Handbook for Virginia Mayors & Council Members

Eighth Edition - August 2026

Edited by
Michelle Gowdy and Rob Bullington

Design and Layout by
Manuel Timbreza

Acknowledgement

The *2026 Handbook for Mayors and Council Members* would not have been possible without the leadership and dedication of **Stephanie Dean Davis**, who served as Editor of the 2026 Edition. Her careful stewardship of the editorial process, thoughtful guidance, and unwavering commitment to clarity and accuracy ensured the handbook remains a trusted and practical resource for local elected officials. We are especially grateful for her efforts in coordinating the many contributing authors and working closely with them as they updated and refined individual chapters, bringing together diverse expertise into a cohesive, current, and highly useful volume.

First Edition, 1979
Second Edition, Revised 1984
Third Edition, Revised 1993
Fourth Edition, Revised 1998
Fifth Edition, Revised 2004
Sixth Edition, Revised 2020
Seventh Edition, Revised 2021

About the Virginia Municipal 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 Code of Virginia [§ 15.2-1303] which authorizes the governing bodies of political subdivisions to form associations to promote their welfare.

Use the QR code or link to view a video [about the Virginia Municipal League].

Use the QR code or link to view the [League's Constitution.]

Although the purpose of the league has been expressed in many different 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, and publication of online resources, newsletters and a monthly magazine for members.

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.

VIRGINIA VML MUNICIPAL LEAGUE

BETTER COMMUNITIES THROUGH SOUND GOVERNMENT

P.O. Box 12164, Richmond, VA 23241 | e-mail@vml.org | www.vml.org

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FOREWORD

Dear Local Official:

We are pleased to present this Eighth Edition of the Virginia Municipal League's *Handbook for Mayors and Council Members*. The Handbook was first published in 1979, and last revised in 2021. Prior to that, it had not been revised since 2004! But the world moves fast, and the laws and practices affecting Virginia's local governments move even faster, so we are committed to publishing a new edition of this valuable resource for elected officials every five years. Please keep in mind that while most of the information will remain accurate until 2031, this handbook is meant to serve as a reference only. You should consult your local attorney before making any decisions or taking any action related to the topics covered herein.

Suffice it to say, it takes a lot of work to put together a new edition and special thanks for assistance with this edition goes to Stephanie Davis, Collegiate Associate Professor and Certificates Program Director at Virginia Tech, who served as Editor. Also deserving credit are the authors who contributed their time and knowledge to update and create new content for this handbook. Public service requires time and dedication, and we very much appreciate that they donated their time and experience to this project. Thank you all!

If you are using an electronic version of the Handbook, please note that there are active links to resources, Code of Virginia sections, and websites throughout. New for this edition are QR Codes for many of the links so that those using a printed copy can access content using their mobile devices. Officials and staff from VML member localities can receive an electronic (PDF) version by logging into their VML account at www.vml.org and navigating to the Publication > Handbooks, Guides & Reports tab.

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 website (at the same location as the *Handbook* above). VML also provides information that will help you avoid any mishaps with these complex Acts.

We always welcome comments and feedback on our publications. Please let us know how we can make them most useful. Please send feedback or requests for assistance accessing content on our website to VML's Director of Communications Rob Bullington at rbullington@vml.org.

Thank you for your service to the Commonwealth. We hope this handbook proves useful in your endeavors.

Sincerely,

Michelle Gowdy
VML Executive Director

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CHAPTER 1

Local Government Authority: The Dillon Rule

By Michelle Gowdy

Included in this chapter:

- **Introduction: Home Rule vs. the Dillon Rule**
- **The Dillon rule and its application in Virginia**
- **Determining the extent of local authority**
- **Conclusion: The future of the Dillon rule in Virginia**

Introduction: Home Rule vs. the Dillon Rule

Local government authority is derived from the state in one of two ways in the United States, "Home Rule" or "Dillon Rule".

Home Rule is a transfer of power from the state to units of local government so they 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.

In **Dillon Rule** states, however, 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 makes their needs and priorities subservient to those of the state.

Virginia is a Dillon Rule state – Virginia's localities get their authority from the State Constitution, the State Budget, and various sections of the Code of Virginia.

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 strongly distrusted 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."

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)*.

The Dillon Rule defined

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.*

Despite attempts over the years 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.

