of Virginia. Our Commonwealth follows the Dillon Rule:

1. *Local Governments have only three types of powers:*
 - a. *Those granted in express words.*
 - b. *Those necessarily or fairly implied in or incident to the powers expressly granted.*
 - c. *Those essential to the declared objects and purposes of the locality, not simply convenient, but indispensable.*
2. *If there is any reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred and shall always be resolved against the local governing body.*

As such, what is enabled and the way it is enabled, as well as those practices that are prohibited by the Code of Virginia, are critical considerations in the drafting of zoning ordinances. However, it is also important to recognize that zoning is drawn on the police powers of the locality – protecting and furthering the health, safety and general welfare of the community and its residents – which can be a very broad grant of discretion. Further, the General Assembly grants charters to cities, towns and some counties in the Commonwealth and these charters may have the effect of extending the authorities and powers of the local government. Finally, because one size does not fit all in Virginia, there are geographical and situational differences in the zoning authorities granted to localities with Northern Virginia and “high-growth” localities having expanded authorities in several areas and Tidewater localities having requirements for protecting Chesapeake Bay water quality as examples of these differences.

At its core, zoning divides a locality into specific districts and establishes regulations concerning the use, placement, spacing and size of land and buildings within the respective districts. The zoning ordinance includes both the zoning text and a zoning map – they are integrally related. However, in practice, they are frequently thought of as different documents because actions come to a governing body as a “rezoning” which typically means a zoning map amendment or as a text change to the ordinance language and in some situations such as a planned development, both a map and text amendment are part of the same application. In Virginia, zoning ordinances must contain a textual description of each district and the district regulations, as well as a map detailing the location and extent of each district throughout the community. For the purposes of this section, the term zoning ordinance is used to refer to both the text and the map components unless a specific distinction needs to be made. One note at the outset is that while a property owner may ask for a map amendment for their land, with few exceptions, it is only the planning commission or governing body that can initiate a text amendment.

Zoning is a complex topic, especially for most cities in the Commonwealth. Thus, the topic is broken down into subsections, first providing an overview of the basic zoning authorities and tools in general followed by brief descriptions of some of the innovations and different approaches to zoning used in the Commonwealth, most of which have developed over the past three decades or so.

Zoning in General

According to [§ 15.2-2280](#) of the Code of Virginia, any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof, into districts of such number, size and shape as deemed important to needs of the community and the purposes of zoning as defined by the code. Except in Tidewater Virginia localities (generally those east of I-95 also known as Chesapeake Bay Preservation Act localities), zoning is not mandated like the subdivision ordinance, however most Virginia localities have adopted some form of zoning for at least some portion of their territory.

Zoning is intended to avoid disruptive land use patterns by preventing activities on one property from generating negative externalities that are detrimental to other properties. This harkens back to the beginnings of zoning which

principally arose to separate industrial uses from residential and ensuring adequate light and air in post-Industrial Revolution cities. Regulating the location of land uses – in this case a single land use – as a concept began in the US in the late 19th century in Modesto, CA but the first widespread implementation of zoning occurred in Los Angeles in 1908 and then in New York City in 1916. The City of Richmond adopted height and density restrictions in 1908 which became partial zoning in 1915. The U.S. Department of Commerce, under Herbert Hoover, created the State Standard Zoning Enabling Act (SZEa) in 1924. The Virginia General Assembly enabled zoning soon thereafter using the SZEa language nearly word-for-word and the SZEa remains the basis for zoning authority in the Commonwealth today. It is interesting to note that the stated purpose for the Commerce Department to create the SZEa was to promote increased homeownership in the U.S.

Conventional zoning is called “Euclidean zoning”, named after the Town of Euclid, OH (a suburb of Cleveland), whose zoning ordinance was upheld by the Supreme Court of the United States in a landmark case in 1926 (see: [*Euclid v. Ambler*, 272 U.S. 365 \(1926\)](#)). This conventional approach divides the land within the jurisdiction into discreet geographic districts based on the general use and intensity that is permitted for land and buildings. The typical zoning districts under this approach are residential, commercial, industrial, and open space. While the basics remain the same, there are probably as many variations as there are localities because no two localities in the Commonwealth are identical and zoning provides an opportunity for a customizable and flexible approach which creates a regulatory framework to support the locally based goals in the comprehensive plan.

The standards, requirements, and prohibitions on the use of zoning in Virginia are found in [§ 15.2-2280](#) to [§ 15.2-2329](#) of the Code of Virginia. The purposes of zoning are spelled out in [§ 15.2-2283](#), matters that a locality must consider in developing, enacting, and applying a zoning ordinance are contained in [§ 15.2-2284](#). The preparation, administration, and enforcement of zoning, along with zoning standards applicable to group homes, airports, conditional uses, affordable dwelling units, historic properties, and the vesting of rights are found in [§ 15.2-2285](#) through [§ 15.2-2307](#) of the Code of Virginia. [§ 15.2-2308](#) through [§ 15.2-2314](#) contain the provisions applicable to the Board of Zoning Appeals – a body that must be established if zoning is used in a locality. The remaining sections address wireless communication facilities, transfer of development rights, impact fees and the relationship with other ordinances and local codes.

The General Assembly continues to place some limitations on local authority including, among other things, prohibiting the ability to deny placement of or require use permits for manufactured housing, group homes and assisted-living facilities, family day care, medical cottages, sex-offender treatment facilities, craft beverage production/venues, and wireless telecommunication facilities, among other things, if these uses meet certain criteria defined in the Code of Virginia. As localities experiment with new and innovative ways to use zoning, the General Assembly on occasion feels compelled to reel them in or to provide clarity on how to – and how not to – creatively use zoning. This list grows longer with each session of the General Assembly. Localities are well advised to remain abreast of these changes. The Virginia Municipal League, Virginia Association of Counties, Virginia Chapter of the American Planning Association and Local Government Attorneys of Virginia all publish an annual compendium of changes to planning and zoning statutes. Local planners and local government attorneys should pay attention as there is generally only a relatively short time frame from mid-April to July 1 within which to amend local ordinances if that is required. This willingness of the General Assembly to intervene in local zoning highlights the impact of zoning, and planning in general, on communities, neighborhoods, property owners, developers, and others.

One legal principle of zoning deserves to be highlighted at the outset: Zoning runs with the land. This means that once a property is zoned in a certain way or some sort of development entitlement has been obtained, the property can change ownership and the zoning and entitlement will continue in full force and effect. As such, it is essential in analyzing a zoning request that the focus is entirely on what is being requested, not who is making the request. Also, unless there are binding conditions that are a part of the application and approval, that which is promised during a rezoning is unenforceable.

Establishing & Amending Zoning Ordinances

Every city and most towns in Virginia have chosen to adopt zoning to guide future development by regulating land use. Just as the local planning commission is charged with developing the comprehensive plan, so too is the planning

commission in the driver's seat when it comes to developing, adopting, and amending the zoning ordinance. However, drafting a zoning ordinance is generally beyond the scope of ability for most planning commissions and as such it falls to local planning and legal staff who may be assisted by one or more consultants. Drafting a new zoning ordinance is neither fast nor inexpensive; and like many other things the quality of the outcome is directly proportional to the level of effort expended in the drafting and public engagement process.

Effective zoning ordinances are based on the adopted comprehensive plan and reflect the goals of the residents of the locality for what the future development pattern should be. However, zoning has been used both intentionally and unintentionally for purposes that are inequitable and serve to enforce economic, racial, and cultural separation and concentration. Race-based zoning was extensively used throughout the south; unfortunately, Richmond was one of the pioneers in this beginning in 1908. (To read more on this topic, see: Silver, Christopher: *The Racial Origins of Zoning in American Cities* From: Manning Thomas, June and Marsha Ritzdorf eds. *Urban Planning and the African American Community: In the Shadows*. Thousand Oaks, CA: Sage Publications, 1997). The planning profession's code of ethics makes it clear that professional planners must find ways and use techniques to ensure that those who in the past have been under-represented in planning processes are fully and completely represented in planning projects and engagement today and going forward.

The original purpose of zoning was to prevent incompatible land uses from locating close to one another to ensure adequate light and air. This separation of uses has led to several unintended consequences; probably the most notable being an automobile-centric sprawling development pattern wherein parking requirements have become the primary determinant of site layout. Further, this absolute separation of land uses (especially various types of residential from each other and from commercial uses) has to a great extent contributed to an economic Balkanization that many believe contributes to significant inequities in communities and regions. For this reason, there has been a substantial emphasis placed on creating mixed-use, mixed-income communities. Traditional zoning is not as effective in producing what we want as it is in preventing what we do not want. As a result, there has been a move toward performance-based and form-based zoning plans to try to be more proactive and future-focused. Increasingly popular in innovative zoning ordinances are point systems and other flexible methods that allow developers and their design team to choose how to comply with certain regulations. Such approaches allow the locality and developer to work cooperatively to achieve certain community goals.

The Code of Virginia prescribes public notice and hearing requirements for all zoning actions. For a new zoning ordinance or any amendment thereto, the planning commission and the governing body must each hold public hearings before acting on any proposal. Each public hearing must be preceded by notice published in newspapers as well as mailed to all adjacent property owners and, in the case of a text change, to all property owners who would be directly affected. This should be considered the absolute *minimum* level of engagement and public input. Most localities conduct many other forms of outreach including open houses throughout the locality, online and virtual engagement, targeted polling, door-to-door conversations, design-focused charrettes, and other tools and techniques. Many successful engagement efforts have included hiring a consultant specializing in community outreach as well as involving community and faith-based organizations. However, even that minimum level of required notice can be prohibitively expensive and result in localities using zoning ordinances first developed 30 and 40 years ago to implement current comprehensive plans. Not surprisingly, problems can and do result when this situation occurs.

Unlike subdivision approvals which are ministerial, zoning actions are legislative acts. And because it is a legislative act, approval is discretionary. To be clear, no one is entitled to a rezoning. Action taken by a governing body is final unless parties file an appeal with the local circuit court. Localities enjoy the "presumption of validity" under the law when approving or denying zoning amendments, but the record of the facts and findings used by the governing body in deciding to adopt or reject a proposed rezoning action can be crucial if the action is appealed. The legal standard is that the issue was "fairly debatable" which means that there are compelling arguments on both sides that were carefully considered by the governing body before voting. The opposite of "fairly debatable" is "arbitrary and capricious" and the losing side will argue that the decision made falls into that category. If the record is clear that all sides of the issue were heard and that the governing body considered them, the courts should uphold the decision of the governing body. Thus, for controversial zoning votes, local government attorneys will often assist the governing body in enunciating statements of fact and findings in the record of the hearings.

Zoning is a flexible and scalable tool of which localities in Virginia have made good use in customizing to local needs and requirements. Yet, the fact remains that in our Commonwealth, some of the most successful neighborhoods and communities developed organically before zoning came into use and have withstood the test of time. The challenge moving forward is to find innovative ways to use the zoning toolbox in ways that support the traditional neighborhoods and use their strengths to develop connected, collaborative, equitable, diverse, and inclusive 21st century communities. The next sections will look at some of the specific tools that are being used. Many are not specifically called out in the Code of Virginia and, instead, have been refined and adapted at the local level. Localities have long been the crucible of innovation in models of governance and zoning is no different.

Conditional Use Permits

Conditional use permits (also called special use permits and special exceptions) are specifically enabled by the *Code of Virginia*. Within each zoning district some uses are permitted as a matter of right and others are only conditionally permitted. The theory behind the conditional use approach is that the particular use has a certain level of negative externality which, if properly managed, could allow the use to be established in the district. Absent proper management, conversely, the use is most likely unacceptable. The conditional use permit process affords a case-by-case review. Just as no one is entitled to a rezoning, no one is entitled to a conditional use permit. Moreover, it is up to the local governing body to establish the conditions under which the conditional use permit is to be approved; applicants/property owners are not required to agree to the conditions imposed for them to be valid and binding on the property. The question being considered is whether the proposed use in the proposed location can be conditioned in such a way as to prevent negative externalities from being imposed on adjacent and nearby properties. Possible negative externalities can comprise a long list that often are spelled out in the ordinance – smoke, dust, noise, trash, light, traffic, incompatible activity levels or hours of operation, likelihood of trespass on adjoining properties, stormwater/drainage runoff, inadequate public infrastructure, and many more. The case-by-case review provides a powerful tool. Equally powerful is the ability, rarely used, to revoke for cause a conditional use permit for failure to abide by the conditions established.

Conditional use permits may be granted by the planning commission or by the governing body after a recommendation by the planning commission. The Code of Virginia also allows the Board of Zoning Appeals to grant conditional use permits; however, no Virginia locality currently uses this approach. Conditional use permits do not require advertised public hearings under the Code of Virginia, but most localities provide notice and public hearing opportunities.

With a couple of exceptions limited to Norfolk and Richmond, conditional use permits, like base zoning, run with the land, not the owner.

Planned Unit Development

While not an approval process specifically called out in the Code of Virginia, planned unit development is as close as we come in Virginia to contract zoning, although there is a provision in [§ 15.2-2303.1](#) allowing development agreements, but it only applies to New Kent County and only to projects of 1,000+ acres. In a planned unit development, both the developer and the locality negotiate the final product with the clear goal of providing a development that is superior to that which can be achieved using a traditional zoning district. The resulting approval essentially creates a project-specific zoning district that frequently is much more detailed than a basic zoning district. Specific unit counts, lot and building arrangements, mix of uses, amenities, public infrastructure improvements, phasing, signs, landscaping, materials, schedules, design, architecture, property owner association provisions, and other things can all be found in typical planned unit development approval ordinances. While localities over the years have tried to create zoning ordinance language that defines different types of planned developments as being appropriate in different locations and conditions, experience suggests that an open-ended approach is generally better as it provides greater flexibility for the developer and community alike.

Conditional Zoning (aka “Proffers”)

Conditional zoning in Virginia is detailed in several sections of the Code of Virginia and differs both geographically (Northern Virginia has different standards and rules) and situationally (high growth localities have a somewhat less restrictive set of standards and rules). Conditional zoning is unique to the Commonwealth and exists to allow developers to make binding commitments – called proffers – to a locality as part of a rezoning request. The proffers

break into two types: cash and non-cash. To accept either, a local zoning ordinance must have conditional zoning provisions established therein.

Non-cash proffers focus on and include layout and arrangement, design, uses, unit types and counts, public infrastructure improvements, landscaping, phasing, and other physical and operational aspects of the development. Cash proffers are payment streams to the locality intended to offset the public infrastructure and capital costs needed to support the public service demands of the future residents with school construction costs usually being the largest proportion of the proffer amount.

Non-cash conditional zoning has been far less controversial because at its core it is simply a way for the promises made during a rezoning about what a development will and will not be to become binding and avoid a “bait and switch” situation. Conversely, cash proffering has become a lightning rod for both developers and localities and the General Assembly has tended to tinker with its provisions frequently. Because localities view residential development as unable to pay for itself – the public service delivery costs per unit on average outweigh the taxes collected – cash proffers are seen as a way for development to pay for the associated capital investment costs without raising taxes on everyone in the locality. Developers view cash proffers at best as a necessary evil and at worst as a legalized extortion scheme that drives up the cost of a new home or apartment by thousands and often tens of thousands of dollars. In a hot housing market, those costs can be absorbed, but it reduces the availability of new housing at lower price points. In a recessionary housing market, the added costs depress the market further and have an even greater impact on the availability of new dwelling units at moderate price and rent points. Also, as the cash amount per dwelling unit has increased, some critics have suggested that cash proffering is a “zoning for sale” scheme.

Conditional zoning is voluntary under the Code of Virginia. A developer shall not be required to proffer conditions or cash; however, since no one is entitled to a rezoning, local governing bodies are not required to approve a rezoning request absent proffers. Since there is not supposed to be a negotiating process associated with conditional zoning, developers are often unsure or unclear about the needs of the locality and the local planners and leaders are essentially prohibited from suggesting things that might be proffered, at least not specifically. It becomes a frustrating dance and has led to the creation of “proffer policies” in some localities which detail out the capital costs of public infrastructure necessary to serve new development based on many different factors. A developer can use this guidance to determine what might be an acceptable offer and whether the development as envisioned can absorb those costs. These policies also lead to discussions about the relative reasonableness – or unreasonableness – of local expectations which, in turn, has led to additional tinkering by the General Assembly.

There are several resources available that clearly define conditional zoning and what is and is not legal. The [Virginia Chapter of the American Planning Association](#) provides an annually updated online publication, *Managing Growth and Development in Virginia: A Review of the Tools Available to Localities*, which provides substantially more detail than this chapter contains.

Cluster Development

Providing by-right opportunities for cluster development, also called conservation development, is required of high growth localities in Virginia (10 percent or greater population growth between decennial Census counts), though towns are excluded as are most core cities due to exceeding a population density of 2,000 persons per square mile. The concept of cluster development is very simple and straightforward – on a given piece of land to be developed, instead of dividing the entire parcel into lots, put the very same number of lots on only a portion of the parcel and keep the remainder of the property as open space. Doing so should reduce development costs by having less roadway to construct and shorter utility runs and provide a better way to manage stormwater while affording access to open space amenities for the future residents.

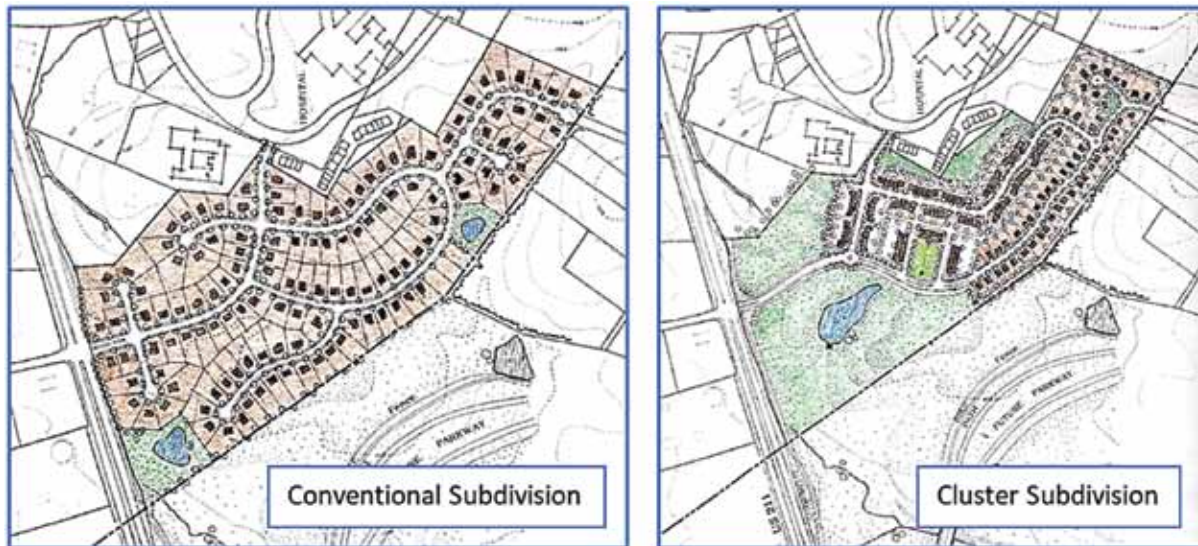


Figure 2 Cluster Subdivision Example (Source: Sympoetica and APA Virginia Chapter)

Generally, this is accomplished by calculating the lot yield based on the zoning district in which located and then arranging those lots on percentage of the total parcel area, usually 50-70 percent, with the remaining land area being kept as a combination of open space or amenity area for the residents. The lots are smaller, but the overall density does not increase. The resulting development pattern allows for a more environmentally friendly approach than conventional subdivision. The use of this type of development technique can be especially beneficial in rural localities where protecting farmland is critical. Different localities address the disposition and ownership of the open space component of the development in different ways from allowing it to remain private with a perpetual conservation easement to making it part of the property owners association for the development to mandating public dedication or some combination of options.

Performance Zoning

The concept of performance zoning is to establish expectations within the zoning ordinance for some or all land uses allowed in the locality through the use of performance standards. Sometimes referred to as outcome-based zoning, the performance standards establish clear expectations for how a use is to be developed and often, how it is conducted thereafter. Additionally, performance zoning generally has various compatibility requirements that include such things as transitional buffers between differing uses or additional setbacks when adjacent uses are dissimilar. Increasingly, localities are using this approach to reduce the number of land uses for which conditional use permits are required by in essence setting forth the conditions in the ordinance. In performance zoning, the zoning ordinance becomes longer but in so doing, a lot of uncertainty for landowners and developers is reduced or eliminated and actions can become ministerial instead of legislative and as a result, approvals can occur more quickly. However, a community adopting performance-based zoning generally needs a more robust planning staff to undertake the necessary reviews and approvals in a timely manner.

Form-Based Zoning

While the general term of form-based zoning includes the development of form-based codes, it is not the only way for a zoning ordinance to consider form as part of the regulatory regime. The use of form-based zoning focuses extensively on how structures, both existing and proposed, relate to each other in the built environment and especially how they relate to the public realm. Such an approach emphasizes the form of development rather than the specific uses and density of development. The most significant difference that form-based zoning brings – whether it is adding form standards to more conventional zoning approaches or creating a full form-based code – is that there is an extensive use of graphics to reinforce the text and to visually depict expected outcomes. While form-based zoning does not dictate architecture as such, focusing on the form of buildings frequently drives architectural choices.

Zoning regulations intended to implement and support the principles of New Urbanism and Traditional Neighborhood Design typically focus on the public realm – walkable, bikeable with a mixture of residential and

commercial land uses. It is in such environments that a form-based code can be helpful and often is the only approach that can achieve the desired outcome. Preparation of a full form-based code is a significant undertaking that almost always requires bringing in a consultant team to perform the research and prepare the graphics. While the “Transect” is the most well-known feature of many form-based codes, it is not always necessary, especially when the form-based code only applies to a specific corridor or neighborhood in a community. In Arlington County, for example, there is a form-based code limited to the Columbia Pike corridor.

Adding a form focus to conventional zoning, sometimes referred to as a hybrid ordinance, is well suited to existing urban communities where there is an established character of development and the desire is to protect that character by ensuring that new and infill development maintains the same basic form factors—height, placement of doors and openings, fenestration, materials, front setback, porches and stoops, and similar features. In traditional neighborhoods developed prior to World War II, most residential dwellings did not have garages and where they did, they were not attached. The jarring juxtaposition of a modern house where the predominant feature on the front façade is a garage door, and often a double garage door, adjacent to a pre-war bungalow is an example of what form standards can address. Norfolk has found it helpful to supplement form standards in the zoning ordinance with pattern books that more fully illustrate the preferred outcomes.

Historic Districts

Local historic districts may be established in the zoning ordinance for designated historic landmarks and defined historic areas. Local historic districts may include adjacent properties and road corridors leading to historic areas that provide significant tourist access. The Code of Virginia provides a very broad definition of what constitutes a historic area or landmark:

“...An area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.”

Unlike *National Register of Historic Places* and *Virginia Landmarks Register* designations, a local historic district provides protection for the designated buildings and cultural resources in the district. This takes the form of a requirement that *“no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.”*

This requirement is generally administered through an Architectural Review Board comprised of individuals appointed by the local governing body who possess specific expertise in historic preservation, archeology, architecture and similar professions. The establishment of one or more historic districts or landmark designations permits a locality to ensure that the character of a neighborhood in terms of architectural and urban design is compatible with the historic structures to a degree that goes well beyond what conventional zoning provisions can accomplish. Experience shows that preparing and adopting design standards for each historic district can be beneficial to both property owners and the Architectural Review Board.

Local historic districts and landmark designations can either take the form of a specific base zoning district or may be established as an overlay district on top of the underlying base district(s). Overlay districts do not alter the underlying zoning regulations; instead, they provide additional requirements that supplement the base district standards. In the case of historic overlays, the added requirements generally apply to the design and form of new and/or expanded buildings and appurtenances plus the requirement for review by the Architectural Review Board.

While historic districts are the primary reason for establishing an Architectural Review Board, the expertise of the Board is such that there may be other applications for which the advice of the Board may be sought. For example, a locality that has adopted a form-based zoning approach to all or part of the community may wish to empower the Architectural Review Board to serve as the arbiter of differences of opinion between staff and developers over its application, particularly as it relates to design. Again, having well-illustrated formal design standards can be advantageous.

Site Plans

Site plan requirements are most often found in the zoning ordinance because the core purpose of the process is to ensure that the zoning requirements are met before authorizing a development to occur; however, the authority for them is in both the subdivision provisions as well as zoning provisions of the Code of Virginia. A site plan is a “*proposal for a development or a subdivision, including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities, and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.*”

Most localities require every development other than a single-family dwelling to undergo the site plan review process and in some older communities that are highly developed; even infill single-family dwellings are required to comply with much of the site plan process.

In addition to ensuring that the requirements of the zoning and subdivision ordinances are met, the site plan process usually serves to coordinate the requirements of other federal, state, and local codes and agencies. The result is that an approved site plan provides a comprehensive assurance that a development project can proceed in the manner provided in the plan. Most localities require site plans be prepared by a civil engineer, land surveyor or similar registered design professional, often involving a team of design professionals. The site plan review process is ministerial in nature and highly technical in its approach. It is performed by local staff and, depending on the scope or location of a project, includes reviews by state and federal agency staff when needed.

Floodplain Regulations

Floodplain management regulations are required for a locality to participate in the National Flood Insurance Program. FEMA has established minimum requirements and Virginia Department of Conservation and Recreation Division of Dam Safety and Floodplains provides a model ordinance to localities that implement the FEMA requirements. However, floodplain management is an area where localities can exceed the minimum standards should they choose. Doing so often creates both value and savings for properties in the community. While there may be a higher initial cost, studies consistently show that for every dollar invested in resilience, there is a \$4-\$10 return on investment over time. Further, establishing higher regulatory standards can be helpful should a locality choose to participate in the Community Rating System which provides flood insurance discounts to policy holders in participating communities. The more points a community scores, the better the rating and the greater the discount on flood insurance.

Historically, a significant percentage of flood damage has occurred outside of the mapped floodplain so localities may want to consider extending floodplain requirements to areas beyond the mapped floodplain and especially incorporate higher standards for community assets and critical facilities.

Floodplain regulations and amendments to them must be approved by Virginia Department of Conservation and Recreation Division of Dam Safety and Floodplains as well as FEMA Region 3 before adoption by local governing bodies.

Official Locality Map

The official map is one of four specific tools designated in the Code of Virginia for a locality to implement its comprehensive plan. Unlike the subdivision ordinance, the official map is an optional tool. Code of Virginia [§ 15.2-2233](#) provides that a local planning commission may make a map showing the location of any:

1. *Legally established public street, alley, walkway, waterway and public area of the locality; and*
2. *Future or proposed public street, alley, walkway, waterway and public area.*

While nearly every comprehensive plan contains one or more maps showing existing infrastructure and the general location and extent of future proposed improvements, Code of Virginia [§ 15.2-2233](#) goes on to state:

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof.

And therein lies the rub for localities in the Commonwealth. While the purpose of the official map is to make it easier to protect and acquire property needed for future roads, utilities, and public use spaces, placing them on the official map in the manner specified is more-or-less condemning those properties as of the date of adoption, likely well before the locality is prepared to acquire them and creating significant legal questions about their status. The Code of Virginia requires that if a locality denies a development permit on property shown on the official map for the purposes of reserving the land for future infrastructure, the locality must acquire the property or file a suit of condemnation within 120 days of the permit denial.

Moreover, it is an expensive proposition to perform all the surveys required to establish metes and bounds and centerlines as this would also necessitate completing various environmental reviews and studies to ensure that the choice of location or alignment is permissible. These environmental documents typically have a relatively short shelf life before having to be redone. Finally, there has been a concern raised that the official map may create more confusion than enlightenment as some future planned infrastructure improvements might be included – generally limited those ready to go to acquisition and construction – while others from the comprehensive plan are not.

The net result has been that the official map authority has been rarely used by localities and several which began the effort stopped well short of completion and adoption.

Capital Improvement Program

The fourth and final tool enunciated in the Code of Virginia with which localities may implement comprehensive plans is the capital improvement program. Like zoning, a capital improvement program is optional unless certain conditions are met, primarily that the locality has chosen to accept cash proffers as part of conditional zoning. Code of Virginia [§ 15.2-2239](#) specifies that the capital improvement program be prepared annually and contain the next fiscal year plus no more than four successive fiscal years. And, if cash proffers are accepted, the use of such funds must be accounted for in the document as to source and how to be expended on which projects in which years.

The capital improvement program provides a mechanism for planning, scheduling, and implementing large-scale infrastructure and community improvement projects by estimating capital requirements, establishing priorities, and keeping the public informed. The Code of Virginia specifically calls out the use of both lifecycle costing and value engineering as tools that may be used in developing the capital improvement program. For many localities, the capital improvement program is an economic development tool to demonstrate the commitment to and timing of public facilities such as streets and roads, school improvements and expansions, parks and recreation facilities, water and sewer service, and drainage improvements.

The Code of Virginia makes the local planning commission the entity responsible for developing the capital improvement program, clearly an effort to provide a direct linkage between the comprehensive plan and the capital improvement program. However, fewer localities vest responsibility for preparation of the capital improvement program with the planning commission. The increasing complexity of financing options and vehicles available to pay for capital projects together with new and enhanced financial reporting requirements are the principal reasons for shifting the capital improvement program to professional finance departments. Nonetheless, the planning commission still has a role to ensure that the capital projects placed in the local capital budget conform to the adopted comprehensive plan and include life cycle costs. Frequently, the planning commission is asked to consider the proposed capital improvement program and make a formal determination that all the projects contained therein are in conformance with the adopted comprehensive plan.

Whether prepared by the planning commission or the professional finance department of a locality, it is important to ensure that the capital improvement program is more than a wish list of desired public projects. The use of level of service standards in the comprehensive plan can help provide clear guidance for capital projects and their prioritization. Similarly, by establishing an implementation schedule within the comprehensive plan, localities can improve the linkages between planning and financing.

Other Planning Tools

While the tools discussed above are either specifically enabled by the Code of Virginia or are in wide and general use across the Commonwealth, the tools described below are less frequently used or apply to a smaller subset of localities in the Commonwealth. In some cases, their potential is stunted by overly restrictive enabling language requiring that the tool may only be used in a prescribed manner.

Tax Reduction Strategies for Agricultural and Open Space Protection

There are three programs enabled by the Code of Virginia aimed at preserving and protecting land used for agriculture, forestry, horticulture, or open space. Each has different requirements, but all reduce the local property tax (a common theme is how quickly and generously the General Assembly is willing to give local tax revenues away!) as an incentive – or remove the disincentive – for continuing to use the land for agriculture and open space instead of selling the property for development.

Land Use Value Taxation

The Code of Virginia [§ 58.1-3231](#) through [§ 58.1-3244](#) allows any locality, which has adopted a land-use plan as part of the comprehensive plan, to adopt an ordinance to provide for use value assessment and taxation in certain districts. Under this program, a locality can tax farmland and open space land at its use value rather than its fair market value. This can reduce the real estate tax on the land especially in fast growing regions of the Commonwealth, thus making it easier to continue to farm the land. The program requires at least five acres to qualify under agricultural or open space classification and 20 acres under the forest use classification. There are some special situations where even smaller parcels can qualify. Rollback taxes, often for the most recent five years, generally must be paid if the property is removed from the program at other than renewal periods, but some localities view this as a year-by-year proposition that more equitably addresses real estate taxation instead of a direct effort to keep agricultural use land out of development. There is some flexibility for a locality to offer a greater real estate tax reduction annually when a landowner commits to a longer period of keeping the land in agriculture or open space. A downside for localities is that when the Commonwealth calculates the composite index for school funding purposes, the full market value of real estate is used, not the reduced use valuation.

Agricultural and Forestal Districts

Code of Virginia [§ 15.2-4300](#) through [§ 15.2-4313](#) allows any locality to adopt agricultural and forestal districts. Land lying within a district and used in agricultural, or forest production is automatically qualified for a land use assessment as described above. Agricultural and/or forestal districts are established on application of landowners and run from four to ten years, during which the property owners enjoy reduced real estate taxes. At least 200 acres of contiguous land is required to create a district. In approving a district, the local governing body commits to maintaining use value taxation in the district for the full term of the district and to provide protection against the construction of certain public infrastructure improvements within the district. There are both rollback taxes and penalties for early withdrawal of parcels from the district before the full term of the district has run. The same downside with respect to the Commonwealth's composite index calculation exists for agricultural and forestal districts as it does for use value taxation noted above.

In addition, Code of Virginia [§ 15.2-4400](#) through [§ 15.2-4407](#) allows for certain localities (currently Albemarle, Augusta, Fairfax, Hanover, James City, Loudoun, Prince William, Roanoke, and Rockingham counties) to create Local Agricultural and Forestal Districts of as little as 20 acres for periods of eight years.

Conservation Easements

While both land use value taxation and agricultural and forestal districts provide a financial incentive through reduced taxes to keep land out of development, the impact is limited to an applicant's willingness to pay the financial penalties to take the land out of protection. Conservation easements however are legally binding and cannot be broken simply because a better offer comes along. A conservation easement is a legal agreement between a landowner and a land trust or government agency that limits the use of the land by recording deed restrictions that prohibit or severely restrict further development to protect the conservation value of the property, such as farmland, watersheds, wildlife habitat, forests, and/or historical lands. Each easement is unique in terms of acreage, description, use restrictions,

and duration. These details are negotiated between the property owner granting the easement, and the organization that will be holding the easement. The locality must agree that the easement conforms to the local comprehensive plan, else it cannot be established – for example if a local comprehensive plan designates an area for future economic development, the locality will clearly object to placing a conservation easement over that area.

