

# Home Builders Association of Virginia

*Representing Virginia's Residential Construction and Land Development Industry*

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## Local Boards of Supervisors, City Council, Planning Commission Meetings

In the wake of various recommendations from health officials aimed at preventing and minimizing the transmission of COVID-19, local governing bodies have been struggling to figure out how to conduct business while at the same time being encouraged to minimize or reschedule group meetings.

Currently, the Code of Virginia only allows local governing bodies to meet by electronic communications without a quorum of the public body **physically** assembled at one location during a state of emergency provided that “(i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) **the purpose of the meeting is to address the emergency.**” This code section places significant restrictions on the ability for local governing bodies to utilize modern technology during these unprecedented times.

Although the recommendations from Governor Northam and various state health officials are prudent and important measures to help prevent and minimize the transmission of COVID-19, they have the unintended effect of potentially “freezing” all land-use/development applications if local governments do not have the authority or ability to utilize modern technology to conduct their business.

HBAV believes that the current de facto “freeze” or restriction on the ability for local governments to review and take action on land-use applications will disrupt the pipeline of economic and community development projects in localities throughout the Commonwealth. This will exacerbate the dire supply/demand gap that exists in Virginia’s housing market and thwart our efforts to address Virginia’s affordable housing crisis.

Recognizing the significant impact that these restrictions could have on local government’s ability to budget/appropriate funds and evaluate/take action on various land-use applications, the Virginia Municipal League (VML) proactively sought an Attorney General’s opinion on Virginia Code Section 44-146.21, which states that during a state of emergency (state or local), “the director of emergency management of each political subdivision or any member of the governing body, may.....[among other powers] proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work...”

The request for an Attorney General’s opinion, [which can be found here](#), was submitted by Senator Jeremy McPike and Delegate Rip Sullivan and contained three questions:

1. Does [Virginia Code 44-146.21](#) allow local governing bodies, upon declaration of a state of emergency, to hold their meetings solely by electronic communication during the pendency of the emergency?”
2. Since the Governor has declared a state of emergency, may local governing bodies hold their meetings solely by electronic communication during the pendency of the emergency pursuant to [Virginia Code 2.2-3708.2.A.3?](#)
3. If Virginia Code does not allow solely electronic meetings of local governing bodies, can the Governor expand his declaration of “state of emergency” to allow for electronic meetings of local governing bodies or must the General Assembly convene a special/emergency Session to amend the Code of Virginia?

On Monday, the Home Builders Association of Virginia contacted the Attorney General’s office to reiterate that inaction on this issue could have a significant impact on economic and community development projects around the Commonwealth – and could exacerbate the Commonwealth’s already dire housing supply/demand gap. HBAV will continue to provide updates on this matter as they become available.

Please contact HBAV’s Vice President of Government Affairs, Andrew Clark, at [AClark@HBAV.com](mailto:AClark@HBAV.com) if you have any questions or concerns – or would like to pass along any information that you have received from your local governments.

## *DPOR Extension of Licenses, Certifications, and Other Credentials*

This morning, the Department of Professional and Occupational Regulation (DPOR) announced that they will be extending the validity of licenses, certifications, and other credentials issued by its regulatory boards that would otherwise expire during the declared state of emergency or be eligible for renewal or reinstatement during the state of emergency under applicable regulations, until the 30th day after the date by which the state of emergency is lifted.

DPOR also announced that they will be waiving any regulations of regulatory boards under the DPOR that prohibit or limit online, electronic, or distance theoretical instruction, in order to prevent and mitigate the spread of the coronavirus (COVID-19). This waiver does not waive statutory requirements or limitations, nor does it waive practical (hands-on) instruction required by a board's regulations. This waiver shall take effect on March 18, 2020, and shall remain in full force and in effect until June 10, 2020, unless sooner amended or rescinded by further executive order.

More information from DPOR can be found [here](#).

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## **Issues with Recording, Indexing and Scanning Local Land Records**

On Monday, the Chief Justice of the Supreme Court of Virginia issued a declaration of judicial emergency, which suspended all non-essential, non-emergency Circuit and District court proceedings with some exceptions, [which can be found here](#). The Chief Justice's declaration also stated that "the courts and clerks' offices shall remain operational and provide **essential services** while balancing the health and safety needs of court visitors and personnel."

We believe that the Chief Justice's declaration and underlying judicial protocols hold that indexing, scanning and recording by the Clerks' Offices are deemed "essential functions" of the Virginia court system.

However, we have received several reports of challenges with the recording, indexing and scanning of local land records.

**If you run into any challenges with local Circuit Court Clerks and the recording, indexing, and scanning of land records, please contact HBAV's Vice President of Government Affairs, Andrew Clark, at [AClark@HBAV.com](mailto:AClark@HBAV.com) as soon as possible.**

We have been in frequent communication with the Virginia REALTORS and the Virginia Court Clerks Association to resolve any challenges that arise during these unprecedented times. **In order to resolve these issues in a timely manner, it is helpful to consolidate our communications to the relevant stakeholders through HBAV.**