The takeaway for Virginia's local governments: Be careful and don't make assumptions! If you aren't certain if you have the authority to do something, you most likely don't. Always check with your local attorney first!

Dillon Rule example

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:

- Common areas in an educational facility, including but not limited to, classrooms, hallways, auditoriums, and public meeting rooms;
- School buses and public conveyances; and
- 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, under the Dillon Rule, if the statute does not authorize the locality to act, it cannot.

There are other code sections that deal with smoking, but because localities need express permission from the state to prohibit smoking, some have taken to asking that people not smoke near various facilities. In 2012 Arlington County began a campaign asking people not to smoke in certain locations. At the time, Jason Spencer of the Clarendon-Courthouse- Rosslyn Patch noted:

"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." (emphasis added)

Determining the extent of 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 are authorized 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 among those that localities use the most when questions of local authority arise.

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.

First – Determine specific authority

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 v. New Cingular Wireless PCS, LLC.*) So, before you can take any action, you must first determine if the local governing body has the authority to do so. This can be difficult because the Code will most likely not specify the exact thing that you want to accomplish. Consider the example about regulating smoking above; even though it seems to be 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. If a locality enacted a smoking prohibition at parks it would be void. Proceed with caution and ask your attorney to review case law, etc. when there is no express authority for your position.

Second – Establish proper execution

Assuming you are able to determine that you have specific authority for an action, you must then ensure that the power is properly executed. It is essential that you implement enforcement in the specified manner; no other manner of enforcement can be used.

To see how this can play out in the real world, consider the following examples from the Town of Front Royal and the City of Harrisonburg.

Example: Unsuccessful navigation of the Dillon Rule by the Town of Front Royal

Below is 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. *§ 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."

The case of *Logie v. Town of Front Royal, 58 Va. Cir. 527* came about after the town enacted an ordinance to enforce the uniform statewide property maintenance code. The enabling state statutes allowed 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, a resident of the town, 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 no express authority. The rule of thumb is, if the Code doesn't say that you can do it – you probably cannot! Before proceeding, ask your attorney to review case law, etc. to support your position.

Example: 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 new ordinance forbade landscape cover material (which could be mulch) within 18 inches of buildings with combustible siding, such as vinyl. Per the ordinance, the 18-inch space between the building and the cover material had to be filled with 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 their citizens.

S1

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 were introduced by a delegate and a senator who represented the City of Harrisonburg. If the matter has stopped there, it would serve as an excellent example of the General Assembly using its power under the Dillon Rule to prohibit action by a locality. But in this case the City of Harrisonburg kept working on the issue. In 2016, the city amended the local ordinance so that it did not require the *removal* of any combustible landscape material; instead, it prohibited 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 – that would have prohibited localities from requiring the retrofitting of mulch were vetoed. So, the City of Harrisonburg accomplished its goal to provide for the health, safety and the general welfare of its citizens while abiding by the Dillon Rule limitations on its power.

The new mulch: Gas powered leaf blowers

For several years, the General Assembly has taken up the issue of gas-powered leaf blowers as many localities would like to ban their use. In 2024, the Office of the Attorney General opined that, despite the Dillon Rule, some municipalities can reasonably regulate or ban the use of gas-powered leaf blowers as a noise-control measure. This was a very specific decision based on language in the City of Alexandria's charter and therefore does not translate to other localities in the Commonwealth. During the 2026 General Assembly session the bills related to banning gas-powered leaf blowers were again not enacted. So, this fight will continue!

Conclusion: 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 2

Who's who: Elected Officials in Local Government

By Kimball Payne

Included in this chapter:

- **Introduction: Navigating the local elected official / citizen relationship**
- **Forms of local government in Virginia**
- **Mayors**
- **Council Members**
- **Constitutional Officers**
- **School boards**
- **Final thoughts: Working with state and federally elected representatives**
- **Appendix A. Tips for Effectively Communicating with Legislators**

Introduction: The local elected official / citizen relationship

Local government is the level of government that is the closest to the citizens. This closeness provides both challenges and opportunities. Elected officials have a responsibility to be accessible and responsive to the citizens of their community; however, local elected officials may find that accessibility goes beyond the formal arrangements that they make to receive citizen inquiries, complaints, or input. Many local officials find that they are approached by citizens in informal settings such as in the grocery store, or at church, sporting events and other activities. They may also receive phone calls, texts, or emails at any hour of the day or night. There is no one-size-fits-all way to handle these situations. Instead, each elected official develops his or her own approach to citizen interaction.