Conservation easements are typically established in perpetuity but may be established for shorter periods. The easement allows a property owner to continue to own any underlying interest in the land that is not specifically limited by the easement, to use the land within the terms and restrictions of the easement, and to sell the land or pass it on to heirs (with the easement restrictions conveying with the land). Conservation easements do not permit public access unless specifically provided.

Conservation easements have substantial tax advantages to the landowner. The assessed value of the land is generally reduced substantially and thus so are the real estate taxes being paid. Unlike in the case of land use value taxation and agricultural and forestal districts, this is a change in assessment and thus the reduction carries forward into the Commonwealth's composite index calculation. In addition, the value of the land being given up through a perpetual easement may be used as a charitable contribution deduction from both federal and state income taxes. Given that this value is based on the opportunity cost, local planning staff will frequently be asked to opine on various hypothetical development concepts for the property as the easement documents are being prepared.

Transfer of Development Rights

Transfer of development rights conceptually provides for some, or all, of the development rights associated with a parcel of land in one district (the sending district) to be transferred to a parcel of land in a different district (the receiving district). While its basic intent is to preserve open space, farmland, water resources and sensitive areas, it has promise as a way of managing retreat away from vulnerable land areas put at risk by the impacts from climate change. In a classic transfer of development rights system, one or more sending districts are identified as well as one or more receiving districts. Development rights are assigned to landowners in the sending district, typically based on a certain number of permitted dwellings per acre. Owners of land in the sending district, instead of developing at the full level of their development rights, may sell their development rights to owners of land in the receiving district, who may then use the newly acquired development rights to build at higher densities than normally allowed by existing by-right zoning. For the system to work, the market value of the rights severed must provide adequate compensation for not developing.

The Code of Virginia [§ 15.2-2316.1](#) and [§ 2316.2](#) enables localities to establish voluntary transfer of development rights programs; however, the conditions and requirements established constrain its flexibility and hence its usefulness as a planning tool. Transfer of development rights programs are technically complicated and require a significant investment of time and local government resources to implement. For example, when development rights are transferred from a sending parcel, a permanent conservation easement must be placed on the land. Conservation easements must be held by a qualified land conservancy and the holder of the easement must inspect the property regularly to ensure that the terms of the easement are being upheld. The costs for the inspection regime must be covered in some way, often by the locality.

Another challenge for localities is that the designation of receiving districts can be fraught as existing residents often take a NIMBY approach to the density increases that will occur as a matter of right through the transfer of development rights.

Affordable Housing Incentives

The need for healthy, safe, and affordable shelter located near jobs, schools, community resources and transportation services across the Commonwealth is profound. The Code of Virginia provides authority for certain affordable housing programs. Found in Code of Virginia [§ 15.2-2304](#) through [§ 15.2-2305.1](#), all require the granting of density bonuses for a commitment from a developer that a certain percentage of the bonus density will be used to provide affordable dwelling units. The prescriptive nature and one-size-fits-all approach have generated relatively little interest from localities outside of Northern Virginia while the need has manifestly grown larger. The 2020 Session of the Virginia General Assembly adopted an additional code section which is even more prescriptive and gives developers the sole authority to determine where and how to build projects in which some affordable units are provided. Rather

than providing localities an opportunity to work with community partners and developers to design an effective program that is flexible enough to fit the different needs of different communities, the new code section doubles down on the failures of the code sections that have existed for decades. Unsurprisingly, no locality has shown an interest in adopting an ordinance under the newly granted authority.

Nevertheless, there is a significant need for finding new ways to create, preserve and maintain affordable dwellings – both owner-occupied and rental – and localities are where the innovation will need to come from to meet the needs of their residents.

Impact Fees

Impact fees are an alternative to the cash proffers that have become a contested issue in conditional zoning applications. Unlike proffers which apply only to property that has been rezoned, impact fees generally apply to all new construction whether by-right or via a rezoning. The theory behind impact fees is that new development should contribute directly to the capital needs of a locality when those capital needs arise in part from new development. In simplistic terms, impact fees are based on average impact generation factors such as pupils per household and trips per household for which a uniform impact fee per new household can be calculated and published. While the actual calculation of impact fees is more complex than the simple example above because there are differences between the type of residential units and usually commercial activities are included though without a school impact; in the end, the process is both transparent and certain for the locality and developer alike.

Unfortunately, general impact fees are not authorized by the Code of Virginia, and it is unclear whether localities that have become quite comfortable with the cash proffer process would choose to give that up for general impact fees. However, there are provisions that allow for road impact fees (Code of Virginia [§ 15.2-2317](#) through [§ 15.2-2327](#)) which only one locality appears to have used and a more general impact fee (Code of Virginia [§ 15.2-2328](#) and [§ 15.2-2329](#)) that might be allowable in an urban county that chooses to accept full responsibility for the maintenance of VDOT roads. The latter provision excludes Arlington and Henrico counties which have always maintained their local street network and, while some urbanized counties have analyzed the benefits and costs of such an approach, none has made the decision to do so.

Code of Virginia [§ 15.2-2119](#) enables all localities to charge connection fees to public water and sewer systems. These connection fees usually include recovery of a portion of the capital cost associated with the water and sewer facility in addition to the actual cost of extending service laterals and tapping the lines. As such, they are impact fees by a different name.

Enterprise Zones

The enterprise zone program is a state and local partnership intended to improve economic conditions within a targeted area of distress in a locality. Enterprise zones that are designated by the Governor have state tax benefits in addition to local tax benefits and fee waivers. Local enterprise zones may also be established by local governing bodies within which local tax and fee benefits may be stipulated, but the state tax credits are not available.

The state enterprise zone program is found in Code of Virginia [§ 59.1-538](#) through [§ 59.1-549](#) and allows the governing body of any locality to apply to the Department of Housing and Community Development (DHCD) for the designation of up to three enterprise zones in the locality. The community distress factors that are considered in making the designation are the average unemployment rate for the locality, the average median adjusted gross income for the locality, and the average percentage of students within the locality receiving free or reduced-price lunches. The Code of Virginia stipulates both a minimum and maximum size for an enterprise zone and precludes a zone designation for a single property or user.

Enterprise zone designation requires the establishment of local incentives which vary across localities but generally include business license tax and machinery & tools tax reductions for a period of years together with planning, zoning, and building permit fee reductions or waivers. The Commonwealth provides additional incentives to encourage private sector job creation and investment within enterprise zones: Enterprise Zone Job Creation Grants (Code of Virginia [§ 59.1-547](#)) and Enterprise Zone Real Property Investment Grants (Code of Virginia [§ 59.1-548](#)).

There are several similar programs managed by federal agencies that apply to specific locations and situations but are not generally available to all localities in the Commonwealth. The opportunity zone program that was created in the 2017 Tax Act has virtually no local involvement other than the initial designation of the opportunity zones and thus is also not addressed here.

Professional Planners

While the Code of Virginia may designate planning commissions and other appointed and elected bodies to perform planning functions, almost invariably it is the locality staff who manage the bulk of the work. Planning is a profession just as are accounting, architecture, engineering, and other services used daily by localities across the Commonwealth and the nation. And like those professions, planning has a certification that is the gold standard for commitment to expertise, credibility, and ethics – AICP which signifies having been credentialed by the American Institute of Certified Planners.

Planning is a generalist profession requiring an exceptionally broad knowledge base. And the AICP credential helps distinguish planners who have acquired the education, experience and understanding to serve their communities and clients most effectively. To become certified, planners must have reached a certain level of both education and work experience and demonstrate how this experience meets the criteria for certification. The rigorous AICP certification exam tests all aspects of the profession, including history, law, and ethics.

All certified planners pledge to maintain high standards of professional conduct and ethics including:

- Serving the public interest
- Considering long-range consequences of recommendations
- Providing timely, clear, and accurate information to all parties touched by our projects
- Preserving the integrity and heritage of the natural and built environment
- Dealing fairly with all participants in the planning process
- Helping to educate members of the public about the relevance of planning in their lives.
- Ensuring equitable access to the planning process, especially for those traditionally left out

Finally, certified planners have continuing education requirements which ensure that they remain current in the tools and techniques of the profession and continue to grow as professionals.

Regional Planning

Planning district commissions came into being in 1968 to provide a forum and venue within which challenges of area-wide significance could be discussed and addressed. Regional communication, coordination and cooperation are the primary tools and benefits of each planning district commission which are comprised of elected officials, administrative officers and other citizens appointed by the member local governing bodies.

The planning district commissions across the Commonwealth are as different as the localities they serve. While the inherent purpose of each commission remains addressing and solving problems affecting more than one locality, most commissions provide staff and consultant resources to the member localities to assist and augment local projects and functions. For example, commissions often provide planning assistance to individual member jurisdictions such as in helping a locality prepare a comprehensive plan. Additionally, the work programs of many commissions include regional economic development planning, regional water supply planning, solid waste and environmental resource protection planning, and regional visioning and strategic planning.

While nearly all planning district commissions perform some level of transportation planning, those commissions in Virginia's urbanized areas (as designated in the U.S. Census) typically serve as or host the metropolitan planning organization (MPO). The MPO is charged by federal legislation with leading the planning process for transportation and mobility infrastructure and services in the areas inside the urban boundary. To receive federal transit grants or funding for transportation infrastructure within an MPO area, the project must be included in an approved regional plan. The purpose of this is to require local consultation and approval for these investments which in the past had largely been the exclusive province of the state highway departments.

No action of a planning district commission may affect the powers and duties of member local governments or local planning commissions. Thus, while some of the most challenging problems facing localities are regional in nature, planning district commissions can only host a conversation about the problems and potential solutions; they are powerless to implement change across the region without the unanimous consent of the member local governing bodies. And given that the “All politics is local” mantra holds true today as much as it did when first credited to Tip O’Neill in the 1970s, there is little incentive for local governing bodies to cede some of their authority to a regional body. Nonetheless, the planning district commissions can serve as the forum for dialogue and recent regional visioning efforts in some of the parts of the Commonwealth give rise to hope that there can in fact be regional approaches to solving regional challenges.



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CHAPTER 13

Building Inspections & Code Enforcement

By James S. Moss

This overview of building inspections and code enforcement is intended to familiarize the mayor or councilmember with the workings of this important local government function. Though sometimes a daunting task, proper code enforcement can bring a tremendous sense of achievement to local leaders and myriad benefits to their community. To begin, let's take a look at the two codes that play the largest role in inspections and enforcement in Virginia: The **Uniform Statewide Building Code** and the **Statewide Fire Prevention Code**.

The Uniform Statewide Building Code (USBC)

The USBC incorporates nationally recognized standards in its administrative enforcement procedures. It is comprised of three parts:

- Virginia Construction Code – new construction
- Virginia Existing Building Code – additions, alterations, repair, and changes of occupancy for existing structures
- Virginia Maintenance Code – maintenance of existing structures

Local building departments must adhere to these codes as well as the minimum building regulations established by the USBC.

USBC: Code of Virginia mandate

The Code of Virginia [§ 36-105](#), requires that cities, counties, and towns enforce the Uniform Statewide Building Code for construction (USBC Part I) and rehabilitation (USBC Part II) of buildings and structures. Whenever a county or locality does not have a building department, the local governing body shall enter into an agreement with the local governing body of another county or locality or some other agency approved by the Department of Housing and Community Development for such enforcement. Towns with a population of less than 3,500 may elect to administer and enforce the USBC; however, where the town does not elect to administer and enforce the USBC, the county where the town is situated shall administer and enforce the USBC for the town.

The Uniform Statewide Building Code mandates that a building official be appointed as the official in charge of the department, who cannot be removed from office except for cause after having been afforded a full opportunity to be heard on the specific and relevant charges by and before the appointing authority.

The Code of Virginia also states that a locality *may* enforce the provisions of the building code for existing buildings and structures (USBC Part III, Virginia Maintenance Code, or VMC). The enforcement of these provisions would be under the auspices of the code official, who may or may not be the same individual as the building official. Enforcement may be on a complaint-only basis; it may be via a proactive code enforcement program; or it may be a hybrid of the two. Localities also have the option to enact a rental inspection program for rental units located in a rental inspection district. Following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, upon a finding by a local building department, there may be a violation of the unsafe structure provisions of the VMC which become subject to enforcement actions.

USBC: Implementation and Updates

The Board of Housing and Community Development, appointed by the governor, promulgates the USBC. The USBC update process allows proposed changes to be submitted for consideration by the Board of Housing and Community Development.

Statewide Fire Prevention Code (SFPC)

The Statewide Fire Prevention Code establishes minimum fire prevention regulations and standards for premises and existing structures. The SFPC may be enforced at the option of the local government. Local governments may adopt more stringent fire prevention regulations, not related to construction, and can establish operational permit fees to defray the cost of enforcement. The State Fire Marshal's Office has the authority to enforce the SFPC in those localities in which there is no local enforcement.

Does the SFPC apply to buildings under construction?

No. SFPC provisions related to buildings are limited to maintenance of *existing* buildings and structures. The authority to enforce the SFPC does not commence until after a building is completed. All fire safety regulations related to construction of buildings and structures are under the USBC.

SFPC: Implementation and Updates

The state Board of Housing and Community Development and the Virginia Fire Services Board, through a cooperative agreement, promulgate the *Virginia Statewide Fire Prevention Code*. Proposed changes are submitted for consideration to the Board of Housing and Community Development.

Local Administration & Enforcement of Codes

The responsibility for administering and enforcing of codes and property regulations varies from locality to locality. In some localities these tasks are handled by a designated building inspections or code enforcement department. In other localities, these duties are performed by personnel

from departments such as engineering, planning, or community development. In addition to the USBC and SFPC, these departments may be tasked with enforcing a variety of items such as:

- Property maintenance codes
- Zoning ordinances
- Erosion and sediment control, stormwater management, and Chesapeake Bay Preservation Act regulations
- Local ordinances pertaining to debris, inoperable vehicles, and tall grass and weeds

Training and Certification of Code Enforcement Personnel

Building, maintenance, and fire prevention code enforcement officials are required to comply with the qualification, training, and certification requirements contained in the regulations. The Department of Housing and Community Development's Virginia Building Code Academy, which is operated by funds received through the state surcharge placed on local building permit fees, administers the training and certification program for all code enforcement personnel in Virginia.

Inspections

Localities have implemented a variety of approaches to ensure that their inspection process is coordinated and consistent. For example, some localities have chosen to utilize code enforcement teams made up of representatives from all the code disciplines – building, property maintenance, health, fire prevention, and police – to address problem areas in the community. Many older communities face challenges from dilapidated and abandoned buildings that are not only hazardous but also have a negative effect on the adjacent properties and the entire community. While state law gives localities tools to address these problems, the process can be expensive, time consuming, and frustrating. However, the benefits of addressing the problem often outweigh the effort and expense.

Rental Inspection Districts

A rental inspection district is an area designated by a locality to ensure the public health, safety, and welfare in rental dwelling units.

The Virginia Maintenance Code (VMC) allows local governing bodies to establish rental inspections districts based upon findings that:

- There is a need to protect the public health, safety, and welfare of the occupants of dwelling units inside the designated rental inspection district;

- The residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age, and condition of residential dwelling rental units inside the proposed rental inspection district; and,
- The inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent, and sanitary living conditions for tenants and other residents living in the proposed rental inspection district.

These programs are designed and intended to prevent property deterioration and neighborhood blight in areas by requiring proper building maintenance and continued compliance with all applicable regulations.

Code Compliance and Local Officials

Issues related to code compliance have the potential to generate citizen complaints and can become a sensitive topic for local elected officials. However, by constructively using the available code enforcement tools, the mayor and council can demonstrably improve the quality of life for their citizens. Moreover, the local code official can become a valued resource for knowledge and guidance. As such, the council's commitment to funding qualified code enforcement personnel can have positive, far-reaching results.

For all these reasons, and more, the importance of consistent, clear, and proper code enforcement cannot be understated.

Policy issues related to code enforcement that council may face include:

- How to protect tenants and neighborhoods from substandard conditions in rental properties.
- How to address issues of absentee landlords who own dilapidated and abandoned structures.
- How to ensure code enforcement departments or agencies are adequately staffed and funded.
- Whether to adopt and enforce the Virginia Maintenance Code provisions.
- Whether to enforce the Statewide Fire Prevention Code on a local basis.

Code Compliance and the Community

Foremost among the benefits of code compliance for a community is safety. Buildings constructed to code are more likely to withstand hazards such as high winds, floods, hurricanes, seismic activity, and/or tornados. The proper renovation or removal of blighted buildings and structures following the Virginia Maintenance Code and the Virginia Existing Building Code extends the viability of culturally significant buildings or makes way for new structures. The removal of tall grass, weeds, and inoperable vehicles significantly improves the aesthetic character of a community, making it more attractive to both residents and investors interested in relocating to the locality. It can also make a neighborhood safer as public safety “broken windows” theorists have proven that crime is more frequently tolerated in rundown neighborhoods than in well maintained neighborhoods.



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CHAPTER 14

Public Safety

By Ed Daley

Public safety issues have played a key role in Virginia communities since colonial times. Today, local governments must prepare for catastrophic natural emergencies as well as human-caused emergencies such as terrorist acts, large-scale accidents, and civil unrest—all requiring resources not always available to an individual locality. Proper contingency planning does not prevent these events, but it can help ensure proper response. This chapter discusses local government programs and policies for police, fire, emergency medical, incarceration, and detention services.

Key messages of this chapter:

- Elected officials need to meet with administrative managers to understand public safety activities, organization, and needs.
- It is important to coordinate emergency response capabilities on a regional basis.
- Local leaders should understand of the roles and responsibilities of federal, state and local public safety officials.

Council Responsibilities

Public safety is one of the more important responsibilities of the local council. As a councilmember, you are responsible for establishing public safety policies. Through the budgetary process, councilmembers determine the level of services in the community. Through the oversight process, the council ensures the quality of those services. The major factor in determining the level of public safety services available is the number of resources allocated to the service. To determine and ensure service levels, elected officials must work with the local manager, who provides executive oversight, and the police, fire, and emergency medical chiefs and incarceration/detention superintendents, who directly supervise employees in their respective departments.

Elected officials should not attempt to interfere directly with department operations, but you should have an understanding of department operations. The delivery of public safety services is weakened when employees and citizens do not know who is directing the services. Citizens must also be assured that law enforcement and emergency services are provided on a politically neutral basis. The manager and city council must give each department chief the needed policy direction and adequate resources, and then allow the chief and department employees to do the job. While many public safety policies and procedures are established by state law, the local council is responsible for establishing a variety of policies that determine incident response times and the quality of those responses. Councils also play key roles in determining how public safety agencies will work to coordinate services on jurisdictional and regional levels.

Local Law Enforcement

Below are explanations of both local police departments and sheriff's offices. It is important to be aware of which type of law enforcement services that your locality has available. Police Officers and Sheriff's Deputies serve as the most visible element of a community's law enforcement effort. As representatives of the locality, police officers and deputies can create either a positive or negative perception of the locality through their interactions with citizens. Officers must be trained in public relations and public information dissemination to ensure a positive perception.

Local Police Department

Local police departments in the counties, cities and towns are authorized in the Code of Virginia. While there isn't a consolidated set of instructions for each police department to follow, there are some fundamental requirements that apply to all Virginia police departments:

1. Each duly recognized police department must have a chief of police who is a certified law enforcement officer.
2. All sworn police officers must be certified by the Virginia Department of Criminal Justice Services (DCJS).

All police departments must comply with Code of Virginia mandates and with DCJS administrative regulations on fundamental requirements that include officer training, operational policies, and records management.

Chief of Police

The chief of police is the community's principal law enforcement officer and a visible demonstration of a professional public safety organization and a safe community. The chief of police is also a principal member of the local management team reporting to the city or town manager. The manager and the chief work to recommend programs to the council and to ensure that council priorities are implemented. Once community goals are established, the local manager and the chief of police are responsible for recruiting, selecting, training, and equipping personnel. They also determine how the department will be organized and how personnel will be deployed. The chief reassigns personnel and equipment, as needed.

As the department's principal public relations officer, the chief of police works closely with the local public relations officer to ensure that timely, proper, and correct information is given to the community on a regular basis and during incidents.

The chief must also represent the community to other law enforcement agencies in both Virginia and the nation in a positive and professional manner. It is also the chief's responsibility to establish working relationships with other law enforcement and emergency service agencies in the area to ensure coordinated response procedures. Most local police departments have several divisions including patrol, investigations, and administration. Smaller departments may find it necessary to combine some of these functions, while larger departments are able to have even more specialized divisions.

Police Funding

State funding for police activities is provided through the "599 program," established by the General Assembly during the 1980-1982 biennium. It's important to note that the state has consistently not met its financial obligations to cities and towns under House Bill 599. Your manager or police chief can explain the amount of funds received compared with the amount that your locality should receive. In contrast to House Bill 599 funding, city and county sheriffs receive funding directly from the state on a per officer basis (see discussion below).

Sheriff's Role

The city sheriff is a constitutional officer elected to serve as court bailiff and process server. The sheriff also serves as custodian of the jail if the locality does not participate in a regional jail. If the locality is part of a regional jail, the sheriff is a member of the jail board.

Homeland security concerns for courtroom and courthouse security have placed additional responsibilities on the city sheriff to ensure public safety. State-certified deputies may also be used to assist local police departments with law enforcement activities. This should be done with the concurrence of the police chief, who is the jurisdiction's chief law enforcement officer. It is important that the sheriff and the chief work together for public safety.

The limited responsibilities of the city sheriff contrast with most Virginia counties, where the sheriff also serves as the chief law enforcement officer and provides the services that cities and towns provide through the police department. The greatest difference between the activities of a local police department and a county sheriff's department is related to population density. City populations are confined to much smaller areas, thereby increasing the potential need for police intervention. In addition, cities and towns typically serve the area's commercial and activity center. Thus, requests typically received for police assistance are significantly greater than those experienced by the neighboring sheriff's department. In contrast, a sheriff's deputy will often be assigned a much larger area to patrol and will usually have less interaction with citizens than a local police officer.

The State Compensation Board provides funding for the sheriff's office, but local governments are responsible for employee fringe benefits. The locality may elect to pay salary supplements when the funds received from the State Compensation Board are not adequate. The local council may also fund additional positions in the sheriff's office when deemed necessary. The locality is responsible for supplying vehicles and equipment for the sheriff's office. In recent years, the state has reduced funding for sheriffs and other constitutional officers and their employees, forcing this cost onto local governments.

Governing Body's Role

The Governing Body needs to work with the local manager and law enforcement to establish the department's mission, vision, values, and goals. Decisions must be made about what financial and human resources the locality will provide to keep the crime rate low or lower it. The Sheriff and/or Chief with manager can then determine the number of personnel needed and the plan of personnel deployment appropriate to ensure the desired levels of public safety. The governing body can also encourage citizens to become involved in public safety efforts by reminding them that the goal is crime prevention and elimination in addition to criminal apprehension.

Citizens' Role

Citizens have important roles in their neighborhoods and in their communities. Citizen volunteers can help maintain a low crime rate by providing routine support services, thereby freeing officers for criminal apprehension efforts. **Neighborhood watch programs** and citizen associations can help improve anti-crime efforts. **Citizen academies** can be used to train citizens in police procedures and crime prevention techniques. Graduates can become volunteers who assist police officers at community events. These and similar programs can help increase police interaction with community members. They also increase citizen understanding and informal oversight of law enforcement procedures.

Fire & Rescue Services

Virginia localities use a variety of different mechanisms to provide local fire and rescue services. Larger-sized localities have formal organizations with fire suppression, prevention, emergency medical services (EMS), and administration divisions. Some localities have separate EMS units. Many fire and rescue departments also have public education programs, as well as investigative and training divisions. Smaller localities frequently offer fire and rescue services through a volunteer organization, which may be part of a county or town organization.

Services may be provided by a career staff, an all-volunteer staff, or a combination of career and volunteer resources. A shift in the combination system model has become more prevalent in Virginia. The mix of career staff and volunteer services continues to change as citizens are unable to volunteer as much time and additional career personnel are necessary to provide full-time fire and EMS coverage on a 24-hour basis.

Council Responsibilities

Local roles in providing fire and rescue services are not clearly defined; they depend upon local circumstances and the relationships between local and volunteer agencies. Local agencies receive policy guidance and oversight from councilmembers, and funding allocations determine the available resources and personnel, just as with law enforcement. Councilmembers must determine the balance between the ability to provide funding and the need to provide acceptable service delivery in a timely manner with trained, qualified personnel.

Volunteer organizations may or may not receive funding support from the local government. Some agencies receive direct contributions, while others receive both direct and indirect contributions through career staffing. When career staffing is provided, it must be accompanied by a clear line of supervision and accountability.

The local council must work closely with staff and volunteer agencies to determine the best way to deliver services. Local government has a legal and moral responsibility to provide emergency response for fire and medical emergencies. Citizens will look to local government even if volunteers provide the service. The local council needs to understand this responsibility and work closely with the emergency response agencies to ensure trained professionals are available to respond to emergency incidents.

Fire & Rescue Chief

If fire and emergency medical services (EMS) are provided by a local department, it is the responsibility of the chief—after consulting with the local manager—to organize the service. If services are provided by a volunteer agency, the local manager will need to work closely with the volunteer chief to ensure the delivery of quality services in a timely manner by qualified personnel. The chief also will need to clarify the lines of supervision and accountability for both career and volunteer personnel.

While most local agencies develop the resources to handle day-to-day operations, reciprocating mutual aid agreements are imperative to ensure that resources are adequate to deal with major events or catastrophic incidents. These larger-scale events require cooperation with volunteer and regional fire and EMS departments, as well as state and federal agencies. The chief represents the community in these relationships, which are critical since major events require resources from many different agencies.

The chief directs the recruitment, selection, promotion, and supervision of all career personnel, in consultation with the local human resources department. The chief should also coordinate the same responsibilities with volunteer organizations to ensure qualified personnel are available on either a career or volunteer basis. The chief is also responsible for the condition of vehicles and equipment and ensures that these items are maintained in proper working order.

Operating Divisions

The fire operations division is the primary component of the local fire and rescue department; it is responsible for providing the quickest response of trained qualified personnel to all areas of the community. Technology and financial resources have forced chiefs to recommend either the consolidation or closure of some stations that are no longer necessary, while real estate development in areas away from existing stations and other demographic elements have created the need to construct new stations. Combining, closing, or developing new stations should be done in consultation and concert with the local council.

Other divisions in the fire department include investigations, prevention, and administration.

Fire Prevention

Fire prevention and public education activities are usually conducted through the administrative division. The Statewide Fire Prevention Code is part of the overall code package adopted by Virginia and may be adopted by any locality. The code serves as the minimum fire prevention code for those localities choosing to adopt it. It includes provisions for the creation of a fire prevention board of appeals, made up of community representatives, which rules on appeals of decisions by the fire prevention officer; these appeals are submitted by citizens. These rulings are based on interpretation of the fire prevention code and are not designed to undermine or weaken the code.

Public education programs play a vital role by offering a more in-depth understanding of fire prevention measures and rescue response procedures. These programs encourage proactive measures rather than reactive responses; they can help reduce potential health and welfare issues and enhance public relations within the community. School education programs can be a valuable part of this effort.

Investigation of Fire Incidents

The fire chief is responsible for investigating the cause and origin of fire incidents, as prescribed by state statute. However, the investigation of origin and cause of fires in counties where the State Fire Marshal is the fire official falls to the Virginia State Police. The investigation of suspicious incidents is performed differently in various localities. Those localities with organized fire departments may investigate these incidents independently, while others may conduct investigations jointly with law enforcement agencies. This investigation of origin and cause is an important function, as it identifies trends and defective equipment and counteracts criminal wrongdoing, whether for revenge, financial gain, thrill seeking, or other motive. The investigation may lead to criminal charges.

Emergency Management

Emergency management and preparation is the direct responsibility of local government in coordination with state and federal agencies. Virginia local governments are required to have an emergency operations plan and designate an emergency management director, deputy director, and emergency management coordinator. Emergencies and disasters can be natural events, such as flooding, winter storms, or extended droughts; or they may be human-made disasters, such as chemical releases, biochemical incidents, nuclear accidents, or terrorist acts.

The locality's emergency services coordinator is responsible for developing an emergency plan that will coordinate resources as necessary to respond to an event. These resources may include law enforcement agencies, fire and rescue, public works departments, public or private utility companies, schools, finance, inspections, and social services, as well as private organizations such as the American Red Cross and the Salvation Army. Individuals from these agencies coordinate internally as well as externally with representatives of other localities and the Virginia Department of Emergency Management to develop emergency plans. Included will be the ability to provide mass shelter, feeding, clothing, evacuations, security, debris removal, public information, and coordination with other agencies.

In some situations, the local director of emergency management will need to declare a state of emergency. This declaration allows the locality to reduce liability and take actions necessary to obtain materials needed to mitigate the disaster without using standard procurement procedures. A declaration by the director, or their designee, must be ratified by the local council as prescribed within the emergency operations plan. If the scope of a disaster exceeds the capacity of localities or if the state needs more resources, the Governor may declare a State of Emergency for all or part of the state and request federal disaster assistance. Assistance may be in the form of direct financial aid; partial financial aid from federal, state, and local governments; low interest loans; or materials and supplies.

Emergency Communications

Emergency communications may be administered by either a law enforcement agency, fire and rescue department, or an independent department. Some jurisdictions have independent E-911 public safety answering points, with separate police and fire and rescue dispatching centers. Regardless of the configuration, this is the first point of contact for citizens in need, and it may be the only contact a citizen has with local services. And first impressions are lasting.

Incarceration & Detention

Adults who violate the law are arrested and held in jails, while juveniles are held in detention centers. Larger Virginia localities may operate their own juvenile detention facilities, while most others cooperate in funding a regional detention facility governed by a commission on which each locality is represented by at least one member appointed by its governing body.

Likewise, localities may construct and operate their own adult jails or participate in a regional jail constructed and operated by a jail board or authority under a service agreement that specifies usage requirements and financial contributions by each locality. Some localities operate their own jail and also participate in a regional jail authority. The state has historically participated in funding a share of the construction cost of new jails and juvenile detention centers or expansion of existing ones, after a multi-step approval process. While there may still be localities where that is needed, the overall system capacity has made such funding harder to get, and the state's share of costs has decreased as well.

The method of allocating these costs and jail space usage may vary among regional jails. State law requires that each locality be represented on the adult regional jail board or authority by its sheriff and at least one other member. Critical issues for regional jail facilities include funding, overcrowding, and accreditation. The State Compensation board partially funds jail personnel costs on the same basis for regional jails as it does for sheriff-run local jails. All jails, however, must fund positions and incur other expenses, such as physical and mental health services that are not reimbursed by the Compensation Board.

Some jails voluntarily seek accreditation from national organizations. These voluntary accreditations are important because they mean the jail's facilities and procedures have been reviewed and found to meet national standards.

Some jails are habitually overcrowded, while others have excess capacity and can reduce their costs by renting empty space to other localities or to federal agencies to house their inmates. Where there is overcrowding, it can be exacerbated by the state's failure to meet the statutory deadline for removing inmates convicted of felonies and sentenced to serve penitentiary terms. The state pays an additional per diem amount to jails for housing these "out-of-compliance" inmates, but that payment falls far short of fully compensating the local or regional jail for the full cost of incarceration, particularly if extra staffing or overtime is required.

Overcrowding issues may put local and regional jails in danger of losing the mandatory licensing they receive from the Virginia Board of Local and Regional Jails, which sets minimum standards. Many local jails have adopted a variety of measures such as work release and home electronic monitoring programs to address overcrowding issues.

In recent years, some juvenile detention facilities have experienced under-utilization rather than overcrowding. These facilities must maintain staffing and cover other fixed costs regardless of how many juveniles they house. This means that the daily rate per detainee that the participating localities pay to a regional facility can get to be very high. The state Department of Juvenile Justice has been paying local and regional juvenile facilities to house juvenile offenders who have been convicted and sentenced to longer-term confinement. This has enabled the Department to close all but one of its own correctional facilities and has resulted in cost reduction and better usage for local and regional ones. Funding and operational issues for these correctional facilities can be complex and confusing. Councilmembers should seek information about their locality's adult and juvenile facilities from their respective superintendents and the locality's appointees to regional jail boards or juvenile detention commissions.

Homeland Security

Local officials have significant public safety responsibilities because the primary initial responders to an incident will be from a local rather than a state or national agency. Councilmembers must be concerned that the various local agencies are well coordinated and have the ability for direct field communications. Local departments also must have good working relationships with county and state agencies.

Public safety incidents can vary in size and significance. The same local agencies that respond to traffic accidents must be prepared for a major chemical spill on the interstate, a shooting spree, hurricanes, ice storms, or an international terrorist incident.

Training exercises are necessary to ensure that responders from different agencies can communicate directly in the field, as well as to gain a working knowledge of the roles, responsibilities, and capabilities of different agencies. State and federal funding to train and equip local governments in developing and upgrading their capability to respond to natural and manmade disasters has been highly publicized but slow in coming.



About the author: Ed Daley is the former city manager of Winchester. Also contributing to this chapter were Winchester officials Fred Hildebrand, Jr., regional adult detention superintendent; Robert Hurt, juvenile detention superintendent; Lynn Miller, fire and rescue chief; and Gary Reynolds, police chief.

Resources

Public Safety, Agencies & Organizations

Law Enforcement

Virginia State Agencies

Department of Corrections: www.vadoc.state.va.us

Agency responsible for overseeing the state's prison system.

Department of Criminal Justice Services: www.dcjs.virginia.gov

Establishes minimum training standards for law enforcement agencies; provides technical and support services.

Division of Motor Vehicles: www.dmv.state.va.us

Provides traffic crash data and enforcement data.

State Police: www.vsp.state.va.us

State Compensation Board: www.scb.virginia.gov

Other Organizations

International Association of Chiefs of Police: www.theiap.org

National nonprofit group of police executives from local, national, and international levels.

National Institute of Justice: www.ojp.gov/nij

Provides grant data, crime prevention information, community policing best practices, and other related resources.

National Sheriffs' Association: www.sheriffs.org

Police Foundation: www.policefoundation.org

Research organization dedicated to improving police procedures.

Virginia Association of Chiefs of Police: www.vachiefs.org

State membership organization advocating professionalism in police administration.

Virginia Sheriffs' Association: www.virginiasheriffs.org

Fire & Rescue

Virginia State Agencies

Department of Fire Programs: www.vafire.com

State agency charged with providing fire-related training and curriculum development, administering support funding through the Aid to Localities program and grants, resources, and fire prevention inspections through its State Fire Marshal's Office. collecting and distributing the Fire Programs Fund.

Department of Housing and Community Development: www.dhcd.state.va.us

Administers the housing, building, mechanical, and fire prevention codes on the state level.

Other Organizations

International Association of Fire Chiefs: www.iafc.org

Association designed to help fire chiefs manage effectively.

National Fire Prevention Association: www.nfpa.org

International nonprofit organization that researches the international scope of the fire situation, develops standards, and provides expertise to the fire community.

Southeastern Association of Fire Chiefs: www.seafc.org

Virginia Fire Chiefs Association: www.vfca.us

Statewide membership group that acts as the advocate for leadership of emergency response organizations.

U.S. Fire Administration: www.usfa.fema.gov

A division of the Department of Homeland Security; administers various grants, training programs, publications, and the U.S. Fire Academy.

Virginia Chapter of the International Association of Arson Investigators: www.vaiaai.com

Serves to unite for mutual benefits, governmental and private investigators engaged in the control of arson.

Emergency Management

Virginia State Agencies

Department of Emergency Management: www.vaemergency.gov

Develops the state's emergency operations plans and coordinates response and recovery missions during state disasters.

Department of Health, Office of EMS: www.vdh.state.va.us/oems

State office responsible for licensing emergency medical services agencies and apparatus and certifying care procedures; also responsible for distributing the 4-for-Life Fund.

Virginia Department of Emergency Management 911 Services Board: www.vita.virginia.gov/services/voiceServices/e911.cfm

Responsible for collecting wireless tariff, distributing to eligible parties, and coordinating compliance with federal regulations.

Other Organizations

American Red Cross: www.redcross.org

Nonprofit agency that provides assistance during local emergencies, as well as disaster relief internationally.

Federal Emergency Management Agency: www.fema.gov

A branch of the Department of Homeland Security, responsible for federal assistance during disasters and coordination of federal, state, and local resources, as well as relief efforts.

Cybersecurity and Infrastructure Cybersecurity Agency: www.cisa.gov

CHAPTER 15

Public Works & Utilities

By Rick Anzolut, Ed Daley, Gary Lofton, Frank Sanders, Mark K. Flynn, and L. Preston Bryant Jr.

Public works and utilities have a greater effect on the health and vitality of a community than almost all other facilities and services. Obvious examples are the water quality in both the locality's water supply and its wastewater discharge. Water supplies and wastewater treatment also contribute to the economic health of a community by providing

What is a swale?

A swale is a broad, shallow channel covered by vegetation on the side slopes and bottom. Swales, which can be natural or manmade, are designed to trap particulate pollutants, promote infiltration, and reduce the speed of stormwater run-off. Swales can replace curbs, gutters, and storm sewer systems in some circumstances.

opportunities for residential and business expansion. Stormwater, while less recognized, also significantly affects the community's health. Stormwater management is necessary to minimize flooding; in addition, stagnant stormwater can lead to the proliferation of hazardous diseases such as the West Nile Virus. The quality of a locality's stormwater management can be observed in the clarity and cleanliness of its streams and swales.

Sanitation collection, conveyance, and treatment systems are critical contributors to community health and

cleanliness. Moreover, recycling and source separation contribute to community pride while reducing costs. A poorly maintained sanitation program leads to unsightly and potentially hazardous accumulations of refuse that can lower the perceived and real value of property.

This chapter discusses all these areas of public works as well as other public and private utility services.

Water Supply

A local water supply must meet all federal standards. It can be drawn from a groundwater or surface water source, purchased from another community, or privatized. Water, whether groundwater or surface water, is a state-owned natural resource. Access to and withdrawal of both groundwater and surface water is regulated by the state. Select localities may have certain withdrawal rights to certain water bodies. Maintaining an abundant water supply is important for public health as well as economic development.

A local water system is a costly but critical contributor to community health. It is important to understand the basic facilities, how to manage them, what problems are associated with them, and what regulations must be met. Water supply systems that provide water service from the source to the faucet are complex in their capital and administrative needs.

Basic Components of a Water Supply System

Both groundwater and surface water systems have the following basic components.

Source. The water source can be either groundwater (aquifers, wells, and springs) or surface water (such as streams, rivers, and lakes). Facilities associated with the water source include intakes and pumps or, for groundwater, wells and pumps. Surface sources require a pipe to the stream or intake, as well as pumps to the water treatment facility.

Treatment Facility. Each water source is different and requires specific testing and design to ensure compliance with all federal drinking water standards. The complexity of the treatment facilities depends upon the quality of the source water; the more difficult the water is to treat, the more complex the machinery needed. Treating surface water generally involves a greater array of equipment than groundwater.

Transmission Facilities. Transmission facilities consist of pumps and main pipelines that transport water from the treatment plant to neighborhood lines. These larger pipelines can be thought of as the main arteries of the system.

Distribution Pipelines. Transmission pipelines transfer water to smaller-sized distribution pipelines, which feed water directly to the water user.

Storage Tanks & Reservoirs. Storage tanks and reservoirs serve several functions. They maintain relatively constant water levels in the system, moderate pressure changes that occur in the system during high demand periods, provide additional water for use when fighting fires and other emergencies, and provide pressure relief due to water hammer (created by shockwaves in the water when large valves are opened or closed).

Valves & Hydrants. Valves allow operators to isolate parts of the water system when a break occurs or when making repairs. Valves can also control water distribution to customers. Hydrants are used for fighting fires and for flushing the system to maintain water quality in the pipelines. Flushing is preferably an annual practice.

Water Meters. Water meters allow the locality to accurately bill customers for the water they use. The costs of water service can be allocated and billed on a per gallon or cubic foot basis (normally by the 1,000 gallons or by 100 cubic feet). A secondary purpose of water meters is to determine how much water is getting from the intake or well to customers. The water that is not getting to the customer is termed “unaccounted for water” and includes unauthorized use of water from hydrants, authorized withdrawal of water from hydrants, leakage of water from pipes, and water not metered by failing or old meters. Generally, localities set a goal of no more than 10 percent “unaccounted for water.”

Water Service Line. The water service line from the meter to the building is normally owned by the property owner; repairs or changes to the water service line are the customer’s responsibility.

Primary Concerns

Constancy of Service. Customers expect continual water service. For this reason, water suppliers build redundancy into their system in the form of standby manpower, duplication of pumps, storage tanks, and interconnection of pipelines. It is critical to notify customers when disruptions of water service are planned or are caused by outside forces.

Continual Maintenance. Because of the need for constancy of service, system maintenance is one of the keys to successfully operating a water system. Pumps and other equipment should be on a preventive maintenance program to reduce failures and corrective repairs. Additionally, water quality must be checked on a regular basis.

Adequate Rates. Adequate utility revenues make it possible to hire and keep a knowledgeable workforce, maintain equipment and facilities, and meet current and future drinking water standards.

Meeting Current & Future Regulations. Drinking water standards are set by the U.S. Environmental Protection Agency (EPA) and are in a constant state of review and change. Under the authority of the Safe Drinking Water Act (SDWA), the EPA sets the standards for more than 90 contaminants in drinking water. For each of these contaminants, the EPA either sets a legal limit, called a “maximum contaminant level,” or requires a certain treatment. Water suppliers may not provide water that fails to meet these standards.

Per- and polyfluoralkyl substances (PFAS) are a group of man-made chemicals that have been used in the manufacturing process or in the manufacture of a variety of everyday products. These are sometimes referred to as “forever chemicals” for their inability to break down in nature. There are thousands of PFAS chemicals, and they are of growing concern to federal and state regulators. Water and wastewater treatment facilities must filter PFAS chemicals to protect groundwater and surface water and thus drinking water supplies.

Wastewater Treatment & Disposal

Wastewater treatment and disposal is a complex infrastructure service that usually involves biological treatment using bacteria and single-cell organisms for processing and removing organics in the wastewater. This process can be upset or disrupted by changes in flow volume or water temperature, or accidental or illicit toxic discharges into the sewer system.

Basic Components

Wastewater systems are capital- and administratively intensive. System components include the following.

Sewer Lateral. This pipeline that runs from a building to the curb or sewer main in the street is usually owned and maintained by the property owner.

Collection Sewers. These pipelines or sewer mains in a street receive sewage from the sewer laterals. The wastewater collection system may also include small pumping or lift stations.

Manholes. These cylindrical structures are below ground level and allow access to the sanitary sewers for maintenance such as cleanout, inspection, and flow measurement.

Conveyance Facilities. These larger gravity pipelines and pumps move the wastewater from the smaller collection sewer pipelines to the treatment plant.

Treatment Facility. This is the facility for treating both domestic waste and the various types of chemicals from commercial and industrial users. It is important to require pretreatment of industrial waste before it is discharged to the wastewater facility to minimize the potential for treatment upsets and disruptions. A treatment facility also may have onsite pre- or post-treatment storage tanks to regulate the volume of wastewater entering or leaving the treatment plant.

Receiving Stream. Some basic requirements need to be met before discharging the treated effluent into a stream. The discharge:

- Cannot cause foaming in the stream.
- Must have sufficient dissolved oxygen to not be detrimental to aquatic life.
- Must not be high in disinfectant (chlorine).

It may be necessary to have additional facilities to prevent these problems. The stream's flow, other wastewaters discharged, and chemical characteristics all contribute to determining the treatment requirements for the wastewater treatment facility and its future available capacity for additional wastewater.

Primary Concerns

Industrial Pretreatment. EPA regulations require that owners of wastewater treatment facilities have industrial pretreatment requirements to minimize upsets to the treatment process. The locality should monitor all industrial dischargers and require pretreatment of industrial waste before it is discharged to the wastewater facility. The state may also assist in such monitoring.

Control of Wet-Weather Flows. Wet-weather flows occur during rainfalls and snowmelts and are known as infiltration and inflow. "Infiltration" is groundwater that enters the sanitary sewer system through leaks in pipelines and manhole walls. "Inflow" is surface water that enters the sanitary sewer system through cross-connections with a stormwater system, downspouts from adjacent properties, and low-lying manhole covers.

Wet-weather flows can have a significant effect on your facility's ability to meet its discharge requirements by flooding the treatment facility with more water than it is designed to handle. Additionally, treating higher flows drives up costs for power and chemicals and increases wear on parts.

Wet-weather flows can be reduced by eliminating the sources of extraneous water. Infiltration can be eliminated by grouting leaking joints in pipelines, lining deteriorating pipelines with flexible plastic pipe, or replacing pipelines. Inflow can be eliminated by smoke testing for downspouts and stormwater cross-connections, and then eliminating those sources. Manhole covers can be sealed or raised to protect them from flooding.

Continual Maintenance. Maintenance of the wastewater system is necessary to meet water quality regulations for discharge and to minimize impacts on the receiving stream. Water quality must be checked on a regular basis. Water quality reports may be required to be submitted to state and/or federal regulators on a periodic basis.

Meeting Current & Future Regulations. Wastewater discharge requirements are set by the EPA and are in a constant state of review and change. State regulators may be charged with enforcing both state and federal regulations. Water pollution degrades surface waters, making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) requires that both industrial and local treatment facilities must obtain a NPDES permit. This permit program controls water pollution by regulating point sources (wastewater treatment facilities) that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or manmade ditches.

Since its introduction in 1972, the NPDES permit program is responsible for significant improvements to the nation's water quality. (See the “resources” section at the end of this chapter for online resources with more information about this topic).

Stormwater Management

Stormwater management is increasingly regulated by federal and state environmental agencies. States with growing populations and development often see suburban and urban runoff as a significant contributor of pollution (especially sediment and chemicals) to nearby streams, which in turn send the pollution to rivers and other larger bodies of water. Stormwater management receives limited attention until heavy rains and floods bring awareness and scrutiny. State and federal funding for stormwater programs is limited. Funding for stormwater management is generally included with road projects or new development since stormwater facilities are typically located under roadways, and the roadway itself is often part of the stormwater management system. Localities may require developers to manage the stormwater from their proposed development site and to build with consideration for downstream flows.

Basic Components of a Stormwater Management System

Stormwater management systems not only control stormwater flows within streets but also attempt to minimize flooding in areas adjacent to swales and streams. The following components of a stormwater management system are from the upper segment of the watershed to the largest water body.

Land Treatments. Downspouts are used to direct water away from buildings and special areas of the yard. Land may be contoured to move the water off-site quickly, and often to neighboring properties. Local officials are often contacted when stormwater runoff affects neighboring properties.

There is a renewed interest in measures that allow stormwater to percolate back into the soil before it is piped elsewhere. This is called “Low Impact Development” (LID). Examples include:

- Bioretention areas (small depressions that drain to underground sumps).
- Grass-lined swales in place of pipelines.
- Fewer impervious surfaces (hard surfaces such as pavement, sidewalks, and buildings).
- The use of permeable pavements.

Some studies show that the use of these techniques can reduce runoff by up to 50 percent. Land treatments can greatly affect the cost and size of downstream stormwater facilities.

Detention & Retention Basins. These basins are used to collect stormwater from a specified area and then detain it for a temporary or extended period. These facilities allow pollutants to settle and control the release of flow. Important safety considerations for detention basins include the depth of water at the height of the storm and the steepness of side slopes.

Curbs & Gutters. These initial components of a stormwater management system are used to collect water from streets and properties and direct the flow to stormwater inlets.

Inlets. These openings in the curb or gutter allow stormwater to leave the street and enter the stormwater piping system.

Stormwater Piping. These pipes collect water from inlets and move it out of streets and away from people. Piping is a common means of conveying stormwater, but it has the disadvantages of construction cost, impermeability (compared to grass-lined swales), and the potential to transport water at very high speeds, which can result in greater storm flows and downstream erosion.

Concrete Channels. These channels are used to move a large volume of stormwater out of an area to a larger body of water. The disadvantages are similar to those associated with stormwater piping: high cost of construction, impermeability, and the tendency to discharge at higher velocities, causing downstream erosion.

Stream Buffer. This is land adjacent to a stream without an impervious surface (pavement, sidewalk, structure) that may serve as a buffer to reduce or prevent pollution entering a stream.

Primary Concerns

Conveyance of Overland Flow. A well-designed stormwater management system should take into consideration the conveyance of overland flows that exceed the design frequency of the stormwater system. Too often, stormwater facilities are designed for a 10-year or 25-year storm, with no consideration for the storm that will exceed these frequencies. When the larger storm comes, the excess flow leaves the swales, surcharges the inlets, bypasses the channels, and follows the contours of the land, often causing severe damage that could have been avoided.

By designing for conveyance of overland flow, significant flood damage and costs can be avoided.

Impervious Surfaces. Impervious surfaces (e.g., pavement, sidewalks, structures) increase the amount of runoff during rainfalls, decrease the amount of stormwater that enters the groundwater, and contribute to the pollution load in streams. Methods to minimize the impact of impervious surfaces include:

- Additional green space (narrower roads, greater building setbacks, and stream buffers).
- The use of grass-lined swales in lieu of pipes and concrete channels.
- The use of underground gravel sumps for temporary storage of stormwater.
- Prescribed limitations on impervious surfaces.

Erosion & Sedimentation Control. Erosion is the loss of soil from a property primarily due to stormwater and results in loading sediment in streams. Sedimentation is the settling of sediment in stormwater facilities which results in degraded water quality and loss of capacity. Erosion and sedimentation can be especially problematic during construction projects, so it is important to control it before, during, and after infrastructure and other development projects. Localities may manage their own erosion and sediment control and enforcement programs or defer to state environmental agencies to manage and enforce regulations.

Meeting Current & Future Regulations. The permit program of the National Pollutant Discharge Elimination System (NPDES), as authorized by the Clean Water Act, provides the basic structure for regulating the discharge of pollutants from point sources to waters of the United States. The Clean Water Act gives the EPA the authority to set effluent limits on an industry-wide (technology-based) basis and on a water-quality basis.

Under the NPDES stormwater program, operators of large, medium, and regulated small local separate storm sewer systems (MS4s) must have authorization under an NPDES permit to discharge pollutants.

Stormwater Utility. An important aspect of the NPDES stormwater program is that localities can establish a stormwater utility fees system to collect money to offset stormwater-related costs. The fees are normally based upon

the square footage of impervious surfaces. The fees for residential lots are often averaged so that each lot pays the same amount. The fees for businesses and industry, which typically have large areas of impervious surfaces, are often based on a per-square-foot basis.

The stormwater utility fees program allows a locality to collect for costs incurred for stormwater management services rendered. Costs that can be included in the fee structure include:

- Street sweeping
- Stormwater capital projects and system repairs
- Erosion and sedimentation control programs
- General stormwater maintenance (inlet cleaning, illicit discharge detection and removal, system modeling)
- Public education and participation
- Good housekeeping and pollution prevention for local operations

Solid Waste

A comprehensive solid waste plan may include a mix of providers from the locality, private contractors, or a regional entity.

Solid Waste Source Reduction

A good solid waste plan will incorporate and emphasize source reduction, recycling, and disposal. Refuse collection and disposal plans must be comprehensive, while also flexible enough to allow for new regulations or changing conditions. Solid waste source reduction or diversion (recycling) also is an important strategy in extending the life of local or privately-owned landfills. Practices such as grass recycling, backyard composting, and the use of reusable packaging are all important to promote source reduction.

Recycling is an essential component of a solid waste plan. Like refuse collection, recycling can have a variety of pickup schemes. Basic policy decisions include determining what items will be recycled and how the materials will be separated. These decisions are generally driven by the recycled material processor. The market for recyclables varies with the demand for the material regionally, nationally, and even globally. The processor will charge a fee for separating or processing the materials and provide a credit for the sale of recycled items.

Containers for home separation come in different configurations to accommodate the objectives of the recycling program. If curbside separation is used, then no special containers are needed, but the operations will be more labor intensive and less cost effective.

Specially equipped and configured vehicles are available for the collection of recyclable materials. Compartmentalized bodies are the most popular with each compartment used for a different material. When the truck is unloaded at the processing plant, each compartment can be emptied into a different bin or pile thereby reducing or eliminating labor-intensive sorting. These specialized trucks are more costly than a normal refuse truck and are limited in use for any other purposes. The rear-loading truck used for refuse collection (see next section) can be used in a co-mingled scheme, but then the materials collected for recycling must be sorted when they reach the processor.

Yard waste (e.g., grass, soft plant material) also should be diverted from the waste stream when possible. Grass, which has very high water content, adds significantly to the tonnage at the landfill. Some landfills compost yard waste and sell the resulting product.

Solid Waste Collection

The basis of a solid waste operation is the collection of refuse, commonly referred to as trash or garbage. If the locality is providing this service, it should have an ordinance in place addressing key issues such as times of collection, amount to be collected, container requirements, acceptable materials for collection, and any charges or fees for the

service. If a private hauler is providing the service, it should provide the information about such issues to the users. The locality may want to codify the service to provide uniform guidelines for haulers, which can help to minimize complaints.

The most popular method of collecting solid waste uses rear-loading vehicles. Workers take trash containers from the curb or alley and dump the contents into the hopper of the vehicle, which compacts the refuse to maximize space until it is delivered to a landfill. This method requires a driver and one or two workers outside the vehicle to collect the refuse. Another collection method is semi-automated in which workers bring portable carts to the vehicle, where a mechanism on the vehicle lifts the container and dumps it. The employee then returns the container to the curb. A fully automated system consists of a vehicle that mechanically picks up the container from the curb and dumps it without any physical contact by employees except a driver who operates the controls from the truck cab.

Collection methods will be dictated by several factors, such as the cost of on-street parking, terrain, street width, personnel costs, distance between stops, and cost of equipment. Changing the method of collection is a costly decision that should be made only after careful research.

Solid Waste Disposal

Refuse and yard waste is disposed in a permitted and regulated landfill where the cost of disposal is generally based on a per-ton basis. Local governments usually participate in regional agencies that develop and operate landfills. Local governments or regional waste authorities also may engage private-sector landfills. Strict federal and state guidelines ensure that landfills have no negative effects on the environment through the leaching of liquids or gases. Groundwater and gas monitoring as well as post-closure activities can add significant costs to the development and operation of a landfill.

Landfills have restrictions on the material that they accept. For example, most landfills do not accept hazardous wastes such as paint, household chemicals (e.g., pesticides, cleaners), and batteries. New regulations also prohibit disposal of electronics such as televisions, computers, monitors, and related items at landfills. However, enterprising landfill operators will offer programs like Hazardous Waste Days and E-cycling for citizens to dispose of these items, typically at a nominal charge. Tire disposal and/or shredding programs may also be provided as a convenience for residents. A small fee is often charged for these services.

Convenience sites at landfills are typically available to residents who wish to dispose of small amounts of trash between their normal pickup days or items that would not be picked up with their regular trash. These sites are apart from the normal landfill traffic, and residents are often not charged to use them.

Refuse Service Fees

Refuse service funding takes many forms. Some localities include the cost of this service in the general fund tax base. Others establish a fee to offset the cost of the service either in whole or part. If a fee is charged, it is generally included as part of local billing.

Some localities have instituted a volume-based fee for refuse service. Weight-based fees require using trucks equipped with special containers for weighing and recording the refuse to be dumped. A billing program then uses this information to compute the fee and originate a bill each period. Another system levies a fee based on the number of containers and their size. The locality provides the containers and tabulates the fee accordingly. Stickers are an alternative method of determining the service fee; the customer purchases stickers to affix to the bags or containers to be picked up.

In a “Pay As You Throw” program, the customer purchases special bags which are generally a different color from normal household trash bags and have a logo for easy recognition by the workers. Funds from the sale of the bags are used to finance the service.

Collection of large, bulky items – such as furniture, lumber, stoves, and water heaters—may or may not be provided by the locality. A fee is generally charged for the collection of these items. EPA regulations require that all refrigerant-

containing units (e.g., refrigerators, freezers, air conditioners) must have the refrigerant removed and recovered before the final disposal. A fee is usually charged for the recovery of the refrigerant. This fee may be passed on to the citizen as part of the collection fee. Some localities collect large bulky items at no charge during pre-determined times during the year.

Residents may also be allowed to personally transport household solid waste, including bulk items and yard waste, to a landfill or other receiving facility, though days and times for this may be restricted. Those who personally transport waste may be required to show identification or proof of residency to access the facility.

Refuse Collection Equipment

Refuse collection equipment is high maintenance. To provide consistent service, it is important to have reliable vehicles that are equipped to handle the rigors of this type of service. Localities should use ongoing capital replacement programs to fund new vehicles in a systematic manner. A refuse vehicle will generally provide acceptable service for approximately five to six years without repairs; the hopper mechanisms have a higher failure rate than the cab and engine.

Electric and Gas Distribution Systems

Under Virginia's Uniform Charter Powers Act, cities and towns have the authority to regulate and operate electric power and gas distribution systems. Fourteen cities and towns, one local electric authority, and Virginia Tech, own and operate – or have franchise/concession agreements to operate – electric power systems that sell electricity on a retail basis. These local electric systems serve slightly less than 5 percent of the residential customers in Virginia. The oldest and largest is the City of Danville electric system, established in 1886 with approximately 60 streetlights and now serving almost 45,000 customers. The newest is the City of Harrisonburg's Electric Commission, established in 1957; the smallest is the Town of Wakefield, which serves about 600 customers.

All local systems in Virginia purchase electric power from a wholesaler through multi-year contracts. Some of these contracts are negotiated by multi-jurisdictional partnerships, called "joint action agencies." Electric power is distributed through the locally owned electric lines and delivered to the retail customers. Local systems own and maintain the electric lines and infrastructure in their service delivery area, some of which are only within the corporate limits while others extend into adjacent counties. Twelve of these systems have the ability to generate electricity in varied amounts as part of their total system usage. This generation capacity is used most often to offset peak demand usage periods when contract rates for the purchase of electricity are often higher. These generation facilities range in size and are fueled by a variety of sources including natural gas, diesel, fuel oil, hydro power, and, in the case of the City of Harrisonburg, solid waste incineration.

The General Assembly deregulated the provision of electric service in 1999, only to return to a largely regulated industry in 2007. Today, Virginia, through the State Corporation Commission, regulates the retail rate for most electricity customers; this is executed through the Virginia Electric Utility Regulation Act (Code of Virginia [§§ 56-576 through 56-596](#)). Local electric systems can avoid direct regulation by the State Corporation Commission if they do not extend service outside the boundaries of their existing service delivery area, subjecting them to the provisions of "The Act." The cost of system expansion could be prohibitive since a local system would have to purchase the distribution facilities within the service delivery area of an adjacent public utility. For all these reasons, expanding a local electric system is a complicated matter that requires considerable thought and resources.

Under the Virginia Electric Authorities Act (Code of Virginia [§§ 15.2-5400 through 15.2-5431](#)), some cities, towns, and counties can create authorities to construct and operate facilities and transmit electric power and energy. Localities automatically covered under this act are those that on January 1, 1979, either (1) owned an electric system or (2) were cities with a population of 200,000 or more. Other localities must obtain approval from the General Assembly to be covered. An electric authority has wide-ranging powers to operate almost any project dealing with electric power, except that the authority cannot directly sell electricity on a retail basis.

The City of Bristol provides retail utility services by way of Bristol Virginia Utilities, including electric, water, sewer, telecommunications, and internet and cable television. Bristol Virginia Utilities was created by the General Assembly

in 2010 when it passed the “BVU Authority Act” (Code of Virginia [§ 15.2-7200 et seq.](#)). BVU serves approximately 16,000 homes and business in the City of Bristol, Washington County, Scott County, and Sullivan County (in Tennessee).

Only three cities (Charlottesville, Danville, and Richmond) own and operate natural gas distribution systems. These cities purchase natural gas and distribute it to customers on a retail basis. These local distribution systems are regulated by the State Corporation Commission.

Public Utility Franchises

Localities have some limited authority to regulate public service corporations that provide telecommunications services, electricity, and cable television. When a company wants to provide services in a locality, and it plans to use any public rights-of-way for its lines or underground utilities, the company is required to obtain a franchise from the governing body. The council or board follows a statutory procedure to adopt an ordinance to permit the franchise; it also usually enters into an agreement that stipulates the extent of the use, payments to the locality for using streets and other rights-of-way, and related matters.

Telecommunications technology is ever changing. Telecommunications providers – including telephone and cable television – often seek to affix equipment to public and private infrastructure, telephone and light poles, electric poles, government buildings and schools, private buildings, and more. The placement of such telecommunications equipment on infrastructure and buildings may be locally regulated in some instances per zoning ordinances, as federal and state law may provide. This is set out in Code of Virginia [§ 15.2-2316.3](#) and following.

The franchise authority is set out in the Code of Virginia [§ 15.2-2100](#) and following. If the franchise will exceed five years (and most franchises for utilities do exceed this time frame), notice of the ordinance is published, bids are received by council, and a public hearing is held on the proposed winning bid. In most cases, there will only be one provider – for example, the power company.

The ordinance, which generally is quite lengthy, will include the agreement for services that the company will provide the locality for the use of its rights-of-ways, if any, and other matters to which the company agrees as compensation for using public property. The locality’s attorney may want to seek advice from a firm that specializes in negotiating with utility companies.

Different rules apply to different kinds of public utility franchises. The key differences among the kinds of utilities are 1) the degree of regulation allowed by law, and 2) the rates the locality may charge.

Telephone Service

The locality may adopt a franchise ordinance, but the payments received by the locality are regulated by the Public Right of Way Use Fee provisions found in the Code of Virginia ([§ 56-468.1](#)). The utility pays fees to the Virginia Department of Transportation (VDOT) based on a formula in the Code. If a locality has a consumer utility tax on telephone service in effect, it receives funding from the monies received by VDOT based on a formula involving the miles of lines and number of connections in the locality.

Cable Television Companies

Federal law sets limitations on the degree of regulation a locality may exercise over a cable television company. Those limitations are found in the franchise sections of the Code of Virginia, beginning in [§ 15.2-2108.19](#). The locality adopts a franchise ordinance to allow a cable television company to operate in the locality. The franchise need not be exclusive.

The ordinance may require some television channels be dedicated for public, educational, and governmental programming (PEG channels). It also may set standards for quality of service and deployment of and improvements to the cable television grid throughout the locality. The locality may charge a maximum franchise fee of 5 percent of the gross receipts in the locality and may not exceed the lowest franchise fee rate paid by an existing cable operator in the

locality. A federal court decision ruled that the fee does not apply to the receipts from cable modems for Internet use. The normal franchise procedure applies to electric utilities as well. Many franchises are for 10 to 20 years, or more.

Local Authority to Offer Telecommunications Services

State law now allows localities to provide telecommunications services in three different circumstances.

1. Any locality with a municipal electric utility may provide telecommunications services if it obtains a certificate from the State Corporation Commission (SCC). See Code of Virginia [§ 15.2-2160](#) and [§ 56-265.4:4](#). The services may include broadband, local exchange, and interexchange service. Cable television service is not allowed unless the locality was providing it as of December 31, 2002.
2. In any locality without a municipal electric system and with a population under 30,000, if three or more private companies do not provide telecommunications services on par with what the locality proposes to provide, the locality may obtain a certificate from the SCC to get into the broadband telecommunications business. See Code of Virginia [§ 56-484.7:1](#). This authority contains numerous restrictions; for example, cable television may not be provided. If three companies begin providing services that are equivalent to those being provided by the locality, then the locality must divest itself of the system. The price is the fair market value of the system.
3. State law also allows localities to offer unlimited telecommunications services (other than cable television) through use of wireless service authorities, which any locality (or multiple localities) may organize. See Code of Virginia [§ 15.2-5431.1](#) et seq.

For more information visit Commonwealth Connect at www.commonwealthconnect.virginia.gov.

Local Authority to Regulate Cellular Towers

Regulating the placement of cell towers is a zoning decision. However, the Federal Telecommunications Act sets several limits to that decision:

- It may not have the effect of prohibiting service.
- It may not discriminate among equivalent providers.
- It must be based on substantial evidence contained in a written record.

Several federal court cases have further defined the requirements for these decisions:

- Radio waves or electromagnetic energy may not be a basis for deciding on tower location.
- The visual impact of a tower, for example in an attractive residential area, may be a factor.

Laws and regulations in this area are constantly evolving; you should consult your local government attorney.

The locality also often works with the tower applicant to provide design criteria for towers such as height and camouflage requirements. If a tower is less than 199 feet above the surrounding land, it need not have a strobe light. In practice, strobe lights generate much opposition from neighborhoods. Localities are encouraged to require collocation for cell towers; this means that the tower must accommodate the antennas of several companies, thereby reducing the number of towers needed. Localities may negotiate with tower developers to place towers on publicly owned land and receive a share of revenue generated from the towers. Additionally, localities may negotiate with tower applicants for no-cost or reduced-cost use by the locality for the placement of its own telecommunications equipment on the tower, such as for public safety radio systems or other local telecommunications.

Resources: Public Works & Utilities, Agencies & Organizations

Water & Wastewater

- American Water Works Association: www.awwa.org
- Virginia Section, American Water Works Association: www.vaawwa.org
- Virginia Water and Waste Authorities Association: www.vwwaa.org
- Virginia Association of Municipal Wastewater Agencies: www.vamwa.org
- Virginia Water Environment Association: www.vwea.org
- Water Environment Federation: www.wef.org

Stormwater Management

- American Public Works Association: www.apwa.net
- Association of State Floodplain Managers: www.floods.org
- Center for Watershed Protection: www.cwp.org
- Federal Emergency Management Agency: www.fema.gov
- Low Impact Development Center: www.lowimpactdevelopment.org
- US Environmental Protection Agency: www.epa.gov
- US Geological Survey: <http://va.water.usgs.gov>
- Virginia Municipal Stormwater Association: www.vamsa.org
- Virginia Floodplain Management Association: www.vaflood.org
- Virginia Resources Authority: www.virginiaresources.org
- Virginia Soil and Water Conservation: www.dcr.state.va.us/sw/index.htm

Solid Waste & Recycling

- American Public Works Association: www.apwa.net/ResourceCenter
 - The association provides information on solid waste and related topics.
- National Recycling Coalition: www.nrcrecycles.org
 - This site provides a wealth of information about recycling nationwide.
- Solid Waste Association of North America: www.swana.org
 - This site has different topics that deal with refuse certifications and education on solid waste.
- US Environmental Protection Agency: www.epa.gov
 - This site includes a listing of topics that pertain to local solid wastes – such as nonhazardous solid waste, waste disposal, waste generation, liquid waste, and waste transportation.
- Virginia Department of Environmental Quality: www.deq.state.va.us/waste
 - The department provides information and regulations for dealing with solid waste.