The role of citizens

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.

Non-residents have a role too

Because cities and towns are typically the focus of commerce and culture in the larger region, there are many non-residents 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.

Forms of local government in Virginia

The duties and responsibilities of elected (and appointed) local government officials depend on the form of government in the locality. Virginia's municipal localities operate under either the **council-manager** or the **mayor-council** form of government.

Council-Manager. Except for the City of Richmond, all the Commonwealth's cities (and many of its towns) are under the council-manager form of government. In 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.

Mayor-Council. In the mayor-council form of government, smaller towns are not required to hire a chief administrative officer, although they may hire a manager or administrator for specified functions. The town may also use a committee structure to oversee government administration, under the direction of the mayor. In those localities, council members may undertake administrative duties that would not be appropriate for council members in localities with a manager.

Mayors

Code of Virginia § 15.2-1400 requires the qualified voters of every locality to elect a governing body. For municipalities 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 depend on the form of local government.

Role of the mayor

Regardless of the form of government, state general law § 15.2-1423 assigns to the mayor the duty of serving as the presiding officer at council meetings and designates the mayor as the head of the local government for all official functions and ceremonial purposes.

In the **mayor-council form of government** Code of Virginia § 15.2-1423 states that it shall be the duty of the mayor to see that administrative functions 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. Other specific responsibilities and authority may be included in the locality's charter.

In 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 determine how this role in the community is defined.

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

When does the mayor vote?

Most city mayors in Virginia vote as a regular member of council and do not have tie-breaking or veto power. In most towns, the mayor does not vote as a regular member of council but has either tie-breaking or veto power, or both.

How is the mayor elected?

By council – In more than half of Virginia's cities, the mayor is elected from among its council members. In some cases, this is determined by the most votes in the general election in others the role of mayor is rotated amongst council members.

By citizens – In some towns and cities, the mayor is directly elected by the citizens and runs for the specific role of mayor.

The 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 administration with the legislative body, 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 or recommends 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.

The mayor-manager relationship

Ideally the mayor and the manager have a close working relationship. A healthy mayor-manager relationship can be invaluable to the locality as they must work together in numerous ways, including:

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

Remember

The mayor and council set policy, the manager implements it.

Council Members

The council is the legislative and policy-making body in municipal government. General law states that "all powers granted to localities shall be vested in their respective governing bodies." § 15.2-1401

While council members possess governmental authority only as a body, individual council members have powerful opportunities to serve their constituents. Examples include:

- 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.
- Suggest goals for the local government and the community

Campaigning vs. governing

Among the challenges faced by newly elected council members is transitioning from a "campaigning" to a "governing" mindset. Campaigns for local offices are appropriately focused on individuals, their qualifications and initiatives. These elections are becoming increasingly partisan, with candidates running on party labels. However, once elected the individual council members must operate as part of a team to work for the common good of the locality. Exactly what that common good is, and what actions are appropriate to address it, may be subject to differing opinions. Governing bodies are most effective when they can civilly address differences, seek common ground, compromise when necessary, and agree on priorities to make the community better.

Primary responsibilities of the council

- Focus on major community goals and projects.
- Set overall policy for the local government.
- Address the locality's long-term future through considerations such as land use planning, capital improvement plans, and strategic planning.
- Appoint the clerk for the governing body.
- Appoint, 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 treasurer, the assessor, or the police chief).
- Approve the budget and set tax rates.
- Approve the issuance of local debt.
- Adopt local ordinances/resolutions.
- Adopt a comprehensive plan (which dictates the future land use of the locality).
- Redistrict every ten years, in those localities where council is elected by ward.
- Determine the salaries of council members and the mayor.
- Elect the mayor, in those localities where the mayor is not directly elected; or, in localities where the mayor is directly elected, elect a president or vice-mayor from among the council members.
- Fill vacancies on council.
- Appoint members of various boards, committees, and commissions.

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. § 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, economic development authorities, and housing authorities). Governing body members should always consult their local government attorney for advice before accepting two offices.