Local Electric Power Systems

- American Public Power Association: www.publicpower.org
- Municipal Electric Power Association of Virginia: www.mepayv.org

CHAPTER 16

Education

By Dr. Steven Staples

The relationship between local government and the local school division is important. The quality and reputation of schools not only affects children and parents, but the entire community as it can affect critical factors like property values, growth, and business recruitment. Although the relationship is important, it is not always easy. Education is likely the most visible and most expensive service in your Operating Budget. Education is usually governed by a local school board that operates somewhat independently. This governance relationship can create friction as the governing board is asked for funding without direct input as to how it should be spent.

Although your official role is limited, you can still have an important impact on education. You can work with the governing board to ensure a quality education system, work with citizens to develop a sense of the community's educational goals and to generate public support for K-12 education, and work with businesses to enlist support for and partnerships with public schools.

Responsibilities for K-12 Education

The Constitution of Virginia, [Article VIII](#), sets out the basic requirements for K-12 education by assigning the ultimate responsibility for public education to the General Assembly. This Article also assigns designated authority to the State Board of Education, local boards of education, and local governments.

The General Assembly is required to:

- Provide for a system of free public elementary and secondary schools
- “Seek to ensure” a high-quality public education program as defined by the Standards of Quality (SOQ)
- Determine the manner in which funds are to be provided to pay for the Standards of Quality
- Apportion the costs of K-12 education between the states and localities

The State Board of Education is required to:

- Set Standards of Quality, subject to change only by the General Assembly
- Certify qualified names for division superintendents
- Carry out educational policy

Local boards of education are vested with the responsibility of supervising schools in their division.

Local governments are required to pay their portion of the costs of the Standards of Quality.

Local School Division

Most local school divisions parallel their local government jurisdiction. So, counties and cities operate their own systems. Virginia is somewhat unique in this arrangement, as many other states use combined systems due to the city/county relationships of their jurisdictions (think Charlotte-Mecklenburg Schools or Savannah-Chatham). In Virginia, there are a few joint systems in place – for example, Emporia's city charter allows the city to have a joint school system with Greensville County. Williamsburg-James City County and Covington-Alleghany County operate joint systems through renewable agreements. In addition, some towns, such as Colonial Beach and West Point, operate independent school systems. In all, the Virginia Department of Education (VDOE) recognizes 132 school divisions organized into eight regional groupings. These regional groupings do not always align with other regional entities across state and local governments. For example, the regions of the Virginia School Boards Association do not match the VDOE Superintendent's regional groupings.

Many school divisions share services, especially in regional programs for special education, career-technical education, and Governor's Schools.

Governing boards across the state have also entered into several collaborative agreements designed to save money or offer enhanced services. Examples include:

- Joint parks and recreation programs
- Shared vehicle and grounds maintenance services
- Technology and equipment-sharing programs
- Joint purchasing and shared human resource services

Local School Board

In 1992 the General Assembly enacted legislation establishing a process for local referendums to be held to determine if the local school board should be elected or appointed. Voters elect their school board members in most localities, but there are still some using appointed board members. Local board members may, by state Code, receive compensation.

Salary of members. Code of Virginia [§ 22.1-32](#)

- A. Any elected school board may pay each of its members an annual salary that is consistent with the salary procedures and no more than the salary limits provided for local governments in Article 1.1 (Code of Virginia [§ 15.2-1414.1](#) et seq.) of Chapter 14 of Title 15.2 or as provided by charter.
- B. The appointed school board of the following counties may pay each of its members an annual salary not to exceed the limits hereinafter set forth. (13 are currently listed).
- C. The appointed school board of the following cities and towns may pay each of its members an annual salary not to exceed the limits hereinafter set forth. (15 are currently listed).

The referendum process for changing from an appointed to an elected school board (and for reverting back to an appointed board) is triggered by a petition signed by at least 10 percent of the registered voters in the jurisdiction. The election schedule and makeup of an elected school board generally follows that of the governing board – that is, the school board elections are held at the same time as the governing board elections; school boards have the same number of members as the governing board; and the school board members are elected on the same basis as the governing board – either by wards, at-large, or a combination of ward/at-large.

In cities with appointed school boards, general law requires that the governing board hold a public hearing on the appointees prior to the appointment. The governing board cannot have a hearing and then appoint someone who had not been considered at it – appointees must have been considered at a public hearing.

Neither elected nor appointed school boards have taxing authority; the governing board retains the responsibility for appropriating local funds for education.

Authority of Local School Boards

The state constitution and state law assign the school board the authority and responsibility for supervising the schools in its jurisdiction. The school board's general powers and duties are outlined by Code of Virginia as follows:

School board constitutes body corporate; corporate powers. Code of Virginia [§ 22.1-71](#).

The duly appointed or elected members shall constitute the school board. Every such school board is declared a body corporate and, in its corporate capacity, is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law and may sue, be sued, contract, be contracted with and, in accordance with the provisions of this title, purchase, take, hold, lease and convey school property, both real and personal. School board members appointed or elected by district or otherwise shall have no organization or duties except such as may be assigned to them by the school board as a whole.

Powers and duties. Code of Virginia [§ 22.1-79](#).

A school board shall:

1. See that the school laws are properly explained, enforced, and observed.
2. Secure, by visitation or otherwise, as full information as possible about the conduct of the public schools in the school division and take care that they are conducted according to law and with the utmost efficiency.
3. Care for, manage and control the property of the school division and provide for the erecting, furnishing, equipping, and non-instructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts.
4. Provide for the consolidation of schools or redistricting of school boundaries or adopt pupil assignment plans whenever such procedure will contribute to the efficiency of the school division.
5. Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school division and determine the length of the school term, the studies to be pursued, the methods of teaching and the government to be employed in the schools.
6. In instances in which no grievance procedure has been adopted prior to January 1, 1991, establish, and administer by July 1, 1992, a grievance procedure for all school board employees, except the division superintendent and those employees covered under the provisions of Article 2 (Code of Virginia [§ 22.1-293](#) et seq.) and Article 3 (Code of Virginia [§ 22.1-306](#) et seq.) of Chapter 15 of this title, who have completed such probationary period as may be required by the school board, not to exceed 18 months. The grievance procedure shall afford a timely and fair method of the resolution of disputes arising between the school board and such employees regarding dismissal or other disciplinary actions, excluding suspensions, and shall be consistent with the provisions of the Board of Education's procedures for adjusting grievances. Except in the case of dismissal, suspension, or other disciplinary action, the grievance procedure prescribed by the Board of Education pursuant to Code of Virginia [§ 22.1-308](#) shall apply to all full-time employees of a school board, except supervisory employees.
7. Perform such other duties as shall be prescribed by the Board of Education or as are imposed by law.
8. Obtain public comment through a public hearing not less than 10 days after reasonable notice to the public in a newspaper of general circulation in the school division prior to providing (i) for the consolidation of schools; (ii) the transfer from the public school system of the administration of all instructional services for any public school classroom or all noninstructional services in the school division pursuant to a contract with any private entity or organization; or (iii) in school divisions having 15,000 pupils or more in average daily membership, for redistricting of school boundaries or adopting any pupil assignment plan affecting the assignment of 15 percent or more of the pupils in average daily membership in the affected school. Such public hearing may be held at the same time and place as the meeting of the school board at which the proposed action is taken if the public hearing is held before the action is taken. If a public hearing has been held prior to the effective date of this provision on a proposed consolidation, redistricting or pupil assignment plan which is to be implemented after the effective date of this provision, an additional public hearing shall not be required.
9. (Expires July 1, 2025) At least annually, survey the school division to identify critical shortages of (i) teachers and administrative personnel by subject matter and (ii) school bus drivers and report such critical shortages to the Superintendent of Public Instruction and to the Virginia Retirement System; however, the school board may request the division superintendent to conduct such survey and submit such report to the school board, the Superintendent, and the Virginia Retirement System.
10. Ensure that the public schools within the school division are registered with the Department of State Police to receive from the State Police electronic notice of the registration, reregistration, or verification of registration information of any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (Code of Virginia [§ 9.1-900](#) et seq.) of Title 9.1 within that school division pursuant to Code of Virginia [§ 9.1-914](#).

Other sections of state law also require the school board to:

- Appoint a division superintendent (from a list certified by the state).
- Manage the funds made available for the schools.

- Develop a policy on private-sector partnerships with the schools.
- Approve and distribute a Student Code of Conduct (which must also include an Acceptable Use Agreement for technology access).
- Report at least annually to the governing board on all expenditures.
- Not spend funds in excess of those appropriated to it without the consent of the governing board or governing body that appropriates the funds to the board.

Relations with School Boards

Building a positive relationship between local government and local school boards is important but challenging. Differences in educational philosophy, competition for limited revenue, and issues of authority often cloud the cooperative work between the two bodies.

So, it takes work and commitment to develop a positive relationship. It is helpful to recall that, ultimately, both bodies have the same goal: An excellent school system.

Some governing boards and school boards, such as the Cities of Norfolk, Virginia Beach, and Staunton, have adopted or accepted funding formulas or revenue-sharing agreements to quantify fiscal sharing and reduce the annual competition for scarce funds. These agreements help provide certainty when budgeting each year.

Ideas to build and nurture the Local Government/School Board relationship:

- Hold joint meetings on a regular planned basis.
- Appoint liaison members to attend each other's meetings.
- Conduct joint retreats.
- Adopt a “no surprises” policy by keeping each other informed of developments of mutual interest.
- Encourage the local government manager and local superintendent to maintain open lines of communication.

Educational Standards

The Standards of Quality (SOQ) are the minimum standards of education required by the General Assembly and implemented throughout the state. The SOQ reference two other sets of standards:

- **Standards of Accreditation** which provide annual assessments and reports on performance and compliance issues.
- **Standards of Learning** which set mandated learning outcomes by grade/subject area for all students and schools.

Setting the Standards of Quality

The Standards of Quality are set by the State Board of Education, but they can be revised by the General Assembly. The SOQ standards include details like the maximum allowable class size in the various grades. (They are codified as Code of Virginia [§§ 22.1-253.13:1-22.1-253.13:8](#).) They also specify staffing ratios for some positions such as principals and guidance counselors.

According to the VDOE website:

On October 17, 2019, the Board of Education prescribed new Standards of Quality for the Commonwealth's public schools. The new standards are aligned with the Board of Education's goals of promoting educational equity, supporting educator recruitment and retention, and helping students and schools achieve the board's graduation and accreditation requirements.

The SOQ were transmitted to the General Assembly to review and revise during the 2020 legislative session; however, the 2020 General Assembly did not provide adequate funding for the prescribed SOQ.

On September 17, 2020, the Board unanimously re-prescribed the Standards of Quality from 2019.

The SOQ and the annual appropriations act determine direct aid funding for public education. Clearly, the SOQ are of great significance to local governments, as they drive the required amount of local funding necessary to receive state direct aid funding.

This shared state/local funding relationship has been a source of disagreement and dispute for many years. The state argues that Virginia pays “it’s fair share” while many localities counter that the General Assembly consistently underfunds their obligations, leaving local governments to provide the needed revenue.

The Joint Legislative Audit and Review Commission (JLARC), the legislative research and reporting division of the state legislature, has completed several studies regarding this funding dispute. The 2020 update study ([link below](#)) and annual reports on SOQ spending provided to the General Assembly and Governor each year provide detailed information.

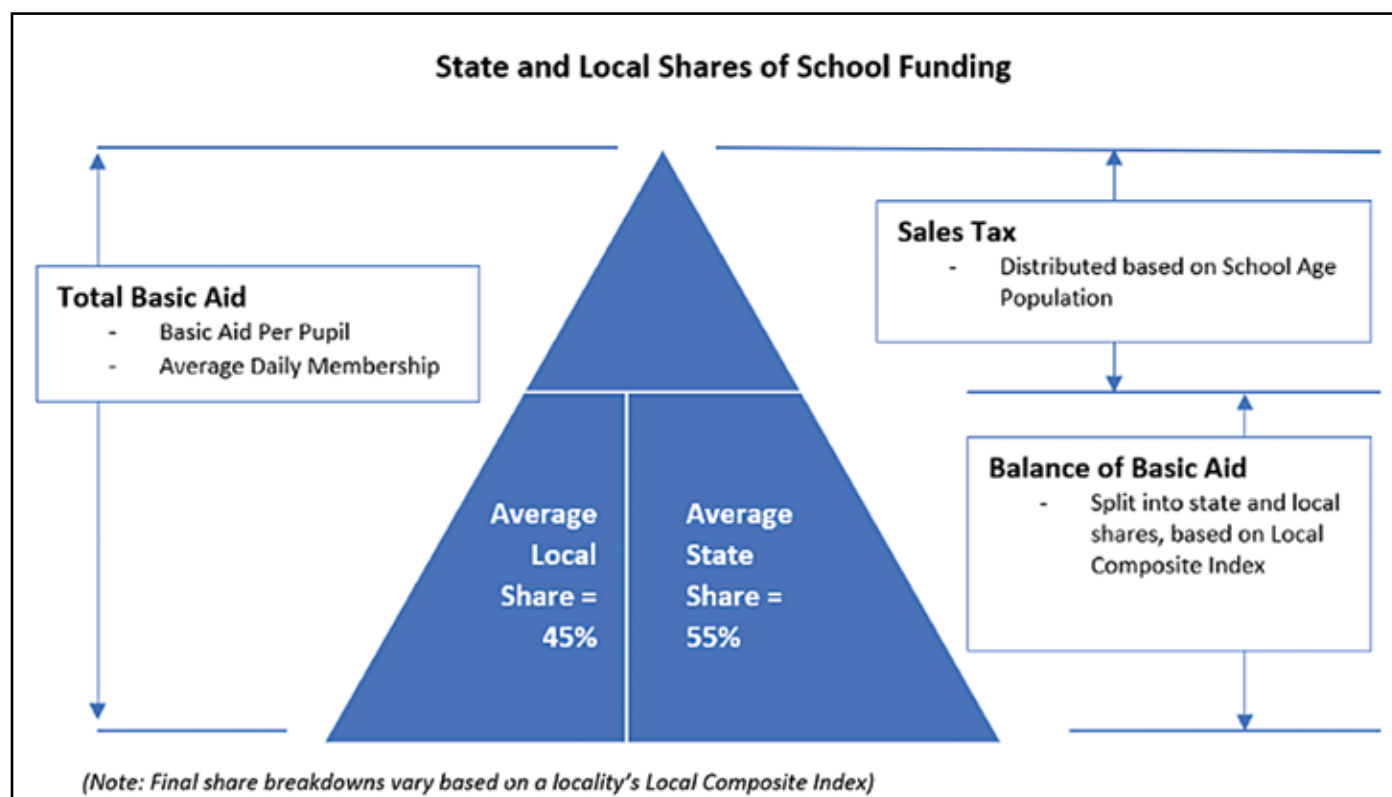
- **JLARC State Spending on the K-12 Standards of Quality – 2020 Update:** www.jlarc.virginia.gov/pdfs/reports/Rpt548-1.pdf
- **JLARC State Spending – 2020 Update:** www.jlarc.virginia.gov/pdfs/reports/Rpt540-2.pdf

Funding the Standards of Quality

The basic steps in funding the Standards of Quality are:

- The state determines a basic aid cost per pupil for meeting the SOQ.
- The cost per pupil is multiplied by the average daily membership (ADM/number of pupils) in a division, to get the cost to meet the SOQ for each school division. NOTE: ADM is provided by the local school division to the Virginia Department of Education twice per year, on September 30 to establish regular state payments to localities, and again March 31, to determine any adjustments needed for enrollment changes during the school year.
- The amount of the state’s sales and use tax dedicated to education and returned to a particular city or county (based on school age population) is deducted from that school division’s SOQ cost.
- The amount remaining is divided between the state and local governments, with each local government’s share based on the Local Composite Index calculation of local ability to pay (sometimes referred to as the Local Composite Index).

The Charts (below and on the next page), from the VDOE website, provide a visual depiction of this formula:



Statewide, the state pays 55 percent of what it calculates to be the cost of meeting the SOQ. On an individual locality basis, however, the state share ranges anywhere from 20 percent to more than 80 percent, depending on the composite index assigned to each locality. For example, if a locality's index is .5286, the local share is 52.86 percent of the total (with the sales tax deducted) and the state share is 47.14 percent. The local share is capped at 80 percent, meaning that the state pays at least 20 percent of the calculated SOQ costs in every jurisdiction.

Categorical & Incentive Programs

Some educational programs are funded through categorical programs outside of the SOQ. Categorical Programs target needs of specific students, typically without a local match.

- FY19 Categorical Programs and state funding (Source: *VDOE Presentation: Overview of Virginia K-12 Funding Formulas and Formula Approaches to Recognize Student Need* September 19, 2018)
- State Operated Programs (\$35.6 million)
- School Lunch Program State Match (\$5.8 million)
- Virtual Virginia (\$5.4 million)
- Homebound (\$5.0 million)
- Adult Education (\$1.1 million)
- Adult Literacy (\$2.5 million)
- Other programs (\$3.5 million)

The state also funds some programs on an incentive basis, where the school division receives state funding if it chooses to participate in the program. These incentive programs *may* require a local match, which is often based on the composite index.

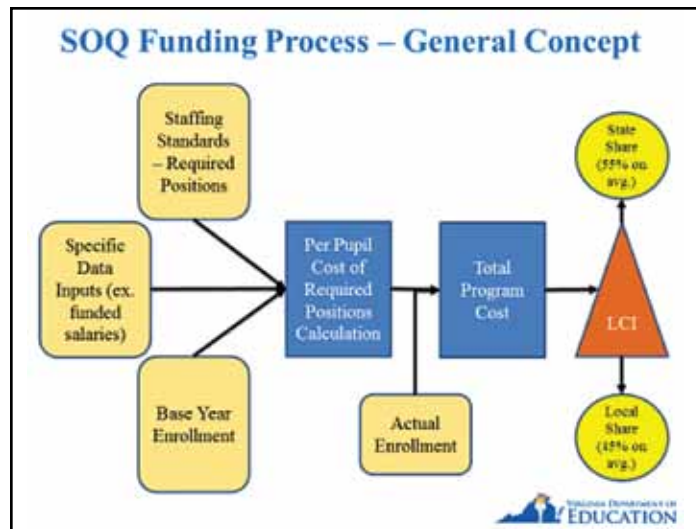
The distribution of state funding for some of these programs is based on an “at-risk” factor; for example, eligibility for participation may be linked to the percentage of children eligible for the federal free or reduced lunch program.

Incentive Programs are voluntary but require additional conditions to receive state funding. As an example, let's take a look at the FY19 state funding.

FY19 Incentive Programs and State Funding:*

- Compensation Supplement (\$0.0 million – funded in FY20)
- Governor's School (\$17.8 million)
- At-Risk Add-on (\$100.3 million)
- Math/Reading Instructional Specialists (\$1.8 million)
- Early Reading Specialists Initiative (\$1.4 million)
- Small School Division Enrollment Loss (\$6.1 million – FY19 only)
- Spec. Ed. Regional Tuition – GF portion (\$28.0 million)
- Other programs (\$2.6 million)

*Source: *VDOE: September 19, 2018 presentation*



Proceeds from the state lottery are the largest source of funding for incentive programs. In FY19, for example, 20 programs were funded by the Lottery Proceeds Fund, including two SOQ programs: Early Reading Intervention and Algebra Readiness. (Source: *VDOE Presentation: September 19, 2018*)

Several programs have a local match:

- FY19 Lottery Programs and state funding
- Supplemental Lottery Per Pupil Allocation (\$234.7 million)
- K-3 Class Size Reduction (\$130.6 million)
- Virginia Preschool Initiative (\$75.3 million)
- Spec. Ed. Regional Tuition – Lottery Portion (\$67.6 million)
- Other programs (\$84.3 million)

Composite Index of Local Ability to Pay

The composite index is designed to be a measurement of local wealth or the locality’s “ability to pay” the required SOQ funding. It compares each locality’s property values, personal income, and sales tax collections to statewide amounts for these same factors.

The LCI is a relative measure of local financial resources relative to the state avg. Its calculation is based upon:

- True Value of Real Property (weighted 50%)
- Adjusted Gross Income (40%)
- Taxable Retail Sales (10%)

Calculation weighted by:

- Average Daily Membership (67%)
- General Population (33%)

The final value is percentage of formula costs that must be funded from local funds (ex. LCI of 0.6000 = 60% local share; 40% state share).

Composite Index Formula

Composite Index of Local Ability-to-Pay Formula

ADM Component =


$$.5 \left[\frac{\text{Local True Value of Property}}{\text{Local ADM}} \div \frac{\text{State True Value of Property}}{\text{State ADM}} \right] + .4 \left[\frac{\text{Local Adjusted Gross Income}}{\text{Local ADM}} \div \frac{\text{State Adjusted Gross Income}}{\text{State ADM}} \right] + .1 \left[\frac{\text{Local Taxable Retail Sales}}{\text{Local ADM}} \div \frac{\text{State Taxable Retail Sales}}{\text{State ADM}} \right]$$

Population Component =

$$.5 \left[\frac{\text{Local True Value of Property}}{\text{Local Population}} \div \frac{\text{State True Value of Property}}{\text{State Population}} \right] + .4 \left[\frac{\text{Local Adjusted Gross Income}}{\text{Local Population}} \div \frac{\text{State Adjusted Gross Income}}{\text{State Population}} \right] + .1 \left[\frac{\text{Local Taxable Retail Sales}}{\text{Local Population}} \div \frac{\text{State Taxable Retail Sales}}{\text{State Population}} \right]$$

Local Composite Index =

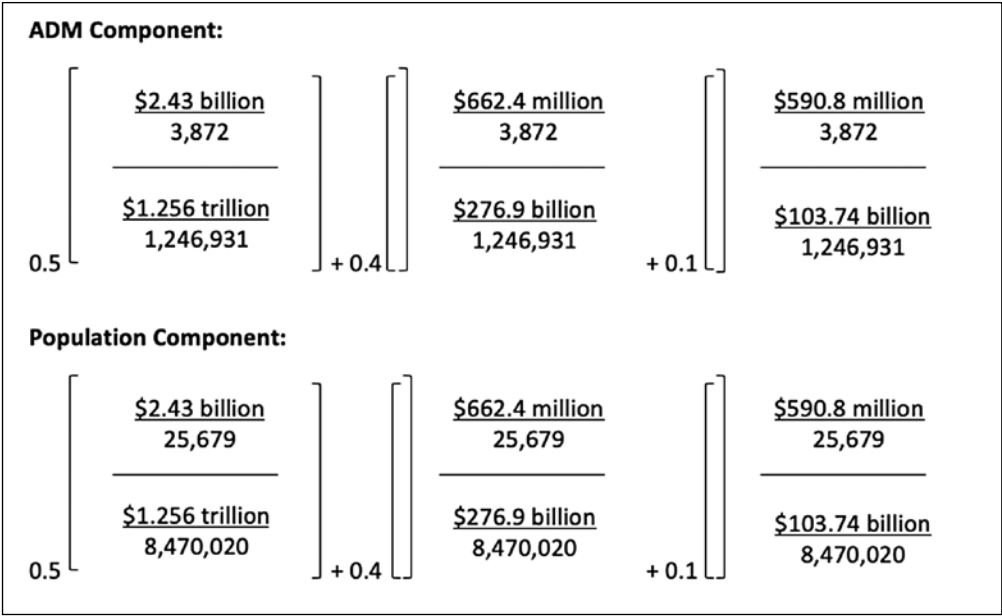
$$[(.667 \times \text{ADM Component}) + (.333 \times \text{Population Component})] \times 0.45 \text{ (average local share)}$$



Source: *VDOE Presentation of September 19, 2018*

As an example, based on this formula the City of Salem has an LCI of 0.3641 for Fiscal Years 2020-2022:

- Local True Value of Property: \$2.43 billion
- Local Adjusted Gross Income: \$662.4 million
- Local Taxable Retail Sales: \$590.8 million
- Local ADM: 3,872
- Local Total Population: 25,679
- State True Value of Property: \$1.256 trillion
- State Adjusted Gross Income: \$276.9 billion
- State Taxable Retail Sales: \$103.74 billion
- State ADM: 1,246,931
- State Total Population: 8,470,020



Local Composite Index:

$$[(0.6667 \times 0.8026669) + (0.3333 \times 0.8221573)] \times 0.45 = 0.3641$$

Many localities, and even some state representatives, agree that the LCI is not a perfect measure, as it simply “estimates” local wealth. Changing the composite index, however, is very challenging mathematically and politically. Without a major infusion of additional state funds, changes may create “winners” and “losers” because improvements for one locality would be achieved only by reductions in others. This dilemma is experienced anew every two years when the LCI data for every locality is re-calculated and state funding is adjusted by the new LCI figures.

School Division Budgets

The school board is assigned the duty of managing and controlling public education funds. The school board is required to report its expenditures to the governing board at least once a year. It is prohibited, without the consent of the governing board, from spending or contracting to spend any money in excess of the funds available for school purposes during a given fiscal year.

By April 1 of each year, the division school superintendent must provide the governing board an estimate of the funds the division will need during the next fiscal year. The school board is required to hold at least one public hearing before approving the budget to be submitted to the governing board. The state Superintendent of Public Instruction must submit estimates on the amount of state aid to be provided under the basic school aid formula within 15 days of

the end of the General Assembly session. The governing board is required to enact the school board budget by May 15 or within 30 days of receiving those estimates of state funds.

The governing board is required to make sufficient appropriations to the school board to pay its local share of the costs of meeting the SOQ. The governing board may either appropriate a lump sum to the school board or appropriate by eight major classifications:

1. Instruction (where the bulk of the money goes, as this category includes instructional salaries)
2. Administration, attendance, and health
3. Pupil transportation
4. Operation and maintenance
5. School food services and other non-instructional operations
6. Facilities
7. Debt and fund transfers
8. Contingency reserves

If appropriations are made by these classifications, the school board may not transfer money between categories without the governing board's approval. Appropriations may be made on the same periodic basis that the governing board uses for other departments. Should the governing board not appropriate enough funds to pay the local costs of meeting the SOQ, the State Board of Education is required to notify the state Attorney General, who is required in turn to file a writ of mandamus forcing the governing board to make the appropriation.

Funds appropriated to the school board but not spent during the fiscal year revert to the governing body. Localities can create a separate escrow account for the deposit of the locality's appropriations from state lottery proceeds, designated for nonrecurring costs of the school division. These costs include:

- School construction, additions, infrastructure, site acquisition, and renovations.
- Technology and other expenditures related to modernizing classroom equipment.
- Debt service payments on school projects completed during the last ten years.

The title to all the school division's property, both real and personal, is vested in the school board, except that the title to property may vest in a city by mutual consent of the school board and the governing board.

Funding Capital Costs

In Virginia, local governments traditionally have funded most school capital costs.

Primary Options to Fund Capital Expenses

- Issue General Obligation Bonds to pay for school construction. In terms of bond issues, localities now can participate in the bond pool program sponsored by the Virginia Municipal League and the Virginia Association of Counties. This is sponsored by VML/VACo Finance.
- Borrow funds from the state Literary Fund (see sidebar for more info).
- Borrow money through the Virginia Public School Authority.
- Accrue enough funds to pay cash (an almost impossible task for any costly project).
- Undertake a public-private partnership under the Public-Private Educational Facilities and Infrastructure Act. This act allows private entities to acquire, design, construct, and operate qualifying projects, including school facilities.

More about Literary Fund Loans

The Literary Fund is a permanent and perpetual school fund established in the Constitution of Virginia. Revenues to the Literary Fund are derived primarily from criminal fines, fees, and forfeitures, unclaimed and escheated property, unclaimed lottery winnings and repayments of prior Literary Fund loans. The Literary Fund provides low-interest loans for school construction, grants under the interest rate subsidy program, debt service for technology funding, and support for the state's share of teacher retirement required by the Standards of Quality.

As of July 2020, there were twelve projects on the “first priority waiting list” due to a lack of available funds to support requests.

More information about Literary Fund Loans is available at: www.doe.virginia.gov/support/facility_construction/literary_fund_loans/index.shtml

Standards of Learning

The Standards of Learning (SOL) are educational objectives established by the State Board of Education. They cover the content area objectives to be learned by grade in all the subject areas. The SOL increased expectations from basic knowledge to “college and career ready standards” during multiple revisions over the last decade. The result is a more challenging curriculum and higher expectations for all students. As an example, here is a 4th Grade Math Standard:

4.13 *The student will*

- a) *Determine the likelihood of an outcome of a simple event;*
- b) *Represent probability as a number between 0 and 1, inclusive; and*
- c) *Create a model or practical problem to represent a given probability.*

The SOQ state that the SOL are not regulations; however, local school boards are required either to implement the state SOL or develop objectives that meet or exceed them.

Standards of Accreditation

The Standards of Accreditation use student performance on particular SOL tests for certain grades and classes as a factor in school accreditation.

The Virginia Board of Education's [Regulations Establishing Standards for Accrediting Public Schools in Virginia](#) are designed to ensure that an effective educational program is established and maintained in all of Virginia's public schools.

The Standards of Accreditation (SOA):

- Provide an essential foundation of educational programs of high quality in all schools for all students.
- Encourage continuous appraisal and improvement of the school program for the purpose of raising student achievement.
- Foster public confidence.
- Assure recognition of Virginia's public schools by other institutions of learning.
- Establish a means of determining the effectiveness of schools.

The SOA impact the cost of public education as they specify requirements for all schools such as facility standards, a standard school year of 180 days (or 990 hours), the conduct of fire drills, and specify the number of credits and experiences a student must earn to receive a Standard or Advanced Studies Diploma.

School Quality Indicators

The Virginia Board of Education’s revised accreditation system measures performance on multiple school quality indicators and encourages continuous improvement for all schools.

Performance on each school quality indicator is rated at one of the following levels:

- Level One: Meets or exceeds state standard or sufficient improvement (Green)
- Level Two: Near state standard or sufficient improvement (Yellow)
- Level Three: Below state standard (Red)
- Too Small: Too few students in school or group to evaluate

More details are available at www.doe.virginia.gov/statistics_reports/accreditation_federal_reports/accreditation/index.shtml#qual

Virginia’s School Quality Profiles

School Quality Profiles are a new way to look at the performance of Virginia’s public schools. School Quality Profiles were developed by the State Board of Education in response to the 2015 Virginia General Assembly, which directed the board to redesign online reports for schools and school divisions to more effectively communicate to parents and the public about the status and achievements of Virginia’s public schools.

School Quality Profiles are available for all schools, school divisions, and for the state. Information on the Virginia Department of Education (VDOE) website can be re-configured in multiple ways to produce customized reports as desired.

More detailed information (and access to “At a Glance” summaries for every school in Virginia) is available here: www.schoolquality.virginia.gov/.

School Accreditation Ratings

Schools earn one of the following three accreditation ratings based on performance on school quality indicators:

1. **Accredited:** Schools with all school quality indicators at either Level One or Level Two. In addition, high-performing schools with waivers from annual accreditation authorized by the General Assembly are rated as Accredited.
2. **Accredited with Conditions:** Schools with one or more school quality indicators at Level Three
3. **Accreditation Denied:** Schools that fail to adopt or fully implement required corrective actions to address Level Three school-quality indicators.

Every Student Succeeds Act (ESSA)

The “Every Student Succeeds Act” of 2015 (ESSA) was signed into law on December 10, 2015. ESSA amends the Elementary and Secondary Education Act and replaces No Child Left Behind. The Board of Education approved its plan to implement ESSA at its July 2017 business meeting. The final version was approved by the U.S. Department of Education in May 2018.

The complete Virginia Plan is available here: www.doe.virginia.gov/federal_programs/esea/virginia-essa-plan-amendment-3-redline.pdf

Federal Accountability

Under ESSA, Virginia will identify schools for comprehensive or targeted support and improvement using a multi-step process that includes multiple indicators.

More detail on ESSA Requirements and Virginia’s ESSA Plan are available at www.doe.virginia.gov/statistics/reports/accreditation_federal_reports/federal_accountability/index.shtml

About the author: Dr. Staples is the former state superintendent of public instruction and is currently an executive professor at William & Mary.

CHAPTER 17

Human Services

by Janet Areson

Virginia's state and local human services umbrella covers a broad array of needs and services for Virginians of all ages. This policy arena includes services involving aging and rehabilitative services, blind and vision impaired, deaf and hard of hearing, health professions, medical assistance services (i.e., Medicaid), social services, children's services, behavioral and developmental services, and public health.

Local government responsibility in the human services arena resides in four major areas:

1. Social Services
2. Children's Services Act
3. Behavioral Health and Developmental Services
4. Public Health

Cities and counties play a primary role in administering and funding services in these areas. Although federal and state mandates dictate program rules, regulations, and minimum funding levels for many human services programs, local policymakers may exceed the minimum requirements to meet community needs.

Social Services

Virginia operates a state-supervised, locally administered system of social services. A total of 120 local social services departments administer several benefit and service programs (e.g., Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program (SNAP), foster care and adoption services, and child protective services) and determine eligibility for others (e.g., Medicaid), subject to the rules and regulations set by the state agency boards, including the state board of social services and the state board of medical assistance services, as well as the federal government.

Local Administration & Oversight

Each city and county must establish a local department of social services, under the supervision and management of a local director. With approval from the state, cities and counties may choose to unite as a district to establish one department to serve their communities (Code of Virginia [§ 63.2-324](#)); a locality can also withdraw from a district board and establish its own department in accordance with a state-approved transition plan (Code of Virginia [§ 63.2-306.1](#)).

State law requires each city and county, or combination, to establish a local board of social services to oversee its local department (Code of Virginia [§ 63.2-300](#)). For a local board serving a single city, the city council must appoint either one local government official or five individuals to serve as the board (Code of Virginia [§ 63.2-304](#)). If one official is appointed as the board, the governing body must also appoint an advisory board comprised of at least five and no more than 13 members (Code of Virginia [§ 63.2-305](#)). For a district board that represents more than one city or county or a combination of cities and counties, the board must consist of at least three and no more than nine members unless otherwise stated in the Code. (Code of Virginia [§ 63.2-306](#) and [§ 63.2-307](#)).

Members of local boards must be paid reasonable and necessary expenses for attending meetings. These expenses are paid by local general funds, not state or federal funds. Local governments may also compensate local board members for their service, with compensation set by the governing body and paid for by the local government (Code of Virginia [§ 63.2-310](#)).

Funding

Each year the local social services board must submit to the governing body a budget that contains an estimate and supporting data on the funding needed to carry out mandated services. The governing body examines and approves the local department's budget and then appropriates funds to sufficiently cover the required costs of administration and the programs, anticipating reimbursement (on a formula basis) from the state. The Code of Virginia allows governing bodies to appropriate more than the minimum required by the state to carry out benefit and service programs and to offer services – using local only funding – that exceed minimum state and federal requirements. The state reimburses local governments on a monthly basis for the federal share of any public assistance and social services programs. State funding for any remaining balance of service costs is made on the basis of availability of state appropriations; the state is required to reimburse each county and city the full amount of public assistance grants provided for Temporary Assistance for Needy Families.

State funding reimbursement for administrative costs is set within the limits of available federal funds and state appropriations; it is supposed to be not less than 50 percent of those costs (Code of Virginia [§ 63.2-401](#)). In addition, the Code of Virginia requires the state, to the extent that funds are available for such purpose, to reimburse localities for monthly rental payments for office space provided to the local department in publicly-owned buildings and for the cost of repairs and alteration in either a privately or publicly owned building. The Commissioner determines the extent of reasonable costs. (Code of Virginia [§ 63.2-401](#)).

If a local government/district fails or refuses to provide public assistance or social services, the state board shall use appropriate proceedings to require the provision of such services. If a local government district fails or refuses to 1) operate programs in accordance with state laws and regulations, or 2) provide the necessary staff for implementing such programs, the state board of social services may authorize and direct the withholding of state reimbursement for administrative expenditures for the time during which the locality/district fails to comply with state law or regulations.

Children's Services Act

In 1992, the Virginia General Assembly adopted the Comprehensive Services Act for At-Risk Youth and Families (CSA). In 2015, the name of the program was changed to the Children's Services Act. CSA consolidated eight existing funding streams for youth with, or at risk of, serious emotional and behavioral issues into a single state pool of funding. Its goal was to create a system that is child-centered, family-focused, and community-based. While mandating collaborative and coordinated planning and reporting of services/use of funds at the local level, CSA also gave communities greater flexibility and financial incentives to design treatment plans emphasizing greater use of services in a child's community and less dependence on residential placements.

The CSA is a state-supervised, locally administered system. The State Executive Council for Children's Services (SEC) and its administrative agency, the Office of Children's Services, are responsible for oversight of the CSA program and develop and enforce program policies. Local governments are represented on the SEC. OCS audits local programs for compliance with state laws and policies and provides a variety of training opportunities for those involved in the program at the local level.

Population Served & Funding

CSA primarily serves two target populations: children for whom foster care services are provided; and children whose special education needs extend beyond a regular classroom (e.g., placement in private special education programs). Services required by the target mandated population are considered sum sufficient, meaning that the local and state government must pay for services needed even if the cost goes beyond what was set in the local or state budget for the year.

Each city and county is eligible for a portion of the state pool of funds as determined by a formula; the locality matches state funds based on a state-calculated match rate. State funds are provided on a reimbursement basis. Only CSA-approved services can be paid for with state pool funds. The state also provides a modest amount of administrative funds to each local government. In turn, each local government must annually budget its share of anticipated mandated costs as well as the balance of administrative costs.

Local governments may furnish services to children who do not fit into one of the sum-sufficient (mandated) categories but who may enter a CSA program if their needs are not addressed. The state has a limited pot of non-sum sufficient or “protected funds” for these children. A local match is required for the use of these funds as well.

Local Administration

As with social services, cities and counties can operate their CSA programs on an individual basis or as a region. Each local/regional CSA program has:

- A coordinator with overall administrative responsibility for the community/regional program.
- One or more family assessment and planning team (FAPT) or other approved multi-disciplinary team (MDT) that include staff from the agencies involved in CSA at the local/regional level as well as a parent representative. A family partnership team (FPT) is also allowed under CSA policy. In most cases (except Individualized Education Program or maintenance-only foster care), the FAPT assesses each youth referred to them with the use of a mandated uniform assessment tool and works as a team and with the child/family to develop an individually tailored service plan. A case manager is appointed for each child/family, and the team follows the progress of each child/family and adjusts services as needed.
- A community planning and management team (CPMT) with overall responsibility for oversight/administration of the local/regional CSA program, including planning and policy development, fiscal and programmatic management, and data collection and reporting. It also identifies the person or agency responsible for signing placement agreements or contracts. The local governing body establishes the CPMT. This team must include at least one elected or appointed designee for the governing body as well as local agency directors or designees, a private provider representative and a parent representative. Additional members may be appointed.

Behavioral Health & Developmental Services

Virginians receive publicly funded mental health, substance abuse, and developmental disability services through a combination of community-based services (including public and private services licensed by the state) and state facilities. The community-based system serves the majority of individuals seeking services.

Administering community-based services

Virginia has a network of 39 Community Services Boards (CSBs) and one Behavioral Health Authority (BHA) to serve all its communities. The CSB system began in 1968, when the General Assembly enacted legislation allowing local governments to operate mental health and developmental disability programs. Every city and county must be a part of a CSB or BHA.

The CSB/BHA serves as the single point of entry into the state’s publicly funded mental health, developmental, and substance abuse services system. They may serve one locality or a combination of cities and counties. A CSB/BHA may operate as a department of a locality or with local government employees; the majority of CSBs and the BHA operate independently of local government with staff employed by the CSB and not the local government (Code of Virginia [§ 37.2-500 et. seq.](#))

A CSB consists of 1) a citizen board for a local department or public organization that is appointed by the governing body/bodies for the communities to be served by it, and 2) a local government department or public organization responsible for supplying or contracting for behavioral health and developmental services to the community. Local governing bodies designate the form of the CSB/BHA and may change this designation at any time by ordinance. In the case of multi-jurisdictional CSBs, the decision to change must be agreed to by the communities involved in the Board.

CSBs are accountable for their programmatic, fiscal, and administrative activities at both the local and state levels. A CSB/BHA is required to get each local governing body it serves to formally approve its performance contract before it is submitted to the state each year. These contracts should be approved before the beginning of the fiscal year.

Funding

CSB funding comes from a combination of federal, state, and local funds. CSBs, through their localities, are required to provide a 10 percent local match for state-controlled funds they receive through the performance contract for services, facilities, and personnel (unless a waiver is granted). Many localities exceed this match with local-only funds. Local-only funds are not controlled by the performance contract and may be used to expand or offer additional services and programs as directed by the local governments.

The state agency may withdraw state-controlled funds (but not local-only exceeding the 10 percent match) from a CSB if it does not meet the provisions of the performance contract.

Public Health

Before March of 2020, many Virginians took little notice of the Virginia Department of Health (VDH) and the public health system in Virginia. When the COVID-19 pandemic took hold, VDH and the public health system came into the spotlight as the state's lead agency for the state's response to a full-fledged public-health emergency. While epidemiology and emergency preparedness are major focuses of public health, Virginia's public health system addresses a wide array of issues and responsibilities, including disease prevention, environmental health, public health education, vital records and health statistics, medical examiner services, facility licensing, and emergency medical services.

The State Board of Health is responsible for developing and overseeing policy for the public health system. The Board is appointed by the governor and includes 15 members, including one representative of local government. With the exception of emergency medical services and the medical examiner, public health services are delivered primarily through local departments of health. The Code of Virginia requires every city and county to have a local health department; some health districts include more than one city or county. There are 35 health districts in total. (Code of Virginia [§ 32.1-30 et. seq.](#)). Each department is headed by a local health director, who must be a physician licensed to practice in Virginia.

Local public health ordinances and regulations must be at least as stringent as state law or regulation. All local health departments supply a broad array of state-mandated services, including childhood immunizations, environmental health services, investigation of communicable diseases, rabies control, water supply inspection and restaurant inspections. They also may offer optional services to address either local ordinances or needs, such as home health, food handler training, and blood lead-level testing.

Cities and counties can operate their departments under one of three models:

1. The locality can operate its own health department as a unit of local government; the state commissioner appoints a local director who is an employee of local government, as is the department staff. A contract between the state and local government stipulate the conditions under which the model may operate and specifies the funding arrangements.
2. The local governing body contracts with the state board of health to administer health services. The contract specifies what services, if any, will be supplied in addition to state mandated services. The state health commissioner appoints the local director, and the director and staff are considered to be state employees. The contract specifies the amount of state and local funding to support the provision of required health services. Optional services are funded to the extent that state and local funds are available. The local governing body/bodies may appoint a local health services advisory board for its department. (Code of Virginia [§ 32.1-31](#))
3. A city or county does not enter into a contract with the state and operates an independent health department and appoints its own director, who must meet state Code requirements. The locality is responsible for enforcing all applicable health laws and regulations. The state holds no obligation to grant funding to these departments. No localities have operated under this model since the early 1970s. (Code of Virginia [§ 32.1-32](#))

Emergency Medical Services

Emergency medical services (EMS) are delivered in communities across Virginia through local fire and rescue departments or through local contracts with authorities or other entities. This local service is supervised by the state through a comprehensive set of laws and regulations. State law specifies the powers of local governments in providing EMS, including the ability to franchise or permit these services or to limit their provision within the jurisdiction's boundaries.

EMS operations at the state level reside within the Virginia Department of Health. The State Board of Health and the state Emergency Medical Services Advisory Board oversee EMS policy and operations. VML has a member on that Advisory Board, appointed by the governor.

The State Board of Health also designates regional emergency medical services councils (Code of Virginia [§ 32.1-111.4:2](#)). These councils adopt and revise as necessary a regional EMS plan in cooperation with the Board. Regional councils must match state funds with local funds obtained from private or public sources. Local governments may, but are not required, to appropriate funds to help meet the regional matching grant funds.



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CHAPTER 18

Animal Control

By **K. Michelle Welch** and **Lila M. Friedlander**

Localities have many required duties and responsibilities with respect to regulating animal control within their jurisdiction, as well as authority to enact a wide variety of animal-related ordinances if the local governing body determines them to be in the best interests of the city, county, or town.

It is important to keep in mind that some of the state statutes setting out duties and powers for local governing bodies apply *only* to cities and counties whereas others apply equally to all localities, including cities, counties, *and* towns. Local governing bodies should note whether the wording of a Virginia statute applies to any locality, or to only cities and counties.

Animal Licenses & Vaccinations

Two major animal control issues localities are responsible for are the licensing and rabies vaccinations of animals within their boundaries.

Animal Licenses

Under Virginia law, it is unlawful for anyone to own a dog older than four months of age that is not licensed. As for cats, state law gives any county, city, or town the authority to adopt an ordinance imposing a license requirement on anyone owning a cat older than four months of age. (Code of Virginia [§ 3.2-6524](#))

A license tag cannot be issued for a dog or cat unless the animal has received a rabies vaccination (Code of Virginia [§ 3.2-6526](#)). A locality can only license dogs and cats of an owner or custodian who is a resident of the locality. (Code of Virginia [§ 3.2-6527](#))

City and county governing bodies are responsible for setting the cost of dog licenses by ordinance. If a city, county, or town has chosen to adopt a cat licensing requirement, the governing body of that locality will be responsible for setting the cost of cat licenses by ordinance. The cost must fall within a range set by state law. The ordinance may provide for the licensing cost to vary according to whether the animal is a dog or cat, its sex, and whether it is spayed or neutered. Localities may not impose licensing costs on trained service dogs. (Code of Virginia [§ 3.2-6528](#))

The governing body of a county or city (but not a town) may enact an ordinance providing for lifetime dog or cat licenses if the animal's owner lives in the issuing locality and keeps the animal current on rabies vaccinations. (Code of Virginia [§ 3.2-6530](#))

Unless the locality specifies otherwise by ordinance, funds collected for the issuance of animal licenses are kept in a separate account and used for animal control purposes. (Code of Virginia [§ 3.2-6534](#))

Vaccinations & Preventing Spread of Rabies

Under state law, the owner of any dog or cat four months old or older must have the animal currently vaccinated for rabies by a licensed veterinarian or veterinary technician. Upon request by a local animal control officer, humane investigator, or law enforcement officer, the owner must provide the animal's certificate of vaccination. (Code of Virginia [§ 3.2-6521](#))

The local health department and the local governing body must approve all rabies clinics. All counties and cities are responsible for ensuring that a rabies clinic is conducted to serve their jurisdiction at least once every two years (Code of Virginia [§ 3.2-6521](#)). Local governing bodies are to work in conjunction with their local health director to develop and adopt a plan to control and respond to any risk of rabies exposure to a person or companion animal. (Code of Virginia [§ 3.2-6562.1](#))

All localities have the authority to pass ordinances restricting the running at large of dogs and cats that have not been vaccinated against rabies (Code of Virginia [§ 3.2-6522](#)). In addition, state law gives local governing bodies the authority to “adopt such ordinances, regulations or other measures as may be deemed reasonably necessary” to prevent the spread of rabies within the locality. (Code of Virginia [§ 3.2-6525](#))

In a situation where there is reason to believe the risk of rabies exposure is elevated, a locality may enact an emergency ordinance requiring all dog and cat owners to keep their animals confined on their premises unless leashed. This ordinance will become effective *immediately*, but it will not be operative longer than 30 days unless renewed in consultation with the local health director. (Code of Virginia [§ 3.2-6522](#))

Localities may also adopt an ordinance creating a program for the distribution of an oral rabies vaccine. State law requires that such an ordinance be developed in consultation with the Department of Health and with written authorization from the Department of Wildlife Resources. Additionally, state law lays out specifically what provisions must be contained in such an ordinance. Before passing such an ordinance, a local governing body should refer to Code of Virginia [§ 3.2-6525](#) to ensure that the required provisions are included in the ordinance with the proper wording.

Public Animal Shelters

Another key component of a city or county’s responsibilities with respect to animals is the establishment and maintenance of a city or county public animal shelter. Every city and county is required to maintain, or contract for the establishment and maintenance of, a public animal shelter. The shelter must operate according to regulations issued by the state’s Board of Agriculture and Consumer Services.

The animal shelter must be available to the public at reasonable hours. If a person contacts the animal shelter inquiring about a lost companion animal, the shelter must inform the person as to whether that animal or an animal of similar description is confined there, and if the rightful owner of a confined animal can be readily identified, the shelter must make a reasonable effort to notify the owner. State law sets a specific “stray hold period” during which a shelter must keep an animal and cannot euthanize it, adopt it out, or release it to another shelter or agency. This length of time varies depending on whether the animal is found to have any form of identification. (Code of Virginia [§ 3.2-6546](#))

State law also provides for certain record-keeping and retention requirements for the animal shelter. Each person working for the animal shelter must sign a statement specifying that the person has never been convicted of animal cruelty, neglect, or abandonment. (Code of Virginia [§ 3.2-6546](#))

Upon taking custody of a dog or cat while conducting official duties, custodians of releasing agencies, animal control officers, law enforcement officers, and humane investigators must ask whether the dog or cat is known to have bitten a person or animal, and if so, must document the bite and its circumstances and date. If the animal is released for adoption, returned to its rightful owner, or transferred to another agency, any known bite history of that animal must be disclosed. (Code of Virginia [§ 3.2-6509.1](#))

Once the stray hold period has passed for an animal confined at an animal shelter, or if the animal is critically injured, ill, or unweaned the animal may be euthanized (Code of Virginia [§ 3.2-6546](#)). However, state law prohibits the euthanasia of animals through high altitude decompression chamber or gas chamber. (Code of Virginia [§ 3.2-6505](#))

All animals adopted from a public animal shelter or other releasing agency must either have already been sterilized, or the person adopting the animal must sign an agreement to have the animal sterilized within 30 days of adoption or of reaching the age of six months (Code of Virginia [§ 3.2-6574](#)). A locality may choose to collect a fee or deposit prior to adoption to ensure the animal’s sterilization. (Code of Virginia [§ 3.2-6579](#))

Animal Welfare & Animal Cruelty

Another important issue for local governments is protecting the welfare of animals within the locality, through enforcement of the statutory requirements for animal care and the laws against animal cruelty.

Under state law (Code of Virginia [§ 3.2-6503](#)), the owner of a companion animal must provide each animal with:

- Adequate feed
- Adequate water
- Adequate and properly cleaned shelter
- Adequate space in the animal’s primary enclosure for that type of animal, depending on the animal’s age, size, species, and weight
- Adequate exercise
- Adequate care, treatment, and transportation
- Veterinary care when needed to prevent suffering or disease transmission

An “owner” of an animal means any person who has a right of property in an animal, keeps or harbors an animal, has an animal in his care, or acts as a custodian of an animal (Code of Virginia [§ 3.2-6500](#)). These requirements also apply to public or private animal shelters, foster care providers, dealers, pet shops, exhibitors, kennels, groomers, and boarding establishments. (Code of Virginia [§ 3.2-6503](#))

Code of Virginia [§ 3.2-6500](#) also lays out further specific definitions of what constitutes “adequate” for each requirement, as well as specific rules for tethering of animals.

Under Code of Virginia [§ 3.2-6503.1](#), the owner of an agricultural animal must provide each animal with:

- Sufficient feed to prevent malnourishment
- Sufficient water to prevent dehydration
- Veterinary treatment as needed to address an impairment of health or bodily function, when the impairment cannot be addressed otherwise through animal husbandry (such as humane destruction of the animal).

Code of Virginia [§ 3.2-6570](#) lays out which specific actions towards animals constitute animal cruelty. Intentional acts like torturing and killing or deprivation like starvation or withholding of vet care all constitute animal cruelty. Depending on the type of animal at issue, and whether the animal dies or sustains serious bodily injury, this offense can either be a Class 1 misdemeanor or a Class 6 felony. Abandoning or dumping an animal is also prohibited.

Animal control officers have the power to seize and impound an animal if the animal has been abandoned, cruelly treated, or if an apparent violation of state law has rendered the animal “in such a condition to constitute a direct and immediate threat to its life, safety or health” and must interfere to prevent any act of cruelty upon an animal in the officer’s presence. (Code of Virginia [§ 3.2-6569](#))

A subsequent hearing before the general district court of the city or county will determine whether a violation has occurred and whether the animal should be returned to its owner or not. Any locality may adopt an ordinance requiring the owner of a seized animal to post a bond in surety with the locality for the cost of boarding the animal for a period of time no longer than nine months (Code of Virginia [§ 3.2-6569](#)). The Court may impose such a bond whether or not there is an ordinance. (Code of Virginia [§ 3.2-6569](#))

Additional Local Powers

Under state law, localities have the authority to adopt a wide variety of ordinances relating to animals as the local governing body sees fit.

Localities can limit how many animals of certain types that property owners may keep (Code of Virginia [§ 3.2-6524](#)).

Localities may pass laws prohibiting dogs running at large (Code of Virginia [§ 3.2-6538](#)). Local governing bodies are authorized to hold an advisory referendum on the question of whether a leash law should be enacted. (Code of Virginia [§ 3.2-6539](#))

Localities may regulate dangerous dogs and vicious dogs. (Code of Virginia [§ 3.2-6540.1](#))

Localities may require pet shops to obtain a permit. A locality may charge a fee of up to \$50 per year for such permit and can set record-keeping requirements for the pet shops; can provide for public hearings prior to issuing, renewing, or revoking permits; and can provide for denial or revocation of a permit if the pet shop engages in fraudulent practices or inhumane treatment of the animals (Code of Virginia [§ 3.2-6537](#)). A locality can also require that any pet shop selling dogs obtained from outside the Commonwealth furnish bond (Code of Virginia [§ 3.2-6537.1](#)). If a pet shop fails to adequately house, feed, water, exercise, or care for the animals in its possession, the locality may revoke its permit after a public hearing. (Code of Virginia [§ 3.2-6511](#))

According to Code of Virginia [§ 3.2-6544](#) localities can regulate the keeping of animals and fowl other than dogs and cats. With respect to such animals, a locality may:

- Regulate their keeping within certain distances of buildings and bodies of water
- Provide that they are not kept within certain areas, or prohibit their keeping in general
- Prohibit cruelty and abuse to such animals
- Prohibit or regulate their running at large
- Provide for their impounding and confiscation if found running at large or if kept in violation of the locality's regulations

Localities can regulate “hybrid canines” – animals that are hybrids between a domestic dog and any other species of the Canidae family (Code of Virginia [§ 3.2-6581](#)). Localities can establish a permit system to ensure the adequate confinement and responsible ownership of such animals or prohibit their keeping. (Code of Virginia [§ 3.2-6582](#))

Localities can compensate livestock or poultry owners for animals killed by dogs and can set the requirements for receiving such compensation by ordinance. (Code of Virginia [§ 3.2-6553](#))

Localities can govern the disposal of dead companion animals. (Code of Virginia [§ 3.2-6554](#))

Localities may prohibit anyone who acquires an animal from an animal shelter maintained or supported by the locality from selling the animal within the next six months. (Code of Virginia [§ 3.2-6545](#))

Cities and counties shall appoint an animal control officer, who is responsible for enforcing the animal control laws. Towns may appoint an animal control officer as well but are not required to do so (Code of Virginia [§ 3.2-6555](#)).

Localities may also appoint deputy animal control officers to assist the animal control officer in the performance of duties. Localities may additionally contract with outside jurisdictions for enforcement services. The locality is responsible for determining how the officers shall be paid (Code of Virginia [§ 3.2-6555](#)). State law sets specific requirements for the training of animal control officers (Code of Virginia [§ 3.2-6556](#)), as well as records-keeping, retention, and filing requirements (Code of Virginia [§ 3.2-6557](#)). State law also sets out the duties of such officers with respect to capture, confinement, and disposition of companion animals found running at large. (Code of Virginia [§ 3.2-6562](#))

Localities can prohibit the feeding of certain animals within its jurisdiction. They can prohibit feeding of migratory and nonmigratory waterfowl in an area of the locality which is so heavily populated as to make feeding waterfowl a threat to public health or the environment. A city or town (but *not* a county) may also prohibit the feeding of deer. However, the locality must provide notice to the Department of Wildlife Resources before doing so. (Code of Virginia [§ 29.1-527.1](#) – [§ 527.2](#))

Commercial Dog Breeding Operations

Localities also have authority to license and set certain requirements for commercial dog breeding operations. To operate in Virginia, a commercial dog breeder must have been issued a valid business license by the locality within which the breeder is operating (Code of Virginia [§ 3.2-6507.1](#)). State law sets specific requirements for such breeders, such as how the dogs may be disposed, and which records must be maintained by the operation. (Code of Virginia [§ 3.2-6507.2](#))

While state law allows commercial dog breeders to maintain no more than 50 dogs over a year old at a time for breeding purposes, a locality may, after a public hearing, adopt an ordinance allowing for a larger number of dogs. Localities also have the authority to set additional requirements for commercial breeding operations. (Code of Virginia [§ 3.2-6507.2](#))

Animal control officers and any public health or safety officials employed by the locality can investigate a commercial dog breeding operation within the locality for any violation of the requirements for commercial breeders, upon receiving a complaint or upon their discretion. (Code of Virginia [§ 3.2-6507.3](#))

Commercial dog breeding operations will also be subject to regular inspection at least twice annually. Per Code of Virginia [§ 3.2-6507.3](#), animal control officers may:

- Inspect the books and records of the breeder
- Inspect companion animals owned by the breeder
- Inspect any place where animals are bred or maintained
- Enter any premises where animals may be bred or maintained during daylight hours

Hunting

Under Virginia law, counties and cities have some authority to regulate the hunting of animals. Towns also have some ability to regulate hunting, but the authority granted them is much more limited.

According to the Code of Virginia, the governing body of any city or county may enact an ordinance to prohibit:

- Using a firearm to hunt game birds and game animals within 100 yards of any primary or secondary highway. (Code of Virginia [§ 29.1-526](#))
- Trapping animals within 50 feet of the highway, except where the landowner has given written permission. (Code of Virginia [§ 29.1-526](#))
- Hunting with certain firearms. The Board of Wildlife Resources has established model ordinances that may be adopted by cities or counties. The governing body of the city or county must notify the Director of the Department of Wildlife Resources by registered mail for the ordinance to be enforceable. (Code of Virginia [§ 29.1-528](#))

Counties and cities with deer overpopulation may choose to adopt the model ordinances for hunting deer established by the Board of Wildlife Resources, to eliminate conflicts between humans and deer, such as road safety hazards. The governing body of the city or county must notify the Director of the Department of Wildlife Resources by registered mail for the ordinance to be enforceable. (Code of Virginia [§ 29.1-528.1](#))

Along with cities and counties, towns may also prohibit hunting with firearms within 100 yards of public schools or regional parks, but do not have authority to enforce such an ordinance in a national or state park or forest or wildlife management area. (Code of Virginia [§ 29.1-527](#))



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CHAPTER 19

Street Maintenance and Construction

By Russell A. Dudley and Gerry L. Harter, PE

The condition of a locality's streets is one of the first things many visitors notice. Accordingly, well maintained streets can improve visitors' first impressions of the locality, while poorly maintained roadways can lead to many complaints from both visitors and residents. As such, well maintained streets, through a robust and well-funded maintenance program, go a long way toward improving the satisfaction of local citizens and attracting visitors and new businesses to localities.

Virginia's cities, towns with populations over 3,500, and Arlington and Henrico Counties, are required by the Code of Virginia to maintain and operate their own system of streets. Localities may construct new streets or expand existing streets for a variety of reasons such as adding traffic capacity, improving safety, enhancing the streetscape, and adding multimodal improvements like bicycle/pedestrian amenities. Localities take the lead role on projects that are funded with local revenues, while the Virginia Department of Transportation (VDOT) typically takes the lead role on projects funded through state or federal resources. However, various arrangements are possible with either party managing a given project through agreements between the locality and VDOT. Most of the communication between the locality and VDOT is handled through the local VDOT District Office.

Street maintenance

Urban street maintenance and operation is an expensive and often underappreciated responsibility of urban localities. Local responsibilities include (but are certainly not limited to) general pot-hole repairs, pavement resurfacing, maintenance and timing of traffic control devices, curb and gutter maintenance, street sweeping, bridge maintenance, and general litter pick-up.

To assist in the costs associated with these responsibilities, VDOT provides quarterly street maintenance payments to supplement the costs of maintaining and operating eligible urban streets in localities that maintain their own road network. Code of Virginia [§ 33.2-319](#) establishes road eligibility requirements for localities to receive street maintenance payments from the state. Specific payment processes, eligible maintenance activities, as well as local spending, reporting and auditing requirements are identified in VDOT's *Urban Construction and Maintenance Program Manual*, maintained by the Department's Local Assistance Division.

Learn more at www.virginiadot.org/business/local-assistance.asp.

State street maintenance payments

The Code of Virginia states that the Commonwealth Transportation Board (CTB) shall allocate each year from all funds made available for highway purposes such amount as it deems reasonable and necessary for the maintenance of roads within the interstate system of highways, the primary system of state highways, the secondary system of state highways and for city and town street maintenance payments made pursuant to Code of Virginia [§ 33.2-319](#). The payments made for maintenance of eligible streets are based on the number of moving lane miles available to peak hour traffic multiplied by the specific rate of payment. Turn lanes and on-street parking lanes, unless parking is prohibited during peak travel hours, are not eligible for state maintenance payments.

Generally, to be eligible for maintenance payments, a street must have at least 50 feet of Right-of-Way and at least 30 feet of hard surface; or at least 80 feet of Right-of-Way and at least 24 feet of hard surface *and* have plans approved to add at least 24 feet of hard surface within the same right of way; or, if a cul-de-sac, have at least 40 feet of right of way and a standard turnaround (i.e. must be accessible by emergency vehicles). There are also specific provisions for continued maintenance payments for lanes which are converted to bicycle or transit only lanes.

Maintenance payment calculation

Annually, VDOT establishes a budget for street maintenance payments, which in 2021, was nearly \$400 million for over 26,000 lane miles maintained by localities. The annual street maintenance budget is increased at a rate commensurate with the base rate of growth planned for VDOT's Highway Maintenance and Operations Program budget. Using that budget, along with any changes in inventory of the previous year, VDOT recommends to the CTB an annual mileage rate per street category (Arterial or Collector/Local). In 2021, those rates were \$22,161.46 and \$13,011.71 per lane mile for arterial and collector/local routes, respectively.

The total annual maintenance payment for each eligible locality is approved no later than June 30 of each year using the applicable payment rate multiplied by the number of approved lane miles within that locality. A resolution approving the annual statewide allocation is approved by the CTB typically at their June meeting. Maintenance payments are then made quarterly, in equal amounts, on or before September 30, December 30, March 30, and June 30. These maintenance payments from the state will most likely have to be supplemented with local funding to meet the needs and goals of the locality as well as state and federal requirements.

Urban street inventory

Each locality and VDOT are required to keep a permanent record of eligible roads for maintenance payments. Localities must notify VDOT, by resolution, of additional mileage to receive additional maintenance payments. Requests must be made by March 1 to be included in the following year's payments. Likewise, localities must also notify VDOT of any deletions of lane miles. All required documentation must be submitted to VDOT no later than February 1st of each year to be eligible for payment in the next fiscal year (beginning July 1). Every locality's inventory of streets receiving maintenance payments is included as a separate dataset (layer) in VDOT's Roadway Network System (RNS), which includes a statewide inventory of all public roads in Virginia.

Local performance and street and bridge Inspections

Code of Virginia [§ 33.2-319](#) states that maintenance payments will only be made for arterial roads that are maintained to a standard satisfactory to VDOT. The VDOT Residency Administrators, or other assigned District staff, are responsible for scheduling annual road inspections which should be made in the company of an authorized local employee. When deficiencies are identified, the locality should develop a plan for correcting the deficiencies within six months. If the deficiencies are not corrected, VDOT may delete payments associated with the deficient route. Bridges located on arterial routes are also included as part of these annual inspections, and as poorly maintained bridges can pose significant safety issues, they are also subject to additional federally-required [National Bridge Inspection Standard \(NBIS\)](#) requirements. VDOT is required by federal law to ensure that all NBIS bridges are inspected. If a locality fails to perform the necessary inspections and report the results to VDOT, the Local Assistance Division Director may withhold maintenance payments until such inspections are performed. Alternatively, if a locality does not complete the inspections in a timely manner, VDOT may unilaterally perform the necessary inspections and reduce the locality's street maintenance payments. They are also subject to additional federally required National Bridge Inspection Standard (NBIS) requirements.

Expenditure reporting

Code of Virginia [§ 33.2-319](#) requires that any locality receiving maintenance payments report both financial and system condition data to the CTB in the manner prescribed by the Board and report their performance as required in [§ 33.2-352\(B\)](#) of the Code of Virginia.

§ 33.2-319 also requires an annual audit of maintenance payment expenditures. The account must be supported by sufficiently detailed information necessary to determine the source of funds and identify all expenditures. The records of each fiscal year shall be audited by a CPA firm and retained by the locality under the State Auditor of Public Accounts procedures and requirements. Following the completion of the audit, localities are required to make an annual report, accounting for their expenditures, and to certify that none of the payments received have been expended for other than maintenance, construction, or reconstruction on eligible streets as defined in VDOT's [Urban Manual](#).

Construction

Construction of street projects includes new construction on a new location, but also includes major rehabilitation, street expansion/widening, bike and/or pedestrian accommodations, and new traffic control systems. Because of the linear nature of most transportation projects, these can be much more complicated and take much more time to complete than typical capital improvement projects.

Setting priorities for street improvements

Projects that are selected for development and construction typically follow a prioritization process through the [State's Six-Year Improvement Program \(SYIP\)](#) and/or the locality's Capital Improvement Program (CIP). Projects funded in total and administered by the locality are included only in the locality's CIP. Projects administered by localities are guided by the [Locally Administered Projects Manual](#). When projects are funded through VDOT (including Federal Highway Administration allocations) or are administered by VDOT, those projects are also included in the SYIP. The SYIP sets priorities for spending improvement funds over the planning time-period. The program is updated every year to:

- Include new projects approved by the CTB and requested by localities, counties, legislators, and others.
- Make the actual allocations for the current fiscal year.
- Adjust the projected allocations for the next five years, as funding allows.

To seek the maximum input from the Commonwealth's citizens, public meetings for the SYIP are typically held during the spring in each of the state's nine construction districts. Input is solicited from members of the General Assembly, County Boards of Supervisors, City and Town Council Members, Planning District Commissions, Metropolitan Planning Organizations, other public officials, and the general public. The working draft of the SYIP is released in the early spring followed by the public hearings. After the public hearings, the CTB adopts the final SYIP for the next fiscal year that begins July 1. The SYIP contains projects selected for funding through the statewide prioritization process, as well as projects funded through other programs including State of Good Repair, Revenue Sharing, safety, and other special federal and state programs. In general, it is the intent of the CTB that projects included in the SYIP be fully funded through construction and delivered according to the established budget and schedule.

Building or improving a road or street

Once funds are available for a project, preliminary engineering (design) begins. The design phase must consider factors including right-of-way impacts, environmental impacts, topography, drainage, user needs, traffic considerations and constructability. If VDOT designed, there are also other milestones throughout the process that include defined project meetings, certifications, and may also include federal approvals if federal highway funds are used. The project development phase, on average, takes 18-36 months to complete, depending on the size and complexity of the project. Besides the actual project design and cost, there are many other issues that local staff and elected officials need to consider early in the project development phase. Potential and actual environmental impacts, social justice issues, and land-owner impacts are just a few of these. When federal funding is included in the project budget, numerous regulatory requirements are triggered which can greatly complicate project planning, increase costs and the time it takes to complete the project. Localities must go through VDOT when federal funds are involved for most situations.

As noted, impacts to landowners, businesses, and other organizations either within the footprint or adjacent to the project are an important consideration during project development. The activities associated with acquiring property, temporary and permanent easements, and relocating and compensating landowners and stakeholders for the impacts of the project, is known as the Right of Way (ROW) phase of the project. Occasionally, when compensation cannot be agreed upon, VDOT or the locality may decide there is a need to exercise their rights of condemnation to acquire properties or easements.

Normally one or two public hearings are held as part of the project development process. Projects built on a new location generally require two public hearings, while projects on existing streets require only one hearing. In some cases, additional meetings known as citizen informational meetings are held with the public.

Actual construction begins after all design, environmental, and right of way activities are complete and the comments from the public hearing have been considered in the design. The construction phase begins with an advertisement to procure a contractor and ends with final project acceptance by the locality and VDOT, when VDOT is administering the project.

It is important to note that projects with state and federal funding (that typically have state assigned UPC numbers) are subject to the [VDOT Dashboard](#) performance system which monitors the schedule and budget for projects. Poor performance on this system could lead to less funding in the future, so it is imperative that project estimates and schedules are as accurate as possible at the beginning of the project. Performance measures and scheduled milestones on the Dashboard need to be monitored throughout the entire project development and construction phases, and any concerns the locality may have regarding meeting the measures need to be expressed to VDOT as soon as possible.

Funding sources for construction projects

While the planning, engineering, and actual construction of transportation projects can be very complicated, so too can the funding for these projects. Gone are the days when the state provided “formula” fund allocations for each locality to do with what their Council deemed appropriate. Rather, funding is now provided from a myriad of local, state, regional, and federal sources. Except for local revenue, funding is typically provided through competitive application processes at the various levels of government. VDOT accepts most funding applications through a single web-based application portal.

Project eligibility for some funding programs can be quite broad, while others are specific to project types. Likewise, local funding match requirements can range from zero to fifty percent. The requirements for documenting matching requirements vary greatly with the most onerous requirements required for federal highway funding. In most cases, these funding programs are reimbursable grants, meaning the locality must expend their funds first and then request reimbursement from the funding agency. The allocation of state construction funds is distributed per the Code of Virginia, [§ 33.2-358](#), generally. It is important to note that the allocation distribution process requires funding to be made available first for the maintenance of highway systems, including maintenance payments to localities maintaining their highway system.

Some of the most common funding programs managed through VDOT are summarized below.

Smart Scale. The FY2017-2022 SYIP update saw a new project prioritizing process known as [Smart Scale](#). This new process is intended to select the highest priority projects using an equitable approach which scores each project application based on factors such as Congestion Mitigation, Environment, Accessibility, Safety, Economic Development, and Land Use. The evaluation process results in relative scores so that the CTB can make informed funding decisions for development of the SYIP. There is no local match required for the program, however, local funds that are used to leverage state funding can improve projects’ score and increase the potential of funding. Projects are selected and funded on both state-wide and District-wide basis on a biennial term with allocations made on odd numbered years. More information on the Smart Scale Statewide Prioritization Process can typically be found on the VDOT website.

State of Good Repair. In 2015, the [State of Good Repair](#) (SGR) program was created to provide funding for deteriorated pavements and Poor Condition – structurally deficient (SD) – bridges owned or maintained by the VDOT and/or localities, as approved by the CTB. Program allocations are made on an annual basis. SGR allocations are for rehabilitating or replacing bridges deemed in Poor Condition (SD) on the National Bridge Inventory (NBI) and for deteriorated pavement on interstate and primary highways and on primary extensions located in localities. To be eligible for SGR funding, primary extension pavements must have a combined condition index of less than 60, which is an indicator of significantly deteriorated pavement. The project must also meet the definition of reconstruction or rehabilitation.

For eligible bridges, SGR provides funding to complete long-term solutions exceeding routine maintenance, but it should not be viewed solely as a bridge replacement program. The scope of bridge work paid for under the SGR program should be adjusted appropriately to meet the needs of each bridge, with consideration for the overall

limitations on funds available to address the bridge inventory. Bridge replacement projects are generally expected to be “in-kind” replacements. SGR funds are not intended to pay for increases of traffic capacity of a bridge or roadway.

Revenue Sharing. The purpose of the [Revenue Sharing](#) Program is to provide additional funding for use by localities to construct, reconstruct, improve, or maintain their highway systems. Locality funds are matched at a 50% rate (dollar for dollar) with state funds within statutory limitations and CTB Policy. Projects are selected on a biennial basis with allocations made on even-numbered years.

The Code of Virginia specifies the priority of funding for Revenue Sharing allocations. First are those projects needing additional funding which already have Revenue Sharing allocations. The second priority are construction projects that either satisfy a VTRANS (Virginia’s Statewide Multimodal Long-Range Plan) need or can accelerate a project in the locality’s CIP. Third priority are maintenance projects for deficient locality roads and bridges. All other types of projects are considered as the fourth priority.

Transportation Alternatives. The [Transportation Alternatives Program](#) (TAP) is a federally funded program intended to help fund projects that expand non-motorized travel choices and enhance the transportation experience by improving the cultural, historical, and environmental aspects of transportation infrastructure. Eligible projects include bicycle/pedestrian accommodations, conversion of abandoned railroad corridors for off-road non-motorized forms of transportation, and other infrastructure-related projects that provide for safe routes for non-drivers. This program also provides funding for developing safe non-motorized routes to schools for students in K-8 grades. TAP requires a 20% nonfederal match for each project. Projects are selected by both Metropolitan Planning Organizations (MPOs) in Transportation Management Areas (TMAs) and members of the CTB. Projects are selected on a biennial basis with allocations provided on even-numbered years.

Highway Safety Improvement Program. The [Highway Safety Improvement Program \(HSIP\)](#) is a core federal aid program with the purpose of achieving a significant reduction in fatalities and serious injuries on all public roads, including non-state-owned public roads and roads on tribal land. ([23 U.S.C. 148\(b\)](#)). Federal aid contributes 90 to 100 percent of certain safety improvements. Currently, the HSIP is taking a systemic approach considering eight specific areas that include the installation of high visibility backplates and flashing yellow arrows for traffic signals, adding curve signage, improving pedestrian crossings, upgrading unsignalized intersections, adding shoulder wedge, and adding centerline and shoulder rumble strips. Localities may be eligible to apply for these systemic improvements to their road system and would typically apply through their local VDOT District Traffic Engineer.

There are many other funding programs available to localities, including those targeted at providing new or improved access to publicly owned economic development or recreational sites, and providing new or improved access to federal lands. VDOT’s [Office of Public-Private Partnerships \(P3\)](#) can also be a resource for projects that may have an opportunity to partner with the private industry. Various sources are available for additional information on many of these programs including VDOT’s [Board of Supervisors Manual](#), VDOT’s Local Assistance Division web-page, and each VDOT District.

About the authors: Mr. Dudley is the division administrator of the Local Assistance Division and Mr. Harter is the district maintenance engineer for the Lynchburg District, both from the Virginia Department of Transportation.

Resources

Statewide and National Resources

Virginia Department of Transportation

www.virginiadot.org

Commonwealth Transportation Board (regulates and funds transportation in Virginia. It oversees the Virginia Department of Transportation)

www.ctb.virginia.gov

National Bridge Inventory

www.fhwa.dot.gov/bridge/nbi.cfm

Federal Highway Administration (FHWA)

<https://highways.dot.gov>

Virginia Department of Transportation Resources

Local Assistance Division (Main Coordination Agency with VDOT and Municipalities)

www.virginiadot.org/business/local-assistance.asp

VDOT's Urban Construction and Maintenance Program Manual (Urban Manual)

[www.virginiadot.org/business/resources/local
assistance/Urban_Construction_and_Maintenance_
Program_Urban_Manual.pdf](http://www.virginiadot.org/business/resources/local_assistance/Urban_Construction_and_Maintenance_Program_Urban_Manual.pdf)

Locally Administered Projects Manual

[www.virginiadot.org/business/locally_administered
projects_manual.asp](http://www.virginiadot.org/business/locally_administered_projects_manual.asp)

Board of Supervisors Manual (counties)

[www.virginiadot.org/business/resources/local
assistance/BOS_manual.pdf](http://www.virginiadot.org/business/resources/local_assistance/BOS_manual.pdf)

VDOT's Dashboard Project System

www.virginiadot.org/dashboard/projects.asp

Smart Scale

<http://smartscale.org>

Smart Scale Dashboard

<http://dashboard.vasmartscale.org>

Urban Maintenance Program

[www.virginiadot.org/business/local-assistance-
programs.asp#Urban%20Highways](http://www.virginiadot.org/business/local-assistance-programs.asp#Urban%20Highways)

State of Good Repair

www.virginiadot.org/projects/state-of-good-repair

Virginia Six-year Improvement Program (SYIP)

<http://syip.virginiadot.org/Pages/allProjects.aspx>

SMART Portal (where transportation project applications for many different funding types are submitted for consideration)

<https://smartportal.virginiahb2.org/#/>

Road Design Manual

[www.virginiadot.org/business/locdes/rdmanual-index.
asp](http://www.virginiadot.org/business/locdes/rdmanual-index.asp)

Public Private Partnerships (P3)

www.p3virginia.org/

CHAPTER 20

Public Transportation and Passenger Rail

By Danny Plaughter and Andy Wright

In many Virginia communities you will see buses, vans, or trains taking citizens to and from work, school, meetings, shopping destinations, or medical facilities. Although these public transportation systems seem to run of their own accord, the outward appearance of simplicity belies behind-the-scenes administration and management complexities.

Public transportation in Virginia includes **public transit** such as buses, subways, and commuter trains (among other modes) that serve one or more localities in a region, as well as **intercity transportation** which includes offerings such as Amtrak and the Virginia Breeze (the Commonwealth's state-supported intercity bus service) which connect regions within Virginia as well as providing service to destinations outside the state.

Public transit overview

Diversity. Virginia's public transit network consists of 41 systems spanning the entire state. While most systems rely primarily on standard public transit buses, Northern Virginia also has subways, commuter buses, commuter trains, vanpools, and bus rapid transit (BRT). In Hampton Roads, we also have light rail, ferries, and trolleys. Taken together, this network is one of the most diverse in the nation. Included in the system are local or regional fixed routes (the most common form of public transportation); commuter routes/vanpools (taking citizens to and from jobs and primarily crossing jurisdictions); and demand management/para-transit (for example, small buses and vans used to take senior citizens to medical appointments).

Availability. Nearly every Virginian has access to some level of public transportation. Communities from Lee County in the south to Loudoun County in the north are served by some level of public transit. Localities serviced by public transit represent 92 percent of Virginians and 97 percent of the state's population growth over the last decade.

Capacity. In 2018, Virginia's public transit systems handled over 175.3 million passenger trips including 91.1 million subway trips, 73.3 million bus trips, 4.6 million commuter rail trips, 2.6 million demand trips, 1.9 million vanpool trips, 1.4 million light rail trips, 327,000 ferry trips, and 56,000 BRT trips.

Funding. The combined total budgets for Virginia's 40+ transit agencies is \$1.5 billion. The expenditures are split with roughly 70 percent on average going towards operations and 30 percent on average going towards capital improvements and expansion.

Regarding funding, 20 percent comes from federal sources; 21 percent comes from state sources; 33 percent comes from local or regional organizations; 26 percent comes from the fare box or user fees; and less than one percent comes from other sources such as advertising revenue, etc.

Intercity passenger rail overview

Diversity. Virginia's intercity passenger rail network is made up of 26 daily passenger trains* serving 21 Amtrak stations and two Amtrak bus-to-rail stops which link Virginia to destinations such as Chicago, Boston, and Miami. Virginia is served by five daily round-trip Amtrak national trains, including the only auto-train in the nation; one tri-weekly round-trip Amtrak national train (the Cardinal); one daily round-trip North Carolina regional train; and six daily round-trip Virginia regional trains.

**For simplicity, the six weekly Cardinal trains are counted here as daily trains.*

Availability. The Commonwealth's Amtrak intercity passenger rail trains serve over 83 percent of Virginians who live within 25 miles of an Amtrak station, as well as 8.6 percent of the nation's armed forces, 88 percent of Virginia's higher education students, and 85 percent of the state's jobs.

Capacity. In 2018, Virginia’s intercity passenger rail trains handled 1.53 million trips with another 219,000 pass-through trips**. From this ridership, 839,000 trips were taken using Virginia’s state-sponsored regional trains and 695,000 trips used Amtrak’s national trains and North Carolina’s state sponsored trains.

***These are trips that both begin and end outside of Virginia but, if not for the train, most likely would have led to additional vehicles on Virginia roadways.*

Funding. Funding to operate intercity passenger rail (Amtrak) primarily comes from the State’s Commonwealth Rail Fund via the Virginia Passenger Rail Authority, and through federal sources including an annual federal appropriation to Amtrak.

Agencies responsible for public transit & passenger rail

Federal

Federal Transit Administration (FTA). The Federal Transit Administration is an agency within the United States Department of Transportation that provides financial and technical assistance to local public transportation systems.

- **FTA Grants:** www.transit.dot.gov/funding/grants/grant-programs
- **More information:** www.transit.dot.gov

Federal Railroad Administration (FRA): The FRA’s mission is to enable the safe, reliable, and efficient movement of people and goods for a strong America, now and in the future.

- **FRA Grants:** www.railroads.dot.gov/grants-loans/grants-loans
- **More Information:** www.railroads.dot.gov

National Passenger Rail Corporation (Amtrak). This semi-governmental organization is a passenger railroad providing medium and long-distance intercity service in the contiguous United States and to nine Canadian cities.

Interstate partnerships

Washington Metropolitan Area Transit Authority (WMATA). A tri-jurisdictional government agency that operates transit service in the Washington metropolitan area.

Virginia-North Carolina High Speed Rail Compact. Authorized by the Congress and established through legislation enacted by the Virginia and North Carolina General Assemblies the Compact examines and discusses strategies to advance multi-state high speed rail initiatives.

State

Virginia Department of Rail and Public Transportation (DRPT). This state agency is responsible for overseeing and funding transit agencies and rail programs through disbursement of the Commonwealth Mass Transit Fund and Commonwealth Rail Fund.

- **DRPT Grants:**
 - **MERIT Transit Program:** www.drpt.virginia.gov/transit/merit
 - **Transit Ridership Incentive Program:** www.drpt.virginia.gov/transit/trip-transit-ridership-incentive-program
 - **Rail Grants:** www.drpt.virginia.gov/rail/grants
- **More information:** www.drpt.virginia.gov
- **Virginia Passenger Rail Authority (VPRA):** This state authorized authority automatically receives 93 percent of the Commonwealth Rail Fund to invest and improve rail infrastructure. VPRA may own rail infrastructure, and issue bonds, but it must contract for intercity and commuter passenger rail service.

Regional

Metropolitan and Transportation Planning Organizations (MPO/TPO). Virginia’s MPO/TPOs work by enhancing, promoting, and supporting the regional transportation planning process. There are 14 MPO/TPOs in the Commonwealth. A full list is available at www.vampo.org/mpo-directory.

Regional Transportation Authorities & Commissions. Virginia has several regional authorities that fund some or all their local transit service. The regional authorities that deal with public transportation include:

- **Northern Virginia Transportation Commission:** www.novatransit.org
- **Northern Virginia Transportation Authority:** www.thenovaaauthority.org
- **Potomac and Rappahannock Transportation Commission (PRTC):** www.omniride.com
- **Central Virginia Transportation Authority:** www.planrva.org/transportation/cvta
- **Hampton Roads Regional Transit Program:** www.transformtransit.com

Impact of COVID-19

The early data on the impact of COVID-19 on public transportation is eye-opening. Since March of 2020, the transportation system’s entire dynamic has been significantly altered. Everything changed for bus, rail, and air modes including the number of users, user safety issues, and funding.

Early in the pandemic, ridership on public transit systems declined by as much as 95 percent. Total Amtrak Regional train passengers for April dropped from 80,000 to 3,000 in 2020. Airline travel in April 2020 was only 4 percent of total trips taken in April 2019. Travel on state roads dropped as much as 64 percent. Farebox revenue (which averaged \$33 million in 2018) all but dried up completely as overall travel has decreased, and many systems have gone fare free to reduce contact between transit operators and their riders. State and local funding has also been cut due to the economic fallout of COVID, even as the cost of operating the network has become more expensive due to the need to operate additional vehicles to allow for social distancing, increased cleaning standards, and sanitation measures. Despite all this, the simple truth is that public transportation is more important than ever for those who use it. With more people struggling to make ends meet, this need is certain to increase. The work needed to rebuild the economy must include considerations for public transportation so that it is more connected and equitable for all Virginians.

About the authors:



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Other Resources

Virginia Transit Association (VTA). Founded in 1977, VTA is the state’s association of transit agencies, localities, and businesses that provide public education and legislative advocacy to support public transportation systems throughout the Commonwealth. More information is available at www.VAtransit.com.

Virginians for High-Speed Rail (VHSR): Founded in 1994, VHSR is a 501 (C) (3) not-for-profit coalition of citizens, businesses, localities, community organizations, and economic development agencies that educate and advocate for the expansion of improved passenger rail service. More information is available at www.VHSR.com.

CHAPTER 21

Airports

By Mark K. Flynn

The Commonwealth of Virginia's diverse system of 66 public-use airports serve as gateways to the nation's air transportation system and connect the Commonwealth to the global economy. This system of airports plays a vital role in the state and regional economies by creating jobs and contributing to overall economic development. A complex structure of state and federal laws and regulations governs the construction, operation, and maintenance of these airports.

Airport System Overview

Airports are classified according to functions they perform, the services they provide, and their relative significance to the communities they serve with respect to state and federal air transportation systems. On a biennial basis, the Federal Aviation Administration (FAA) prepares a plan that identifies various airports and development projects deemed significant to the national air transportation system. This *National Plan of Integrated Airport Systems* (NPIAS) is a five-year planning document that by federal statute groups airports into two categories: primary and nonprimary.

Primary Airports

Primary airports are defined in the FAA's authorizing statute as public airports receiving scheduled air carrier service with 10,000 or more enplaned passengers per year ([49 USC 47102\(16\)](#)). Primary airports are further grouped into four categories defined in statute: large hub, medium hub, small hub, and non-hub. In addition to serving scheduled airline service, primary airports provide service to general aviation activities; principally serving business aviation and cargo operations. Primary airports served by airlines must meet certain federal certification standards and are sometimes referred to as certificated airports. The certification requirements apply to airports served by commercial air carriers using aircraft with 10 or more seats. Since February 2002, airports subject to the certification requirements have also been subject to regulations under the authority of the Transportation Security Administration (TSA) with respect to security procedures and functions.

Nonprimary Airports

Nonprimary airports principally support general aviation aircraft activity. The non-primary airport category includes: nonprimary commercial service airports (public airports receiving scheduled passenger service between 2,500 and 9,999 enplaned passengers per year), general aviation airports, and reliever airports. These airports are further grouped into five categories: national, regional, local, basic, and unclassified. A large proportion of the civil aviation activity at airports across the country consists of general aviation operations. Activities commonly include:

- On-demand air taxi (charter) services
- Corporate and business aircraft operations
- Private recreational flying
- Aircraft flight instruction and rental
- Aerial photography
- Skydiving

Ownership of Virginia's Airports

The Commonwealth owns no public use airports. Each of the 66 public use airports in Virginia is owned by a locality, a political subdivision authorized by the General Assembly, (airport authority) or, in a few cases, a private owner. The owner is defined as the sponsor of the airport in [49 USC 47102\(26\)](#). A long-term lessee that operates an airport may also be the sponsor. The Metropolitan Washington Airports Authority is unique, in that it operates Washington Dulles International Airport and Reagan National Airport, as a part of a regional compact, authorized by federal law. See [49 USC Chapter 491, § 49101 et seq.](#) and Code of Virginia [§§ 5.1-152 through 178](#).

Virginia Air Transportation System Plan

The Virginia Department of Aviation (DOAV) is charged with determining the extent, type, nature, location, and timing of airport development in the Commonwealth with the goal of establishing a viable, balanced, and integrated system of airports. The *Virginia Air Transportation System Plan* (VATSP) is the guiding document that is used by the Department to achieve these goals. The VATSP establishes funding eligibility and defines the Commonwealth's Airport system. The document categorizes airports by function: Commercial Service, Reliever, General Aviation-Regional, General Aviation-Community and Local Service. To be eligible for state funding, an airport must be designated a "system airport" within the VATSP and issued a public-use airport license by the Commonwealth.

Funding Overview

The federal Airport Improvement Program (AIP) and federally authorized Passenger Facility Charge Program are related programs providing major sources of funding for primary and nonprimary airport improvement projects. Each program is tied to development projects listed within the *NPIAS*. The Commonwealth of Virginia has two dedicated sources of funding for airport development projects: (1) the Commonwealth Aviation Fund (CAF) and (2) the Aviation Special Fund.

The FAA and Virginia Department of Aviation both maintain an Airport Capital Improvement Program (ACIP) that compiles development projects planned for implementation over a six-year period. The Virginia Department of Aviation uses the ACIP to leverage the maximum amount of federal funding for eligible sponsors and projects. Airport sponsors who apply for federal AIP funding must first submit their application to the Virginia Department of Aviation for review and approval. In addition, the Virginia Department of Aviation funds airport projects with only state and local funding participation. Federally funded projects are normally paid for with 90 percent federal dollars, 8 percent state dollars and 2 percent local dollars. For projects that are not federally funded, the ratio is normally 80 percent state, 20 percent local funding.

Federal Funding Sources

AIP Grant Funding & Conditions

The [Airport Improvement Program \(AIP\)](#) distributes grants from the Aviation Trust Fund, made up primarily of revenues from passenger ticket taxes. AIP grants focus on these projects:

- Construction, improvement, and repair of airport facilities.
- Reimbursement of the costs associated with acquisition of land.
- Safety equipment (e.g., fire and rescue, snow removal) required for certification of an airport.

AIP funding is awarded to airport in these categories: entitlement, non-primary entitlement, state apportionment, and discretionary funds. Roughly half of the trust fund is distributed as entitlements. The remainder is allocated by FAA formulas.

The most comprehensive source of federal funding information is the [Airport Improvement Program Handbook](#) (Order 5100.38D, Chapter 4).

Grant Assurances. One of the most significant aspects of accepting federal funding is the *Agreement on Terms and Conditions of Accepting AIP Grants*, otherwise known as grant assurances. The grant assurances obligate an airport sponsor to certain terms and conditions for the duration of a project and thereafter for a period of either 20 years or the useful life of the facilities or equipment funded. A notable exception, however, is that the duration of the assurances as applied to real property purchased with federal dollars is in perpetuity (see [FAA Grant Assurances](#)). Aside from the various federal procurement and labor laws incorporated by reference, the grant assurances impose requirements and standards in five general areas:

1. **Airport Layout Plans (ALPs)** showing existing and proposed facilities and features, which must be approved by the FAA.
2. **Economic Nondiscrimination** as it applies to availability of airport facilities; rates, fees, and other charges; and rules and regulations.

3. **Exclusive Rights** may not be allowed for the use of airport facilities for any person, firm, or corporation providing aeronautical services to the public. Even if the airport manager believes that there is an insufficient demand for two similar aeronautical businesses at the same location, the general rule is that “everyone has the right to go broke at the airport.”

One notable exception to the proscription against exclusive rights is the ability of the sponsor to retain, for itself, exclusive rights to provide certain services. The main right airport sponsors retain is fuel sales.

4. **Fee Structures** for airport facilities and services that are designed to make the airport as self-sustaining as possible. This grant assurance is particularly significant for airports that negotiate use agreements with airlines for landing fees and other rents and charges.
5. **No Diversion of Airport Revenues** which is deemed to occur when payments are made, directly or indirectly, to persons or entities that have not provided goods, facilities, or services of equal value to the airport. Diversion is also deemed to occur when an airport charges a non-related entity (e.g., a city or county government, a sport or flying club, a church group) less than full market value for leased space or property. Special care should be taken by each airport sponsor to monitor the expenditure of airport revenues, because a complaint alleging unlawful diversion of revenues will result in a lengthy administrative investigation and enforcement proceeding. If the FAA concludes that diversion of airport revenues has occurred, not only may the airport sponsor become ineligible for future AIP funding, but also a “parent” locality may become ineligible for other funding from the U.S. Department of Transportation.

Passenger Facility Charges at Commercial Service Airports

In 1990, Congress began allowing airport sponsors operating commercial service airports to charge each enplaning passenger a facility fee under the Passenger Facility Charge (PFC) Program; these fees are known as PFCs. The PFC program allows primary airports to collect fees up to \$4.50 for every eligible passenger at commercial airports controlled by public agencies. PFCs are capped at \$4.50 per flight segment with a maximum of two PFCs charged on a one-way trip or four PFCs on a round trip, for a maximum of \$18.00 total. Airports use these fees to fund FAA-approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition. For additional information on the PFC program refer to “[Passenger Facility Charge \(PFC\) Program](#)”.

Virginia Airport Funding Sources

Commonwealth Aviation Fund

The Commonwealth Aviation Fund (CAF), which was created pursuant to Code of Virginia [§ 33.2-1526.6](#), receives 1.54 percent of the Commonwealth Transportation Trust Fund, which derives from certain state sales and use tax revenues. The Virginia Aviation Board administers these funds. Code of Virginia [§ 5.1-2.2](#). A portion is allocated as entitlement funds to air carrier airports based on a statewide percentage of each airport’s enplanements for the previous calendar year (special entitlement allocations are prescribed for the Metropolitan Washington Airports Authority). See Code of Virginia [§ 33.2-1526.6.B](#). The Virginia Aviation Board allocates the remaining funds on a discretionary basis to air carrier, reliever, and general aviation airports, on a competitive, objective basis. If an airport requires CAF discretionary funds to meet its needs for capital development projects, then the sponsor must prepare a six-year airport capital improvement plan (ACIP) that demonstrates how it would use CAF funds.

Aviation Special Fund

The Aviation Special Fund, which was created pursuant to Code of Virginia [§ 5.1-51](#), consists of money collected by the state from taxes on aviation fuel, the sale/use of aircraft and aircraft parts, and various fees collected by the state in licensing aircraft and airports. Included under this fund’s umbrella are the following programs:

1. **Aviation and Airport Promotion Program** for the promotion of commercial and general aviation services.
2. **General Aviation Airport Security Program** for the purpose of improving security of general aviation airports.

3. **Maintenance Program** for non-recurring maintenance and repairs that are required to preserve existing airport facilities (e.g., runways, taxiways, apron areas) in a safe and economical operating condition.
4. **Facilities and Equipment Program** for the installation of electronic communication, navigation, and information systems that will enhance the safety of flight operations and the use of Virginia's air transportation system.

Required Financial Reporting for Virginia's Airports

Every commercial service airport must submit an annual report of its planned use of entitlement funds. Code of Virginia [§ 5.1-2.2:3](#). The section further provides that the Department shall report to the General Assembly the use of entitlement and discretionary funds at all airports for the preceding fiscal year.

Code of Virginia [§ 5.1-2.2:4](#) requires every airport that receives funding from the Department or the Virginia Aviation Board to report to the Department the purpose for which such funds were received or disbursed, and must list the localities from which the sponsor received funds.

Virginia Airports Revolving Fund

Neither the FAA nor the Department fund revenue-producing infrastructure, such as fixed base operators' buildings, commercial hangars, and revenue-producing parts of an airport terminal. To provide a cost-effective funding source for those kinds of facilities, the Commonwealth of Virginia established an Airports Revolving Fund to provide a low-interest source of funds for capital projects that cannot otherwise be financed with grants from the Commonwealth Aviation Fund. The Virginia Resources Authority (VRA) operates the program. The Virginia Aviation Board approves loan requests, and the (VRA) sets terms and conditions and makes the loans to airport sponsors. Loans smaller than \$500,000 will normally be too small to justify the financing and administrative costs; however, these small projects may be eligible for a direct loan from the relatively new Airport Bond Fund created by the VRA. See [Code of Virginia § 5.1-30.1 et. seq.](#)

Airport Capital Development Process in Virginia

When an airport desires to construct a capital project, the sponsor must work with the FAA (if a federally obligated airport) and Virginia Department of Aviation for approval of each of the required steps. Each step must be presented for approval by both the FAA and DOAV. The steps are in the following order:

1. Include the project in the FAA and Department Airport Capital Improvement Plan (ACIP).
2. Ensure the engineering (contractor) agreement is approved by the FAA and Department and that all applicable procurement requirements and regulations were satisfied.
3. Ensure the project is shown on an approved Airport Layout Plan (ALP) or added before advancing the project.
4. Ensure all federal, state, and local environmental and regulations have been satisfied. The most significant requirement will often be the environmental review.
5. The following should be completed in the design phase:
 - Pre-design meeting.
 - Produce 30%, 60%, and 90% design plans to be reviewed/approved by the FAA and Department.
 - Continuously coordinate project with FAA and DOAV staff.
6. The following should be completed during the construction phase:
 - The sponsor should advertise the project following federal and state procurement regulations.
 - Review bids and select the lowest qualified bidder.
 - Develop and have approved by the FAA and Department a construction contract that addresses:

○ Construction management services	○ Change Orders
○ Line-item costs	○ Liquidated damages
○ Construction Schedule	○ Contractor payments
○ Inspections	

Aviation Management Issues

Airport Zoning

Code of Virginia [§ 15.2-2294](#) requires every locality in which a public use airport is located, to adopt airport safety zoning. Code of Virginia [§ 15.2-2295](#) authorizes such localities to enforce building noise attenuation features in structures near airports. See the Virginia Department of Aviation [model airport zoning ordinance](#).

Noise Issues

One of the most persistent and politically charged issues facing the owner or operator of an airport is that of noise associated with airport operations, especially those at commercial service airports. Airport noise is generally associated with aircraft takeoffs and landings; however, noise associated with ground-level activities, such as engine run-ups during maintenance activities or truck traffic to and from an airport with air cargo service, may also be a source of complaints from adjacent property owners. The impact of noise upon adjacent land uses depends on several factors, including:

- Type of noise
- Type of aircraft using an airport
- Time-of-day patterns of airport usage
- Topographical condition
- Design and location of aircraft maintenance facilities

Many airports have prepared noise exposure maps (or noise contour maps) based on computer imaging that translate noise patterns into contour lines extending from the airport property. These maps show noise exposure levels for adjacent land uses expressed in yearly day-night sound levels (DNL). The DNL measurement translates individual aircraft noise into a cumulative noise profile for the airport facility. The FAA deems all land uses, including residential, to be compatible with 65 DNL. Areas within and above the 80 DNL contour are considered high-impact noise areas.

The FAA recommends that airport sponsors seek to own all property located within high-impact noise areas. If such areas are not owned by an airport sponsor, the airport sponsor is expected, through their grant assurances, to make efforts to limit or restrict incompatible development or uses through means such as aviation easements or zoning regulations. Ideally, local airport zoning ordinances should preclude residential development and other incompatible uses within and above the 65 DNL contour.

Regulation of Aeronautical Activities

If an airport sponsor has received federal AIP funding, it must allow airport use by all types and classes of aeronautical activities, as well as by the general public, within certain limits. An airport sponsor may enact reasonable rules or regulations designed to ensure safe and efficient airport operations. Similarly, any type or class of aeronautical use may be prohibited or limited if it would interfere with either operating the airport safely or serving the civil aviation needs of the public. Thus, an airport sponsor may restrict or deny use of airport facilities for student training, taking off with towed objects, parachute jumping, or other operations deemed incompatible with safety under the local conditions peculiar to that airport.

An airport sponsor may also impose a requirement for general liability insurance to protect itself and the participants in a particular activity from liability, as long as the amount of the required insurance is not unreasonable. No airport sponsor is required to close its facilities altogether to allow activities that cannot safely be carried out under normal operating conditions; for example, an airport sponsor is not required to close its facilities to accommodate the request of a group of parachute jumpers who want to make use of the airport. Special permission must be obtained from the FAA before closing any portion of a public-use airport for non-aeronautical purposes (e.g., local fairs, parades, concerts) or even for certain aeronautical purposes, such as air shows or aviation conventions.

Every airport that receives state funds must execute a master agreement with the Department of Aviation. The master agreement contains many of the obligations set out in the federal standards. The master agreement applies even

when the airport does not receive federal funding. For small airports, due to the signing of the master agreement, the absence of federal funding does not mean the sponsor has no restrictions.

Airport Minimum Standards

The instrument that allows for local airports to document policies, procedures, and codes of conduct are contained in an airport's minimum standards. The FAA and the Virginia Department of Aviation highly recommend the formation and formal adoption of a set of minimum standards for each airport. This document should be issued to all airport tenants and fixed-base operators. These standards serve to set expectations of conduct on the airport and to provide a framework for conflict resolution, permissions and prohibitions of activity, and risk management. Most importantly, once adopted, the airport's minimum standards must be consistently enforced. This document in its basic terms should cover all activities on the airport and minimum requirements for use of the airport.

With few exceptions, an airport sponsor may not allow the use of airport property for non-aeronautical uses. To do so is a violation of the grant agreement the sponsor entered into with the FAA.

Leases of Airport Property

If an airport sponsor has received federal AIP funding, the FAA will take an interest in the terms and conditions of any lease agreements by which airport property is reserved to particular tenants. The FAA does not require that every lease agreement be submitted for its approval; however, it may review selected leases as part of an inspection conducted to determine an airport's compliance with its grant assurances. An FAA inspection focuses on:

- Determining whether particular lease arrangements have the effect of granting or denying rights to use airport facilities contrary to federal law or obligations under the grant assurances.
- Identifying any terms and conditions that could prevent use of the airport for public aviation purposes or that could develop into an inability of the airport sponsor to meet obligations under the grant assurances.

Airports sponsors should not offer special discounts or rental rates to local government entities or agencies that are not providing a service of equal value to the airport because this may run afoul of the grant assurance prohibiting diversion of airport revenues. Also, an airport sponsor should be extremely cautious not to agree to language within any airport lease or use agreement that would impose a stricter standard of liability for maintenance of airport runways and other facilities than would otherwise result under Virginia tort law or federal maintenance obligations. If within a particular agreement an airport sponsor has agreed to maintain a runway "free of obstructions," that agreement may result in strict liability for conditions or circumstances for which the airport sponsor or locality might not otherwise be liable under a general negligence standard.

Through-the-fence-operations. Every business that operates on an airport, such as mechanics, flight instructors and aircraft rentals should have a business permit and lease from the sponsor. Allowing through-the-fence operators can be a violation of the sponsor's FAA obligations. A through-the-fence operator robs revenues without paying its fair share through lease payments and fees and will harm on-airport businesses.

Maintenance of Airport Facilities

The federal grant assurances require the airport sponsor to always operate its airport in a safe and serviceable condition. An airport sponsor is responsible for promptly marking and lighting hazards resulting from airport conditions and for promptly notifying aeronautical users of conditions that may affect use of airport facilities by aircraft. Also, if an airport sponsor has received federal grants after January 1, 1995, for replacing or reconstructing airport pavement, it must implement a pavement maintenance management program for the useful life of that pavement.

Airport Security – Commercial Service Airports

In November 2001, the newly created Transportation Security Administration (TSA) assumed the FAA's civil aviation security functions. The federal security function, via administrative regulation and oversight, is to protect persons and property on aircraft against acts of criminal violence and piracy. The FAA formerly prescribed rules for screening passengers and property for dangerous weapons, explosives, and destructive substances, but the actual screening was performed by airlines or their contractors. Today the TSA conducts this screening, through either its own personnel

or contractors. The TSA has acknowledged that its authority covers only commercial service airports; currently, no uniform standard for general aviation airports exists. The Virginia Department of Aviation has developed a list of recommendations for security at general aviation airports. However, state and federal mandates do not exist for general aviation airports. As referenced above the Virginia Department of Aviation does provide funds to assist general aviation airports with security projects.

Those commercial service airports regulated by the TSA for security functions have found the following areas most challenging.

Law Enforcement Personnel. Under previous FAA security regulations, each air carrier airport was required to provide law enforcement officers capable of responding to an alert within a specific amount of time, depending upon the size of the airport. Certain larger airports were required to always maintain a law enforcement presence on airport property, but those law enforcement officers were not required to be assigned to specific stations.

The TSA requires one or more local law enforcement officers at screening checkpoints and during times of heightened national security alerts. The TSA also requires airports to station law enforcement officers at checkpoints to conduct searches of vehicles entering airport property. In addition to budgetary stresses, the required presence of local law enforcement officers at TSA screening checkpoints raises several issues related to jurisdiction and authority of those officers.

Background Investigations of Employees & Airport Tenants. Transportation security regulations require fingerprint-based records checks of any criminal history over the past 10 years for all persons who will have unescorted access authority to a security identification display area and for tenants and their employees (“airport users”). The records checks are conducted by the TSA and are paid for by airport operators (although airport operators may collect the fees from individuals being fingerprinted if they wish to do so). Depending on the volume of requests being processed by the TSA at a particular time, the time required to obtain the results of these records checks can inhibit the speed at which new airport employees can be approved.

Screening Equipment. By December 31, 2002, airports were required to install new equipment capable of screening all checked luggage for explosives and weapons. Several airports had to modify terminal buildings to accommodate the new screening equipment. The system recommended and preferred by the TSA is referred to as an “in-line” baggage screening system – one that integrates the explosives detection equipment with independent baggage carousels that move checked baggage from airline counters. While federal funding may be available to reimburse airports for costs associated with the redesign and installation of the in-line systems, redesign of an airport’s baggage handling system can be a major undertaking with passenger-service implications. Several enhanced screening technologies have been tested and implemented since the introduction of the initial screening requirements. Systems such as facial recognition and Computed Tomography (CT) scanners have provided some means for enhanced screening and may cause more development costs to be borne by the airports as changes to federal regulations may require.

300-Foot Rule. Shortly after September 11, 2001, the TSA enacted the 300-Foot Rule, prohibiting the parking of unattended motor vehicles within 300 feet of an airport terminal to protect against potential damage from possible explosive devices planted in vehicles. Many airports lost revenues because of having to close surface parking spaces and spaces within nearby parking structures. The challenge now faced by airports is to develop flexible parking programs that allow immediate adjustment of parking procedures during periods of heightened terrorist alert. Certainly, any new parking facilities planned by an airport subject to TSA regulation should be placed in a location outside the 300-foot range as a best management practice.



About the author: Mr. Flynn is the Director of the Virginia Department of Aviation, a pilot, and an airport attorney.

Resources

This chapter merely touches the surface of the various federal, state, and local laws that may govern the use, operation, and management of a local airport. Most local governing bodies rely on airport managers who have developed considerable expertise on these issues.

Government Agencies

Federal Aviation Administration: www.faa.gov

Contains links to federal regulations and advisory circulars published by the FAA on various topics.

Virginia Department of Aviation: www.doav.virginia.gov

Laws & Regulations

Code of Virginia (1950), Title 5.1, as amended: www.law.lis.virginia.gov/vacode/5.1-1

Federal Aviation Regulations (FAR): www.faa.gov/regulations_policies/faa_regulations

Virginia Administrative Code, 24 VAC 5-20 and following: www.law.lis.virginia.gov/admincode/title24/agency5

CHAPTER 22

Parks and Recreation

by **Cindy S. Roeder**

Parks and recreation agencies are in the unique and essential position to provide programs and services to their residents and visitors from every demographic and socio-economic group. The creative and compassionate individuals professionals who staff these departments play a vital role in building healthier, better connected and more resilient communities.

A successful parks and recreation professional will have effective communication skills, strong leadership abilities, and expertise in logistics and planning, customer service, budget and finance, personnel management, conservation, and environmental sustainability. Parks and recreation staff routinely build partnerships and relationships, bridge cultural differences, and stimulate economic development by providing youth development opportunities, senior adult services, and dozens of other elements needed to create and maintain a vibrant community.

Programs & Services

The COVID-19 pandemic illustrated the benefits of parks, open space, and outdoor areas for passive enjoyment, activity and (physically distanced) socialization. Further, the pandemic also brought attention to the social and emotional benefit of volunteerism, frequently undertaken through parks and recreation agencies, which was curtailed or non-existent during the pandemic. While specializations and focus vary from locality to locality, under normal circumstances most park and recreation agencies offer programming for youths, teens, adults, and seniors in areas such as:

- Sports
- Performing and cultural arts
- Life interests
- Aquatics
- Fitness
- Nature
- Camps
- Events and festivals
- Parks and trails (passive and active)

Additionally, some departments collaborate with social service agencies and/or school systems to help community members address basic aspects of daily living, ensure essential services are easily accessible, and advocate for the equitable provision of recreation amenities.

Although the diversity of parks and recreation programs and services offered by a local government are primarily the result of expressed interest of residents and patrons, they are subject to available resources or competing private or non-profit entities. Programs and amenities offered by parks and recreation departments may be fee-based or free, as cost recovery requirements are determined on the local level. Effective parks and recreation staff will listen carefully to the feedback provided by their participants, citizens, board and council members, and visitors to ensure that the appropriate programs and services are given priority.

Parks and recreation departments may have either policy making or advisory boards that provide guidance on issues surrounding short- and long-range planning, cost recovery and fee schedules, capital improvement projects, acquisitions, and development and/or policies and procedures.

Events

In recent years, the ability to coordinate and manage events of all sizes – from multi-day festivals to smaller holiday events, concerts, performances, and community gatherings – has emerged as a standard skill for recreation programmers. In fact, events, tournaments, and festivals have become a showcase for many cities and towns, frequently resulting in a notable economic benefit. In some cases, these events are produced exclusively by the local parks and recreation department; in other cases, they are in collaboration with civic or volunteer groups and/or local businesses.

Issues and Challenges

The early 2020s will require the reinvention and re-initiation of parks and recreation programs and services as the country recovers from the devastating impacts of the COVID-19 pandemic. As needs stabilize and users return to programs and services, funding that allows for flexibility will be essential. Some themes that are certain to play a central role in the coming years include:

Equity. Social equity in communities large and small will be a primary focus. Parks and recreation agencies frequently reflect the diversity of their communities more than other sectors and can lead the way in bringing together people from all walks of life.

Change. Significant financial challenges lie ahead for local governments as corporations and businesses rethink their operating strategies and service delivery model, and individual workers who can now telework from any location they choose and relocate to communities that better meet their personal and family desires.

Sustainability. Environmental sustainability and resiliency as well as conservation will continue to be critical issues for parks and recreation agencies and their communities.

Holistic Planning. Long range planning efforts should consider the desired level of service metrics as well as the relationship between parks and recreation systems and other critical systems including transportation and access, storm water management, habitat conservation and future land-use plans.

Professional Resources

The [National Recreation and Park Association](#) (NRPA) is the recognized professional association for parks and recreation professionals, citizens, and advocates. The association provides research and guidance, continuing education, professional certifications, legislative advocacy, agency accreditation, and awards and recognition associated with its mission to advance parks, recreation, and conservation efforts that enhance the quality of life for all people.

NRPA manages the Commission on Accreditation for Parks and Recreation Agencies (CAPRA) which “provides quality assurance and quality improvement of accredited park and recreation agencies throughout the United States by providing agencies with a management system of best practices.”

The NRPA's National Legislative Platform is available at www.nrpa.org/our-work/advocacy/legislative-platform.

There are currently 14 accredited agencies in Virginia and 186 across the United States.

The [Virginia Recreation and Park Society](#) (VRPS) has as its purpose to “unite all professionals, students, and interested lay persons engaged in the field of recreation, parks and other leisure services in the Commonwealth of Virginia, into one body. The members work together to promote and improve the profession in all its diversity.” VRPS is a volunteer driven organization which provides professional development, shared resources, and a network of colleagues who rely on each other for valuable insight and expertise in a variety of subjects. VRPS offers an annual awards program that, through a jury of its peers, recognizes excellence in programming, events, facility renovation and development, as well as individual awards for volunteer service, community partners, and both up and coming and long-serving parks and recreation professionals.

An important planning tool for Virginia’s local governments is the [Virginia Outdoors Plan](#) issued by the state’s Department of Conservation and Recreation (DCR). The plan provides a comprehensive guide for land conservation, outdoor recreation, and open-space planning. It includes separate regional recommendations which provide insight and helps “regional planners and local governments understand the attitudes and desires of Virginians regarding outdoor recreation, thus assisting all of us in planning for a brighter, healthier future for all Virginians.”

The plan suggests parks and recreation facilities should be regarded as elements of a larger, interconnected public realm that also includes streets, museums, libraries, stormwater systems, utility corridors and other civic infrastructure. With a broader perspective, park and recreation agencies may plan and collaborate with other public and private agencies to meet as many of the community’s needs as possible. As a result, parks and recreation systems can be repositioned as essential frameworks for achieving community sustainability, resiliency, and livability.

Note: There are no longer any nationally accepted standards for parks and recreation planning. Each community must determine its own standards, level-of-service (LOS) metrics, and long-range vision for its parks and recreation system based on community issues, values, needs, priorities, and available resources.

Grant Funding

Land and Water Conservation Fund Act of 1965 (LWCF)

The LWCF is a 50-50 percent matching reimbursement program. Virginia has received more than \$80 million in assistance since the LWCF began, making more than 400 projects possible.

In 2019, Congress adopted permanent reauthorization of LWCF through the yearly Congressional appropriations process. The authorized agreement includes 40 percent for the state assistance program and robust funding for the Outdoor Recreation Legacy Partnership (ORLP) urban competitive grant program.

Conclusion

Local parks and recreation agencies will face many challenges in the coming years. However, these agencies are one of the few areas of employment in which the goal is for people to enjoy themselves. This makes for a high level of gratification among staff whose energy, positive attitude and community focus make them ideal ambassadors to residents and visitors. As such, the resources any locality devotes to parks and recreation programs and amenities are well rewarded by the outcome of such efforts.



About the author: Ms. Roeder has been the Director of Parks and Recreation for the Town of Herndon since 2007. She served as the President of the Virginia Recreation and Park Society in 2012.

CHAPTER 23

Election Administration

By Jessica Dodson (adapted from the 2004 version by Kirk de Courcey Showalter)

It is through the elected representatives that the people of the Commonwealth, and the nation, speak. Thus, the publicly held election is the very foundation of our system of government. How elections are conducted is largely determined by each state, but most invest a local entity with that responsibility. Virginia is no different.

Local Electoral Boards

The Virginia General Assembly, under the authority of the Constitution of Virginia, determines the state's election laws. The State Board of Elections – a policy and procedure making body whose members are appointed by the governor – supervises and coordinates the electoral process. Each county and city in the Commonwealth, however, has an independent electoral board that is responsible for the actual conduct of all federal, state, and local elections to public office within its jurisdiction.

Composition

The electoral board is composed of three qualified voters of the locality who are appointed by the chief judge of the circuit court (or their designee) for three-year terms. Two members must be of the same political party as the incumbent governor. The third member must be of the political party that received the next highest number of votes in the gubernatorial election. If the party of the governor changes, the composition of the board also changes in alignment with board members' term limits.

Terms of Office

Board members' terms are staggered so that one member is appointed each year, with each term beginning January 1 and running through December 31st of the last year of their term. The local political party of the outgoing board member recommends nominees to the court to fill the anticipated vacancy. Recommendations must be made by December 15 of the year in which the board member's term expires, or within 30 days of a vacancy. The court must fill the vacancy from the recommendations filed by the political party entitled to make the appointment.

Electoral Board Duties

Local electoral boards are principally operational rather than policy-making bodies. One of the local electoral board's greatest responsibilities – and sources of authority – lies within its appointive power. In addition to the general registrar, all officers of election are appointed by the board. Election officers are appointed for a one-year-term, while the general registrar serves a four-year term.

Other duties of local electoral boards include:

- Determining the number of voting machines, election officers, and ballots to use in any given election;
- Determining if local candidates qualify to have their name appear on the ballot;
- Determining the number and term of assistant registrars;
- Training election officers before each election;
- Providing for the programming and maintenance of voting machines;
- Determining the results of local elections; and,
- Certifying state and federal election results to the State Board of Elections.

The extent to which each electoral board performs these duties varies by locality, with many electoral boards delegating some or most of them to the general registrar.

Voter Registration

While all election matters fall within the purview of the local electoral board, voter registration, campaign finance reporting management, and early and absentee voting are the province of the general registrar. The general registrar maintains the official list of registered voters and determines who is qualified to vote within the jurisdiction. Only the court has the authority to change a registrar's decision in voter registration matters.

The general registrar also:

- Serves as administrative officer for the electoral board;
- Follows local, state, and federal legislation that may impact voter registration or elections;
- Provides voter registration and election education to the public;
- Notifies voters of any changes in polling places or election districts; and,
- Checks candidates' petitions to determine the number of qualifying signatures on them.

State or Local?

The offices of electoral boards, officers of election, and general registrars are created by the Constitution of Virginia. The people filling those offices, however, are not state employees. Instead, state law specifies that they are employees of the county or city in which they serve, unless otherwise specifically provided by law.

This local employee designation is reinforced by the fact that the locality is the primary source of financial support for both the electoral board and the office of the general registrar. The Virginia General Assembly sets the salaries for the chairman and vice-chairman of the electoral board, as well as the minimum salary for the electoral board secretary and the general registrar (although the locality may supplement the salaries of both officials). The state reimburses the locality for only a portion of those costs.

Other items provided by the state are limited to the operating costs of the Virginia Election and Registration Information System (VERIS), voter registration applications, absentee ballot applications, and some election supplies.

The locality is required to pay the balance of the operating costs for both the electoral board and the office of the general registrar. These typically include:

- Election officers' pay, assistant registrar salaries, and fringe benefits;
- Polling place rental fees and ballots;
- Voting machine and electronic pollbook (if used) warehousing, programming, and maintenance;
- Telephone, postage, and printing, including ballot printing;
- Office equipment, general office supplies, and electricity;
- Training expenses; and,
- Office space for the electoral board and the general registrar.

If the locality adopts satellite voting locations, it must also provide the resources to operate those locations.

Council's Role: Election Districts, Precincts, & Polling Places

Precincts are the smallest form of local election district, and the council is responsible for establishing the size and shape of each precinct within the confines of state and federal election law. Each city precinct must be located within the jurisdiction and, at the time that it is established, generally have between 100 and 5,000 registered voters. The city must also establish one polling place for each precinct. General law establishes one precinct for each town, unless the council by ordinance establishes more than one ([Code of Virginia § 24.2-308](#)).

Polling places must be either inside the precinct itself or within one mile of the precinct boundary. They must be in a public building whenever practicable. If more than one polling place is in the same building, then each polling

place must be in a different room. The council must provide funding so that the electoral board can provide adequate facilities at each of the polling places. This includes making the polling places accessible to voters as required by the Virginians with Disabilities Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans with Disabilities Act.

Polling places may not be located in buildings that serve primarily as the headquarters, office, or assembly building for private organizations other than civic, educational, religious, charitable, historical, patriotic, cultural, or other similar organizations. The State Board of Elections may waive the latter restriction if no other building is available that meets accessibility requirements.

Redistricting

Another important duty of the local council is local redistricting. If members of either the council or the school board are elected from districts (or wards) instead of at large, then the council will be required to reapportion the representation in these districts every ten years.

Decennial Census & Redistricting Timetable

Reapportionment follows the decennial census conducted by the federal government and is based on the resulting population figures. The total population, rather than voting age population, is used in redistricting.

The census is taken in the first year of the new decade, and the figures are released to the localities in the late winter or early spring of the second year. However, because of COVID-19, the figures may not be released for the 2021 redistricting until late summer or early fall of 2021, which will impact the timeline for both the state and localities to complete their redistricting processes. The Constitution of Virginia requires that local redistricting be completed within that second year. The last redistricting occurred in 2011; the next redistricting will take place in 2021.

The redistricting process begins before the census is taken and continues for some time thereafter. The U.S. Census Bureau will work with the locality shortly after the mid-decade point to make any necessary adjustments to census blocks and tracts (the geographical units by which census figures are taken and reported). The Virginia Division of Legislative Services also begins working with general registrars to verify precinct boundaries and local election districts. Where the boundaries for census blocks and precincts fall is very important in the electoral system. Groups of census blocks form voting precincts, in turn determining which voters will live in which election district and for whom they can vote.

Decisions Related to Redistricting

The local council will have to make several decisions before it can begin the redistricting process. Some of these decisions include:

- Which agencies and interest groups will be involved with the redistricting process;
- Who will staff the redistricting effort, and will outside legal counsel or a consultant be required;
- The budget for items such as staff, office space, equipment needs, and mailing change notices to voters;
- A schedule for the process, which includes time for public hearings and input; and,
- The timing of the redistricting, i.e., whether the locality will attempt to reapportion while the Virginia Redistricting Commission redraws the districts for the Virginia State Senate, Virginia House of Delegates and U.S. House of Representatives, or whether it will wait to draw local election districts after the Virginia Redistricting Commission completes its work. This timing is especially important in 2021, as localities can no longer create “split” precincts without the consent of the State Board of Elections. (A split precinct is one that has two or more congressional, Senate or House of Delegates districts in the same precinct.)

Perhaps most important of all, the council will have to decide the criteria that will be used to determine the precinct and district boundaries. Statutory law and case law have already determined some of the criteria that must be used. The Constitution of Virginia requires that election districts must “... be composed of contiguous and compact territory...” and “... give, as nearly as is practicable, representation in proportion to the population of the district.”

Local election districts may deviate from the *ideal size* by no more than a total of 10 percent. (The ideal size is the total population of the locality divided by the number of election districts that you have.) Precincts and local council districts must also follow clearly defined and observable boundaries. The impact of the proposed election districts on minority voting strength must be considered, but race cannot be the sole criterion used to draw an election district.

The local council may adopt other optional criteria to use in redistricting, including:

- Avoiding splits of political subdivisions and precincts;
- Retaining communities of interest;
- Keeping the basic shape of the existing districts;
- Protecting incumbents;
- Promoting political fairness or competitiveness;
- Considering the convenience for voters; and,
- Ensuring effective election administration.

Other Tasks for Council

Once new local election districts have been determined, several tasks are necessary to complete the process. The council must first adopt the changes through the local ordinance process. State law requires that this must be completed a minimum of 75 days before a November general election, or it must wait until after that election.

Finally, the general registrar must notify voters of their new election precincts or election districts, typically by mailing new voter registration notices to the affected voters. The Code of Virginia requires that this must be done at least 15 days before the next election. However, in calculating when to distribute updated voter registration notices, registrars will now also need to account for the 45-day early voting period prior to each election.

Preclearance Requirements for Changes to Local Elections

Prior to 2013, Virginia and the vast majority of its localities were subject to Section 5 of the U.S. Voting Rights Act of 1965, requiring certain jurisdictions to submit any proposed changes to elections to the Office of the Attorney General for preapproval in a process commonly called preclearance. When the US Supreme Court found the coverage formula used to apply this section of the Act unconstitutional in 2013 (*Shelby County v. Holder*), the requirement was dropped. However, when the 2021 General Assembly passed the Voting Rights Act of Virginia ([HB1890](#)), it included a modified reinstatement of the preclearance process that only applies to localities.

[§ 24.2-129](#) of the Code of Virginia now requires that localities either submit proposed covered practices to the Office of the Attorney General of Virginia for a 60-day preclearance process or undergo a 120-day public notice and comment process before enacting changes to elections. The definition of “covered practice” encompasses changes to a broad range of areas, including:

- The method of election for a public position;
- District or jurisdictional boundaries that reduce representation of a minority group among the voting age population;
- The availability of interpreter services; and,
- Anything impacting the location of polling places.

Compared to the pre-2013 federal process, this statewide requirement for localities presents particularly challenging complications. Whereas a jurisdiction could previously apply to the Attorney General to be exempted from the requirements after demonstrating good-faith elections management, the Virginia Voting Rights Act applies regardless of a locality’s history. Further, with the introduction of early voting in 2020, the window of opportunity for changes to receive approval and be enacted at least 60 days in advance of an election is now significantly limited. Councils should be aware that, no matter which approval process they choose, any changes to elections will now be more expensive and take significantly more time.

Local Elections in May or November? Odd Year or Even Year?

The history of the timing of local elections in Virginia has been moderately contentious. Beginning in the late nineteenth century, in an effort to limit political scandal, Virginia law established clear delineations between local elections and those for higher offices by mandating that local election be held on the second Tuesday in May. This helped localities maintain largely nonpartisan government representation: to this day, roughly 75 percent of Virginia’s local elected officials do not identify with a political party on the ballot.

During its 2000 session, the General Assembly modified state law to give localities the option to have elections either in May or November. There are pros and cons to holding elections in either cycle, but this gave local governments the flexibility to conform to the needs of their own communities. Under both the old and the updated law, and with the same thought toward meeting community needs, localities could also choose whether to hold elections in odd or even years.

However, in the 2021 General Assembly Session I, the body mandated that all localities move their elections to November by January 1, 2022. While localities may still decide whether to hold their elections in odd or even years, no term of a mayor, council member, or school board member may be shortened in the process. Changing the year of local election cycles may be completed via ordinance rather than by charter change.



About the author: Ms. Dodson is the policy and advisory relations manager for the Virginia Municipal League. (Ms. Showalter is the former general registrar for the City of Richmond.)

Resources

Voter Registration & Elections

- Virginia State Board of Elections: www.elections.virginia.gov
- U.S. Federal Election Commission: www.fec.gov

Census

- U.S. Census Bureau: www.census.gov

Redistricting

- General Redistricting Information from the National Conference of State Legislatures: www.ncsl.org/research/redistricting.aspx
- Virginia Division of Legislative Services. “Guide to Local Redistricting for 2021.” Richmond, 2020: www.dls.virginia.gov/pubs_redistricting.html
- Virginia Division of Legislative Services “Drawing the Line 2011: Redistricting in Virginia, Issue 1”, “Drawing the Line 2011: Redistricting in Virginia, Issue 2”, and “Guide to Local Redistricting for 2011”: www.dls.virginia.gov/pubs_redistricting.html
- Virginia Division of Legislative Services, “Drawing the Line 2001.” Richmond, December 2000: www.dls.virginia.gov/pubs_redistricting.html

CHAPTER 24

Human Resources

By **Josh Didawick** (adapted from the 2004 version by R. Neil Hening & Todd W. Areson)

Human resources management in the public sector helps carry out the public's business by hiring and maintaining an effective workforce. Because total human resources costs can be as much as 80 percent of a locality's annual budget, careful attention needs to be given to your human resources policies, practices, and systems.

A locality's capacity to attract and retain a quality workforce depends upon its ability to:

1. Attract, recruit, and select qualified applicants for jobs.
2. Evaluate and compensate them with wages and benefits that are market competitive and fairly administered.
3. Maintain a culture in the workplace that reinforces the value of public service, and lets employees grow and develop throughout their career.

Applicable state and federal laws define much of your human resources system. Virginia has enacted several new laws regarding employment dealing with discrimination. See Code of Virginia [§ 2.2-3905](#) (this is the main provision), “ban the box” [§ 15.2-1505.3](#), and marijuana personal use [§ 4.1-1100](#) just to name a few. Each locality should review their personnel and policies manual each year to ensure compliance with the new laws.

Human Resources Selection Procedures

Every locality should have a human resources system with the standards for selecting and hiring employees. The governing body, through its chief administrative officer, is responsible for ensuring that this system meets appropriate standards of recruitment, selection, performance appraisal, and retention. These standards must withstand legal tests and challenges from within and outside your locality. While those outside the human resources function may be tempted to circumvent established human resources practices and policies, the legal and professional liabilities to the locality are not worth the risks.

Classification, Compensation, & Benefits

Each position or “job” in local government is made up of duties and responsibilities sufficient to occupy the time of one employee, or a fraction of one employee. Classification takes all positions and distinguishes them based on several different factors, including:

- Nature of the work
- Level of difficulty of the work
- Amount of education and/or experience necessary to perform the job
- Level and impact of decision making
- Supervisory responsibilities
- Environmental and safety hazards

Each position is rated according to its essential tasks and the responsibilities, skills, and abilities needed to perform the position; the entry-level requirements; and its standing within the organizational hierarchy. Local governments with more than 15 employees are required to adopt both a classification plan and a uniform pay plan (Code of Virginia, [§ 15.2-1506](#)). The classification plan is a means to organize and compensate employees fairly, while the pay plan will determine the range of the salary paid at each classification level.

Compensation – wages or salaries and incentives – is important because it enables a jurisdiction to compete for employees in the labor market, and reward and retain those employees.

Compensation commonly includes base rate of pay, pay increases (merit and/or cost of living adjustments), other pay conditions (e.g., overtime, shift differential, call-back pay, emergency pay, and bonuses).

The range of employee benefits offered by Virginia local governments is determined by local policies and state and federal laws.

The combined value of an employee's compensation and benefits is considered their total compensation. Oftentimes in the public sector, the value of an employee's employer-provided benefits can be as much as 50 percent of the employee's salary.

Menu of Employee Benefits

Employee benefits may include some combination of the following (list is illustrative only):

- Health, life, dental, disability, and voluntary insurance
- Annual, sick, personal leave, and paid time off (PTO)
- Paid holidays
- Participation in a local retirement system, the Virginia Retirement System (VRS), and/or a deferred compensation plan
- Family and medical leave
- Parental leave
- Wellness programs
- Flexible work schedule
- Teleworking arrangements
- Employee assistance programs (EAP)
- Dependent care
- Flexible spending accounts (medical and dependent care)
- Tuition assistance/reimbursement
- Student loan repayment assistance

Collective Bargaining

Collective bargaining is the process by which employees in a bargaining unit have representatives deal with their employer to set wages, benefits, hours of work, and other terms of employment. Typically, it occurs between one employer and one union. Historically in Virginia, public employees were prohibited from collective bargaining. Public employees were able to form associations for the purpose of promoting their interests (see Code of Virginia, [§ 40.1-57.3](#)). However, in 2020 the Virginia General Assembly passed House Bill 582, which went into effect on May 1, 2021, and gave local governing bodies the option to collectively bargain with public employee unions (see Code of Virginia, [§ 40.1-57.2](#)). It's important to keep in mind the following points:

1. The bill only applies to employees of counties, cities, towns, or school boards. State-level employees, including those of constitutional officers, are still unable to engage in collective bargaining.
2. Public employees are still barred by law from engaging in strikes.

The passing of HB582 could be a significant change for local governments. Organizational understanding and practices will likely need to evolve.

Grievance Procedures

A grievance procedure is a formal dispute resolution method through which employees may seek to have certain work-related problems resolved fairly and equitably. Usually, it is prompted by a disciplinary action that an employee believes is either unnecessary or too severe.

By state law, local government employees must be covered by a local grievance procedure or the state's grievance procedure. The use of a locally developed grievance procedure is preferable since it affords continuity with your local human resources policies and enables the locality to handle its own grievances.

State law requires, at a minimum, that:

- Each jurisdiction with more than 15 employees must have a grievance procedure (Code of Virginia, [§ 15.2-1506](#)).
- The procedure must have no more than four steps (Code of Virginia, [§15.2-1507 \(5\)a](#)).
- The procedure must specify time limitations for both filing and responding to the initial, written grievance (Code of Virginia, [§ 15.2-1507 \(5\)b](#)).

Some local governments exercise control over the members of the grievance panel used in the final step of the grievance process. For example, there may be a standing grievance panel, a pre-selected list of potential grievance panel members or the locality is permitted to select at least one panel member.

While local government employees must be covered by a local or state grievance procedure, they may choose to bypass this procedure and file their grievance directly with the Governor's Council on Human Rights or the local Equal Employment Opportunity (EEO) office (see next section).

State law gives certain groups of public employees special procedural guarantees.

Law Enforcement Officers

Police officers under investigation by any agency where the result can lead to discipline are entitled to certain rights (spelled out in Code of Virginia, [§§ 9.1-500-9.1-507](#)) while the investigation is taking place. Officers who want to grieve an action taken against them because of an investigation may use either the state procedure or their local grievance procedure, but not both.

Firefighters & Emergency Medical Technicians

When the result can lead to disciplinary action, full-time firefighters and emergency medical technicians under investigation are also entitled to certain rights (spelled out in Code of Virginia, [§§ 9.1-300-9.1-304](#)) while the investigation is taking place.

Unlawful Discriminatory Practices

Equal Employment Opportunity Commission (EEOC)

The federal EEOC and the law it enforces – the Equal Employment Opportunity Act (1972) – prohibits discrimination in wages, hiring, and management practices based upon age, race, color, gender, disability, religion, national origin, or veteran's status. Compliance at the local level is important not only to ensure positive workplace culture and effective management, but also to prevent grievances, lawsuits, and compliance audits by federal agencies.

The federal Equal Employment Opportunity (EEO) grievance procedure allows employees who believe they have been discriminated against to file written grievances directly with the EEOC within 180 days of the alleged discrimination. As already noted, employees are not required to use the local grievance procedure before filing with the local EEO office.

Attorney General Office of Civil Rights

The Virginia Human Rights Act (Code of Virginia [§§ 2.2-3900-2.2-3902](#)) allows employees who believe they have been unlawfully discriminated against or who allege unlawful discriminatory practices to file written grievances with the Office of the Attorney General Civil Rights Department, within 180 days of the alleged discrimination. The human rights director can investigate complaints, hold hearings, and seek to resolve grievances through conciliation.

Training & Development

The public expects high levels of performance from local government employees. As such, organizations must be prepared to invest in the professional development of their staff to stay current with the industries in which local governments work. This preparation takes many forms, including technical training, supervisory training, and leadership development, to name a few. It is in the best interest of the employee and the employer for the employee to understand the career opportunities that may arise in the future, and for the employer to help prepare the employee to be competitive when competing for those opportunities.

Some professions and occupations regulated by the Department of Professional and Occupational Regulation are found in local government (these are listed in the Code of Virginia, [Title 54.1](#)). These occupations often require professional certification, professional designation, or licensing. Many localities provide funding not only to ensure that employees meet state requirements but also to enable employees to gain or renew other required certifications—for example, through General Equivalency Diploma (GED) classes and other education and training.

Performance Evaluations

Periodic (quarterly, semi-annually, or annually) communication between supervisors and subordinates about work performance is critical in promoting high levels of performance and accountability throughout an organization. These conversations should review and document past performance but are also logical times to discuss topics such as an employee's short- and long-term career goals, potential opportunities within the organization, and training and work plans for the upcoming review period.

Human Resources Information Systems (HRIS) and Management Information Systems

Automated information systems abound in the public sector. Because of local, state, and federal record-keeping requirements and the need to retrieve human resources records quickly, your human resources department is often the primary source for such information. Human resources records include both descriptive information about your locality's workforce (i.e., job descriptions and classifications, EEO information, size and cost of the work force, etc.), as well as a large amount of human resources information on individual employees.

Human Resources Information Systems (HRIS) should be closely tied to the organization's finance, accounting, payroll, and budget functions. This has several benefits, perhaps most important of which is getting employees paid accurately and on-time and ensuring proper that withholding and reporting is made at the state and federal levels. Second, changes to employee benefits and HR policies will have a downstream effect on those finance and budget functions. Finally, integration with those functions can make for better organization-wide human resource decision making.

The amount and importance of this information, along with business and individual taxpayer data, make local governments targets for cyber-attacks. Localities are custodians of vast amounts of sensitive information. Ensuring every employee is trained and understands how to identify and avoid cyber risks is critical to protecting the organization's financial interests and reputation.

Accessing & Maintaining Records

Access to and disclosure of human resources information are governed by several state laws, including the Virginia Freedom of Information Act (Code of Virginia [§ 2.2-3700-2.2-3715](#)) and the Government Data Collection and Dissemination Practices Act (Code of Virginia [§§ 2.2-3800-2.2-3809](#)). One or more employees are often designated as

“records custodian”. They, along with the locality’s FOIA officer, are legally responsible for knowing and monitoring who can review and receive information about the jurisdiction’s workforce, and what information can be disclosed publicly.

Records custodians are similarly responsible for knowing which records they must keep and how long (See the [local general schedule](#)). Under the authority of the Virginia Public Records Act, the Records Management section of the Library of Virginia (LVA) assists state and local governments in maintaining public records, including maintaining retention schedules. It is inadvisable to keep records for not enough or for too long a time and not properly documenting their disposal. Furthermore, when federal and state requirements differ, the longer of the two requirements should be followed.

Special Employee Programs

Military Leave

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the rights of those returning after a period in the uniformed services, including the National Guard and reserves. Virginia requires every military reservist be granted 15 days of paid leave during the military training year when requested and supported by proper documentation (Code of Virginia, [§ 44-93](#)). The job held by the reservist at the time of taking this leave must be given back to them upon returning from leave.

Unemployment Compensation

Once an employee works 30 days for an employer, that employer becomes responsible for unemployment compensation if the employee files a claim. Proven gross misconduct on the part of the employee while employed may prevent him or her from receiving unemployment compensation. It is therefore important to be progressive in administering discipline, when possible, and clearly document the reasons for terminating an employee to prevent this benefit from being used inappropriately (Code of Virginia [§ 60.2-618](#)).

Unemployment compensation programs are administered by the Virginia Employment Commission (VEC). Local governments may choose to pay unemployment insurance into the state fund either through regular payroll taxes or on a self-funded basis. Your locality will need to decide when and how to pay, such as on a quarterly basis, or self-fund, where the locality is billed for use only (Code of Virginia [§ 60.2-507](#)).

Workers’ Compensation

Workers are generally covered for injuries and disease that arise from their employment (Code of Virginia, [§ 65.2](#)). The injured worker must file a claim with the Workers’ Compensation Commission within two years from the date of the accident, or the right to benefits may be lost. State law allows injured workers to receive medical care, weekly income replacement, and rehabilitation services; survivors of workers whose death is job-related may also receive income (Code of Virginia [§ 65.2-100](#) through [§ 65.2-1300](#)).

The benefits are covered by one of the following:

1. A state compensation fund to which the locality contributes through payroll taxes.
2. A local compensation fund that the locality operates as an individual self-insurer.
3. A group compensation fund to which the locality contributes as a member of a group self-insurance association.

Line of Duty Act (LODA)

Virginia’s Line of Duty Act (Code of Virginia [§ 9.1-400](#)) provides benefits to family members of eligible employees and volunteers killed in the line of duty, and to those eligible employees and volunteers disabled in the line of duty, and their eligible family members. Localities are responsible for funding this benefit, which may be accomplished by either participating in a trust fund administered by the Virginia Retirement System (VRS), self-funding by the employer, or purchasing coverage through an insurance company.

Drug Testing in the Workplace * (marijuana not included)

Currently, Virginia has no general law covering the drug testing of public employees. The state does have a law to decertify law-enforcement officers who refuse to submit to drug-screening (Code of Virginia [§ 15.2-1707](#)). Two federal laws, however, apply to local government employees in Virginia: the Omnibus Transportation Employee Testing Act of 1991 and the Drug Free Workplace Act of 1988.

The Omnibus Transportation Employee Testing Act of 1991 (final regulations were published in 1994) requires all employers (effective January 1, 1996) to develop and implement testing programs for employees in safety-sensitive positions (e.g., those with commercial driver's licenses). Six types of testing are required (under the federal Alcohol and Controlled Substance Testing Act):

1. Pre-employment testing for alcohol and controlled substances.
2. Post-accident testing when a driver receives a citation.
3. Random alcohol testing of 25 percent of safety-sensitive drivers annually.
4. Random drug testing of 50 percent of safety-sensitive drivers annually.
5. Reasonable suspicion testing for either alcohol or controlled substances.
6. Return-to-duty testing after prohibited alcohol or controlled substance conduct.

The Drug Free Workplace Act of 1988 applies to employers with federal contracts in excess of \$25,000. Under this act, each covered employer must publish and distribute a policy that:

1. Prohibits “the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances in the workplace.”
2. Includes penalties for those convicted of drug-related offenses on the job.
3. Establishes both an employee awareness program on the dangers of and penalties for drug abuse and the resources for rehabilitation and counseling.

Emerging Issues in Public Sector Human Resources

The landscape of public sector human resources, like so many other areas of government, is constantly changing. To stay competitive and provide the best possible workforce to carry out the government's work, elected officials and leaders need to maintain a finger on the pulse of HR-related issues and topics within their organization, their region, and at the state, national and international level. A list of emerging issues in public sector HR will always be changing, but here are several HR topics public sector leaders must be prepared to address in their organizations:

1. **Twenty-First Century Employment Trends.** Government's workforce strategy has long been focused on hiring an employee early in their career, that employee working to retirement age and retiring from the same employer, maybe with a few jobs sprinkled in here and there. Younger generations entering the workforce are not expected to stay with one employer for as many years as their predecessors. Employers' expectations about retention must adapt to shorter periods of time. Along those same lines, employee benefits may need to become more portable to attract quality employees if their career aspirations are focused less on staying with one employer.
2. **Diversity, Equity, and Inclusion.** Creating a working environment that is diverse and where all individuals are welcomed has never been more important. A diverse and inclusive workforce holds much more value than one that is homogeneous. Furthermore, societal changes do not stop at the employer's door. Organizational leaders need to be educated and prepared for dialog within their organizations so employees feel heard and included.
3. **Workplace Flexibility.** Advancing technology means many local government employees can now do their job from anywhere. Increasing abilities to telework, and/or work flexible schedules, can be leveraged as competitive advantages for employers in recruitment and retention, and make local government a more attractive employment option to prospective employees.
4. **Employee Wellness.** Making initiatives and education available to employees to promote their (and

their families’) overall wellbeing can have a multitude of benefits. Health insurance companies, employee assistance programs (EAP) and deferred compensation record keepers are all able to assist localities addressing employees’ physical, mental, and financial health.

5. **Drug Testing Policies.** Changes in marijuana laws around the country and the rise of CBD products means organizational leaders need to have a heightened awareness to how these issues can affect the workplace. For those localities employing positions requiring commercial driver’s licenses and other safety sensitive duties, policies should clearly outline employer expectations and employee responsibilities.

Conclusion: Relationships are Key

All local governments are facing many of the human resources challenges. Professional networks can and should be leveraged to find out what other organizations are doing in similar situations, how other leaders are handling similar issues, and survey other jurisdictions to keep your locality competitive in compensation, benefits, and HR policies. Establish working relationships with trusted colleagues from other localities to share ideas and best practices.



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Resources

International Public Management Association for Human Resources: www.ipma-hr.org

National Safety Council: www.nsc.org

Society for Human Resources Management: www.shrm.org

Virginia Employment Commission: www.vec.virginia.gov

Virginia Line of Duty Act: www.valoda.org

Virginia Retirement System: www.varetire.org

CHAPTER 25

Public Procurement

By William H. Hefty

The Virginia Public Procurement Act (VPPA) was enacted by the Virginia General Assembly in 1981 in an attempt to standardize the purchase of goods and services by state agencies and local governments ([§§ 2.2-4300](#) and following). The VPPA was researched and drafted following a study by a committee composed predominately of local and state public purchasing officials. Because the act was written with the needs of state and local governments in mind, many of its provisions (such as the 10-day period for a disappointed bidder or offeror to file a protest) take into account the practical problems localities face in purchasing goods and services.

While the VPPA has been amended often since its inception, the VPPA has stood the test of time remarkably well. Given the thousands of procurement transactions that occur each year at the local and state level, a relatively small number of lawsuits have been filed challenging local governments' procurement decisions.

Who is Covered?

The VPPA applies to all cities and other public bodies, such as authorities. Towns under 3,500 are exempt from most of the VPPA's requirements; however, some requirements, such as bonding and retainage for construction projects, as well as the ethical standards, apply to all towns. See Code of Virginia [§ 2.2-4343 \(A\)\(9\)](#). Although small towns are exempt from many of the requirements, it is still advisable to get as much competition as possible whenever a town that is covered by this exemption makes a purchase.

There is also a partial exemption for localities whose governing bodies have adopted, by ordinance, alternative policies and procedures which are based on competitive principles. See Code of Virginia [§ 2.2-4343 \(A\)\(10\)](#). There are certain provisions of the VPPA, however, that cannot be changed by using this partial exemption.

What is Covered?

The VPPA applies to four types of procurements:

1. Goods (purchase or lease)
2. Services
3. Insurance
4. Construction

The purchase or sale of real estate is not covered by the act, although other ordinances or statutes may apply. It also does not apply to purchases from other governmental agencies in Virginia. In addition, the VPPA applies even though the locality is actually getting money, rather than spending it, as long as there is a benefit to the locality. Thus, for example, a landfill that receives money from a vendor to take certain kinds of recyclables from a landfill must go through a procurement process, since it is getting a benefit.

It is important to note that the VPPA does not require a governing body to actually make the decision of who is awarded a contract. As long as sufficient funds have been appropriated for the purchase, the act allows the governing body to delegate all of the actual decision making to the administration. Different localities have varying rules about what contracts the governing body must vote to approve, depending on the size of the locality and how much the governing body wishes to get involved in the process. The Freedom of Information Act generally allows the discussion of purchasing issues to take place in closed meeting.

Small Purchase Procedure

The VPPA allows each governing body to establish a small purchase procedure for its locality. While the original limit was \$10,000, it has been increased to \$200,000 for goods, non-professional services and non-transportation related construction, \$80,000 for professional services (basically architects and engineers), and \$25,000 for transportation related construction. [§§ 2.2-4303 \(G\)](#). The individual locality can craft its own small purchase rules, including setting the limit within the above ceilings. While each governing body may determine how many quotes should be received and may change that number based on the amount of the contract within the limits, the VPPA states that all small purchase procedures shall provide for competition wherever practicable.

Having a small purchase procedure allows the locality to request informal quotations and purchase something quickly, rather than putting out a more formal Request for Proposals or Invitation to Bid (see discussion below). Quotations can be emailed, and the paperwork is obviously less extensive. The locality can choose the vendor who it feels makes the best proposal and does not have to choose the one with the lowest price (assuming there is a justification as to why the vendor with the lowest price was not chosen).

Again, the question of whether to use a small purchase procedure is not the same as deciding who has the ability to make the decision to award the contract. It is possible to have a small purchase procedure with a \$200,000 limit, which makes the procedure easier and quicker, and still have a policy that the governing body must approve every contract over, say, \$50,000.

Emergency, Sole Source, & Cooperative Procurement

A locality may make an emergency purchase without competition as long as an emergency truly exists. A locality also may purchase directly from one vendor if it is the *sole source* for the purchase. However, it has to be clearly determined and put in writing that the vendor really is the only source for the goods or services that the locality needs. [§§ 2.2-4303 \(G\) and \(F\)](#). In the event a locality decides that it needs to make a purchase on an emergency or sole source basis, the locality must post a notice stating the basis for the emergency or sole source on its website. Vendors who would have been bidders or offerors then have ten calendar days to file a protest.

A locality can also go in with other local governments or buy off another public body's contract and use what is called *cooperative procurement* to buy goods and services. If another locality puts language in their bid or proposal documents stating that any other local government can buy off of its contract, then a locality can buy directly from that vendor at the stated price without having to issue a separate procurement. Localities can also use this procedure to buy off of various state contracts that the Commonwealth has procured competitively, as well as some federal contracts.

Invitation to Bid and Request for Proposals

When a locality is buying goods, services, insurance, or construction above the small purchase limits or where there is not an emergency, sole source or cooperative procurement contract to ride, the locality will either have to issue an Invitation to Bid or Request for Proposals. For goods and non-professional services, the locality has a choice of using either an Invitation to Bid or Request for Proposals, without having to provide a reason for using one or the other. For construction, (see discussion below) a locality has to issue an Invitation to Bid *unless* the procurement is being done using construction management, design-build, job order contracting or the Public-Private Educational Infrastructure Act of 2002 (PPEA).

Invitation to Bid (Competitive Sealed Bidding)

An Invitation to Bid is a written document that indicates exactly what the locality wants to purchase and sets forth the contract terms and other specifications that the locality desires. Each bidder is bidding on the same specifications, which are included in the Invitation to Bid. [§§ 2.2-4302.1](#).

Notice of the Invitation to Bid must be posted for at least 10 calendar days prior to bids being received on the locality's website. It does not have to be published in a newspaper, although that is an option. The locality is required to award the contract to the lowest responsive and responsible bidder.

The bidder with the lowest price does not automatically win, because the lowest bidder must also be “responsive” as well as “responsible.” To be “responsive,” the low bidder must have met all the requirements of the Invitation to Bid. While the public body may waive informalities in the bid (e.g., an insurance form that was not submitted with the bid, but can easily be obtained), the low bidder must have substantially complied with all the bid requirements.

In addition, the low bidder must be “responsible.” This means that the low bidder has the capability in all respects to do the work. If, for example, the locality has evidence that the low bidder has performed substandard work either for it or another locality, or if the low bidder in a school construction bid has never built a school, then the locality may determine that the bidder is non-responsible. In that case, the reasons must be given to the bidder, and the bidder has the right to appeal the decision. While the decision to declare a low bidder “non-responsible” must not be taken lightly, it is a way to avoid giving a contract to a low bidder who evidence shows is likely not able to perform the contract. The locality also has the authority to reject all the bids and rebid. While the locality cannot reject bids simply because it does not want to award the contract to a particular bidder, bids can be rejected if, for example, there is evidence that a rebid would result in more competition, that the low bid was too high, that a protest was made that seems to have some validity, or that the locality simply does not want to proceed with the contract.

Request for Proposals (Competitive Negotiation)

If a locality is purchasing something where it is difficult to write specifications, particularly with contracts for services as opposed to goods, the locality can choose to use competitive negotiation and issue a Request for Proposals rather than issue an Invitation to Bid. This is obviously a much more subjective process and does not require an award to the offeror submitting the lowest price.

A Request for Proposals (RFP) is a more general statement of what the locality wishes to purchase, and it invites the offerors to come up with possibly different ways of providing the services rather than issuing specifications where the bidders are all bidding on exactly the same thing. [§§ 2.2-4302.2](#).

A notice indicating that a Request for Proposals has been issued must be posted on the locality’s website at least 10 days before the proposals are due. Notice also must be posted either on the Commonwealth of Virginia’s eVA procurement website or published once in a newspaper of general circulation. Once the proposals are received, they are reviewed (normally by a staff committee) to determine which proposers should be interviewed. This process is called *short listing*. While at least two firms need to be interviewed, often four or five firms that submitted proposals are offered interviews. Having more than that is perceived to be too cumbersome.

During the interviews, the firms are asked to describe why they should be given the contract, and the cost and scope of the services may be negotiated. It is important that the information from one firm about their services, including price, is not shared with the other firms during negotiation.

At the conclusion of the negotiations, the contract is awarded to the firm that the locality feels made the “best” proposal and provides the “best value” based on the factors that were listed in the Request for Proposals. As with bids, the proposals can be rejected at any time before the award of the contract.

Professional Services

A special set of rules applies for the procurement of professional services, which includes primarily architects and engineers. For these services, a locality can use its small purchase procedure when the cost of the architect or engineer is not expected to exceed \$80,000. If the cost is expected to be above that amount, however, a locality must use a Request for Proposals. The process is a little different from the normal Request for Proposal process, however, in that the initial responses cannot ask about the price of the professional services. Thus, the proposals that the locality gets back should not include anything about how much the professional services will cost. The purpose of this requirement is to keep localities from hiring the least expensive architect or engineer without looking at their qualifications. [§§ 2.2-4302.2 \(A\) \(4\)](#).

Once the proposals are received, the firms are short listed, and those chosen are interviewed. At that time, the locality

can ask for “non-binding” estimates of price from each firm. After these interviews, the firms are ranked based on the factors listed in the RFP, including price. Then the locality can negotiate only with the firm ranked number 1 until an agreement is reached or it is clear that an agreement cannot be reached. If the latter, the locality can negotiate with the firm ranked number 2 but cannot go back and negotiate again with the firm ranked number 1. And so on. While the process seems confusing, it is rare that anyone goes past the firm ranked number 1, since both sides have an incentive to come to agreement on a mutually satisfactory contract. The standard for making the decision, however, is still who makes the “best” proposal.

The VPPA also allows for a locality to issue a Request for Proposals for architectural or engineering services that allows for several firms to be chosen to be on a list to do smaller projects without having to issue a separate RFP for each one during a period in which the particular projects have not been identified. This is generally known as a “term contract.” This can save considerable time and effort for the locality by not having to issue an RFP for smaller projects. While the limits and rules are too complicated to go into in this summary, many localities in Virginia are using this method to simplify the procurement of architects and engineers for smaller studies and projects. [§§ 2.2-4303.1](#).

Construction

Construction is treated differently than goods and services. As stated above, a locality can use small purchase procedures for transportation-related construction projects up to \$25,000 and for non-transportation construction contracts up to \$200,000, depending on the limits the locality has set. Cooperative procurement cannot be used for construction.

If the construction project is above the small purchase limit, the VPPA states that the preferred method of procurement is to use competitive sealed bidding and to use an Invitation to Bid. This results in choosing the lowest responsive and responsible bidder.

There are, however, several exceptions to having to use competitive sealed bidding for construction projects. These allow the use of competitive negotiation and a Request for Proposals, which does not require the locality to accept the low bid. These are construction management, design-build, PPEA (The Public-Private Educational Infrastructure Act of 2002), and job order contracting. Because all of these allow for the use of a Request for Proposals, it allows the locality to choose the contractor, or team of design professional and contractor, that it feels most comfortable with rather than having to take the low bidder. The locality should carefully evaluate which procurement method should be used for each individual construction project, since all of them have advantages and disadvantages.

The rules for construction management and design-build are found in [Chapter 43.1](#) of the Code of Virginia, right after the VPPA. These require the locality to adopt procedures in line with the state procedures, and have certain other requirements as to limits, etc. The PPEA also requires the locality to adopt procedures and to follow certain guidelines prior to entering into a contract. These contracts may also include design-build contracts but anticipate a public-private partnership.

The PPEA statutes are also not found in the VPPA but are in [§ 56-575.1](#) and the following sections of the State Code. PPEA also provides for solicited or unsolicited proposals from the private sector.

The fourth exception, job order contracting, is a relatively new procurement method where one or more contractors are chosen through an RFP and have a fixed book of prices for various smaller construction projects. Again, there are dollar limits and length of contract limits which apply. [§§ 2.2-4303.2](#).

Protests

If a bidder or a proposer feels that the locality did not follow the proper procedure in evaluating a bid or proposal, he or she has the right to file a protest. The protest, which must be in writing, must state the grounds for the protest and be filed within 10 calendar days from the decision to award the contract or the decision that the locality intends to award the contract to one bidder or offeror. This short time frame reflects the recognition by the General Assembly that localities cannot hold up procurement decisions for six months or a year while bidders or offerors decide whether

to challenge the process. Only bidders or offerors can file protests; citizens cannot sue the locality on the basis that the VPPA was not followed. Neither damages nor attorneys' fees are allowed in protests, and if the court finds that the VPPA was not followed, the normal remedy is to order the locality to redo the procurement (although there is a provision that if the contract has begun, the locality can continue with the contract even though the court finds a violation, assuming they make certain findings).

The protest is filed with a person designated by the locality, normally the head of the purchasing department. That person has 10 days to answer the protest. If it is denied, the bidder or offeror has the opportunity either to go to circuit court to challenge the decision, or to appeal to an administrative panel if one has been set up by the locality. Not every locality has an administrative appeal panel; if there is none (and one is not required), the only option for the bidder or offeror is to go straight to court. The court should normally rule in the locality's favor unless the decision was "arbitrary and capricious" or the VPPA was not followed in some substantive manner.

While members of a governing body often indicate a desire to award contracts to the local bidder or offeror, the VPPA does not allow a locality to grant a preference to a local firm. While concepts like response time can be taken into account, a contract cannot be awarded to a firm just because it is from the local community.

Ethics

The VPPA contains a special set of ethical rules for anyone involved in the procurement transaction, including local council members if they approve the contract or are otherwise involved in the procurement or the contract. These are in addition to the requirements of the Conflict of Interests Act. A willful violation of the ethical provisions is a Class 1 misdemeanor, which is punishable by a fine up to \$2,500 and/or one year in jail.

The most important prohibition is that anyone having official responsibility for a procurement transaction cannot participate in the transaction if (1) he or she is employed by a bidder, offeror, or contractor or (2) the person, his or her partner, or any member of the immediate family (which includes the person's spouse, child, parents, siblings regardless of where they live, or any other person living in their house) holds a position with a bidder, offeror, or contractor (such as officer or director) or makes more than \$5,000 annually in salary from any such bidder, offeror or contractor. This is a fairly broad prohibition, and members of governing bodies need to be aware that it exists.

In addition, it is a misdemeanor for anyone involved in a procurement transaction (which can include members of governing bodies, depending on whether they have any involvement in approving the contract) to accept any gift, loan, or discount from a bidder, offeror, contractor, or subcontractor of more than nominal or minimal value unless fair market value is paid.



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CHAPTER 26

Risk Management

By Marcus Hensel

Local governments make important decisions each day as they serve their communities. Decisions may involve daily operations – utilities, public safety, refuse and parks – or may be responses to new challenges and uncertainties like COVID-19. Often these decisions not only impact the lives of citizens, but staff as well, in environments that are changing more rapidly than ever before.

How do local governments ensure they make decisions that support their communities and strategic objectives?
How can local governments be more thoughtful, inclusive, and transparent in their decision making?

Traditional risk management focuses on a narrow approach to managing risks or uncertainties – often associated with losses arising from property damage, liability suits and worker injuries. With this approach, little consideration is given to how disparate risks relate to each other, and their potential value or impact to the organization. There are benefits for organizations that think differently about how they manage risks, including examining plausible futures as they serve their community.

Enterprise Risk Management

Enterprise Risk Management (ERM) focuses on managing all risks or uncertainties across the organization, including the consideration of risk in the decision-making process. ERM is a top-down process to collectively manage financial, operational, and strategic risks. No two ERM approaches will be identical. Every ERM program is and should reflect the unique culture, values, goals, and risk appetite – the amount of acceptable risk in pursuit of strategic objectives – of the organization.

Of course, an organization considering ERM may refer to standards set by reliable organizations. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) defines ERM thusly:

A process, effected by an entity's board of directors, management, and other personnel, applied in a strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.

This process can be an important strategic tool for the governing body and top management who are expected set to the organization's risk culture, or set of shared attitudes, and risk appetite.

To get a clearer picture of how ERM works, let's walk through a scenario.

A city's recreation center remains closed in response to COVID-19. It is now spring of 2021 and the city is contemplating whether to reopen the center for community gatherings.

As the staff starts working through this decision, they first identify which strategic objectives are supported by reopening the recreation center. In this example, the decision to reopen is supported because it furthers the city's strategic objectives to strengthen the neighboring communities. The staff holds conversations among themselves and various interested parties to identify and document considerations, including:

- Team members involved in the decision process.
- Issues that may require input by the governing body and top management.
- Internal and external stakeholders who may influence or be influenced by the decision.

- Potential advantages or opportunities arising from the decision, as well as financial impacts.
- Potential threats or downsides of the decision, including financial impacts and how they may be mitigated.

Ultimately, a thoughtful and documented decision adds value by considering the resources of the local government at the decision-making level, rather than exhausting resources on a poor decision made in the hopes of a good outcome. Also, documenting the staff's recommendation provides a point in time perspective and an area to capture resulting impacts, lessons learned, and/or other pertinent feedback.

Role of Governing Body in Risk Management

Governing bodies are facing pressure from both regulatory agencies and community stakeholders to gain a sophisticated understanding of their risks and uncertainties. It is up to the governing body and top management to determine the organization's risk appetite and risk tolerance levels.

To start, governing bodies may wish to consider asking the following:

- What level of decision-making authority has the governing body provided to management?
- What decisions require governing body approval?

When governing bodies and top management determine their comfortable level of risk, it creates an opportunity is created to collectively weigh a variety of risks – financial, operational, hazard, and strategic risks – and embed risk management into decisions. This knowledge allows the governing board to influence how the organization is governed and manages risk.

Contract Review

Governing bodies can meaningfully influence and manage risk for the organization from the top-down through effective contract review. As a safeguard to protect assets and promote sound risk management, it is essential for the governing body and employees of local governments to understand the issues involved in contracts. Of course, the local government attorney should review each contract prior to signing.

Liability issues can arise not only from a breach of the contract's terms, but also from improperly reviewed contractual provisions that impose responsibilities for indemnity, subrogation, or "waivers" or "assignments" of indemnity, or liabilities.

It's important to understand what each of these terms mean.

Indemnity includes an agreement to pay another person or party for its expenses, attorney fees, losses and/or damages. The enormity of risks and liabilities presented by this type of contractual provision cannot be underestimated.

Subrogation is the contractual or legal substitution of one person or party to another person or party's rights or claims against a third person or party. Frequently this occurs as a result of an insurance payment for a loss or as a part of a settlement agreement. Either the granting, assignment, releasing, or waiver of this right carries enormous implications for public bodies.

Hold Harmless is the contractual provision under which one party, the indemnitor, agree to indemnify and hold harmless the other party, the indemnitee. A hold-harmless agreement is a form of an indemnity contract.

Assumptions or Extensions of Liability refer to any provisions agreeing to assume, extend, or release liabilities or legal responsibilities of a local government entity should never be undertaken without the review and approval of your public body attorney.

Risk Transfer vs. Risk Financing

Every year, local governments should evaluate their protections in relation to their activities, exposures, and risk management programs. A variety of techniques may be used to manage risk.

Risk transfer shifts risk from one party to another through group self-insurance pools. Most local governments in Virginia participate in group self-insurance risk pools (formed under Code of Virginia [§ 15.2-2700](#)). Local governments participating in group self-insurance risk pools contribute to a shared fund that in turn pays for the losses and risk management services for the participating members. The risk of the individual members is collectively shared by all the members.

Risk financing means that a local government decides to finance their risks themselves through self-insurance. Regardless of the method used, it is important that local governments evaluate the technique chosen to meet the organization's risk goals. These goals include paying for losses, managing the cost of risk, managing cash flow variability, maintaining appropriate level of liquidity, and complying with legal requirements.

Below are the major types of coverage which may be transferred, financed, or managed by local governments.

Automobile Liability

Automobile liability coverage protects the local government, elected and appointed officials, and employees from claims arising from negligent acts involving vehicles driven with permission that result in bodily injury or property damage to third parties. Coverage includes defense costs as well as damages. The typical limit is \$1 million per occurrence.

Automobile Physical Damage

Automobile physical damage coverage protects the local government from physical damage loss to owned vehicles or those leased for six months or more. Physical damage coverage includes both collision, which covers the vehicle if it collides with another object or overturns; and comprehensive, which covers the vehicle for other losses, such as fire, theft, or vandalism. Physical damage coverage is written on the basis of actual cash value or replacement cost coverage.

General Liability

General liability coverage protects the local government, elected and appointed officials, and employees from claims arising from negligent operations that result in bodily injury or property damage to third parties. Coverage includes defense costs as well as damages. The typical limit is \$1 million per occurrence.

Public Officials' Liability

Public officials' liability coverage protects the local government, elected and appointed officials, and employees from suits arising from alleged wrongful acts. Land use and employment discrimination are common examples. The coverage provides defense costs as well as payment of damages. Typical limits are \$1 million per occurrence.

Law Enforcement Liability

Law enforcement liability coverage protects the local government, elected and appointed officials, and law enforcement personnel from suits arising from alleged wrongful acts. Use of excessive force and other civil rights violations are common examples. The coverage provides defense costs as well as payment of damages. Typical limits are \$1 million per occurrence.

Excess Liability

Excess liability coverage provides coverage in excess of general liability, automobile liability, public officials' liability, law enforcement liability, and employers' liability. Limits should be in proportion to the activities and exposures of the local government.

No Fault Damage

No fault property damage provides payments to third party claimants for damage without regard to fault. The coverage is similar to medical payments coverage already available under the automobile and general liability policies which makes no fault payments to third party claimants for bodily injury.

Cyber Liability

Local governments can protect their associated costs with cyber liability policies. Coverages often provide protection from privacy liability, network liability, internet media liability, data breach expenses and security coverage.

Property

Property and miscellaneous items coverage protect physical property such as buildings, contents, and equipment from losses caused by fire, windstorms, and other perils. Miscellaneous items coverage protects fine arts and valuable papers; tools and equipment; mobile equipment like graders and backhoes.

Boiler & Machinery

Boiler and machinery coverage protect local governments from the breakdown or explosion of boilers and other machinery. This coverage provides protection from losses to machinery due to power interruption, surges, and mechanical breakdown. Boiler and machinery limits are determined based on either the property values where the equipment is housed or the value of any specialized equipment.

Flood

Local governments may own property in various flood zones. Flood coverage for less flood-prone areas can be incorporated into the standard property policy. However, insurance for properties located in flood-prone areas is only available through the National Flood Insurance Plan (NFIP), which is administered by the Federal Emergency Management Agency (FEMA).

Earthquake

Standard policies exclude damages caused by earthquake. By endorsement, local governments can protect their assets against damage by earthquake.

Line of Duty Act Coverage

Provides health insurance coverage and death benefits for eligible employees and salaries, per the requirements of the Line of Duty Act.

Crime

Crime coverage protects the local government from loss of money and other negotiable securities due to acts such as theft or embezzlement by employees.

Workers' Compensation & Employers' Liability

Workers' compensation coverage protects employees and their dependents in the case of work-related injuries or diseases. Benefits for lost wages, related medical expenses, and certain scheduled benefits for specific losses are set forth in the Virginia Workers' Compensation Act. The limits for workers' compensation are statutory. This includes employers' liability coverage.

Other Coverages

Local governments may have exposures that create the need for other protections. The exposure and type of coverage will differ depending on the operations. Examples may include underground storage tanks, airport liability, accident & sickness, medical malpractice, event cancellation and various types of bonds.



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ABOUT THE LEAGUE

Since it was founded in 1905, the Virginia Municipal League's history has been linked inextricably to the fortunes of its member local governments. The league and its member cities, towns and counties have worked together to improve the quality of life in communities across Virginia.

VML is a non-profit, non-partisan association. The authority for the organization derives from Virginia Code [§ 15.2-1303](#), which authorizes the governing bodies of political subdivisions to form associations to promote their welfare.

Its official name before 1960 was the League of Virginia Municipalities. The membership has grown from 16 in 1921, when VML hired its first staff members, to 210 today. That number includes 37 cities, 168 towns and eight counties.

The league has 11 full-time staff. In addition, the league contracts with outside resources to assist with research and advocacy efforts. The league's headquarters is located at 13 E. Franklin Street in downtown Richmond.

An article written in the early 1930s, Newport News Mayor Samuel R. Buxton, the first president of the league, spelled out what the founders of the organization hoped to accomplish. Buxton described the league's mission as follows:

- to bring into a united whole the several cities and sections of the Commonwealth for the larger glory of Virginia;
- to exchange ideas and experiences to secure a better administration of municipal affairs; and
- to secure helpful legislation.

Since that time, the league has evolved into a voluntary nonprofit, nonpartisan organization created to improve local government in urban communities; an agency designed to promote the interest and welfare of municipalities through investigation, discussion and cooperative effort; an organization designed to promote closer relations between cities, towns and urban counties; a clearinghouse for information; a municipal consulting service; and a medium through which local officials of all cities, towns and urban counties can cooperate in improving municipal administration. Its primary mission throughout its history has been to serve as a legislative advocate for Virginia localities.

Although the purpose of the league has been expressed in many ways over time, its underlying missions and programs have remained constant. Among the important services provided by VML over the years are representation of local governments before the General Assembly, training of newly elected local government officials, production of educational and networking events, provision of responsive member inquiry services, publication of a monthly magazine for members and online resources and newsletters.

Over the years, the league has been well served by exceptional leaders and high-quality staff. In return, residents of Virginia's localities have benefited greatly from the organization. Its success has been founded on the concept of local governments working together for the betterment of the lives of their citizens – finding new and better ways to deliver essential services and making sure that people have the governmental resources necessary to live safe and productive lives.

Virginia local governments have earned national reputations for their effective and efficient delivery of services. From providing safe drinking water, educating children, and keeping people safe, to paving streets, operating libraries, and ensuring that people with mental disabilities live as fulfilling lives as possible, local governments make a difference in the lives of Virginians. VML is proud to play a part in that continuing legacy.