Effective July 2026, § 15.2-1535.1 makes a current member of a local governing body who has been employed by any governmental agency that is part of or subject to the control of that governing body deemed to have a continuing personal interest for two years following termination.

Constitutional Officers

Council members in cities share the 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 officers are:

- Treasurer
- Sheriff
- Commonwealth's Attorney
- Clerk of the Circuit Court
- 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. 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.

Fun facts about constitutional officers

- 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.
- 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. Nevertheless, some constitutional officers, particularly sheriffs and commissioners of the revenue, provide services to towns for law enforcement and tax administration, respectively. This is typically done through an MOU.

Responsibilities of constitutional officers

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)
- Serves a significant state function as the receiving point for state income tax forms
- In some cities, assesses real estate

Treasurer

- Handles the collection, custody, investment, and disbursement of city or county 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.
- 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:

- **Judicial proceedings in the circuit court.** 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.** 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

- Primarily responsible for prosecuting alleged felony violations of criminal law.
- The Commonwealth's Attorney may in their discretion prosecute class 1, 2, and 3 misdemeanors or other violations that include a fine of $500 or more or both such confinement and a fine.
- Also, certain responsibilities under the Conflict of Interests Act.

Sheriff (cities)

- Custodian of the jail. **Caveat:** In cities and counties operating a regional jail, a jail superintendent (rather than the sheriff) is the jail custodian. The Sheriff, however, serves on the jail board, as provided by statute.
- Process server.
- Bailiff for the courts.

Sheriff (counties)

Most county sheriffs are 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.

Independence of constitutional officers

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 and if permissible by code. 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 which should be in the form of a memorandum of understanding. 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 for constitutional officers

The funding of the constitutional officers is complex and can be 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 year to year due to state budget decisions.

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.

What does the local government pay for?

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 health 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.

What does the state pay for?

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.

How are salaries and expenses for constitutional officers determined?

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 boards

School boards are elected in most, but not all, cities and counties and the two towns that operate their own schools. The Virginia State 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. § 22.1-71 through § 22.1-87 State law sets out the process to appoint school board members and for holding a referendum to switch to an elected school board and vice-versa. Title 22, Chapter 5

See the "Education" chapter of this handbook for more on schools and school boards.

Final thoughts: Working with state and federally 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 unfunded), restrictions on local actions, and funding for shared state-local (typically, state mandated-locally delivered) services such as education, public safety, and human services are all subject to annual decisions by the General Assembly.

Having a good working relationship with the delegates and senators who represent your locality and region is essential when seeking statutory assistance or when helping them understand the consequences of proposed legislation. See **Appendix A. Tips for Effectively Communicating with Legislators** for best practices in working with state senators and delegates.

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, VMLs 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 – of which VML (and by extension its member localities) is a founding member – 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.

Appendix A. Tips for Effectively Communicating with Legislators

Local leaders have always played a crucial role in explaining to state legislators how the actions they take at the General Assembly affect Virginia's communities. It's important that your communications with legislators - whether in person, on the phone, or in writing - are clear, concise, and targeted to the issues most affecting your locality.

Written communications

A well-written letter or email is one of the best ways to introduce yourself and make your legislators aware of your thoughts and opinions about a particular issue. Here are some tips for getting your message across effectively:

- **Be brief**. Legislators have many demands on their time. They appreciate communications that are short and to the point.
- **Put the message in your own words.** Group emails, form letters and petitions don't have the same impact as personal, informed opinions.
- **Address your message to a specific legislator or legislators.** Depending on your message, you may want to write to the sponsor of a bill, certain members of a committee, or your own legislators. Don't address your message to the entire legislature.
- **Give any sources of information** that you use to make your point.
- **Include your contact information** so they have a way to respond.
- After legislation is introduced:
  - **Identify bills** by their number, title, and sponsor.
  - **Explain your position** on the bill and ask for the legislator's support or opposition.

Outside of a legislative session, the legislative branch *does not* maintain staff or facilities through which constituents may contact their legislators. Instead, constituents may contact legislators directly through any of the means listed on their individual webpages.

Scan the QR codes below to access the member lists and click on a legislator's name to view their contact information.

Senate of Virginia | **Virginia House of Delegates**

***NOTICE**: Legislators are publicly elected officials. Communications with legislators involving legislative business may be considered a "public record" pursuant to Virginia law. As such, email sent or received, its sender and receiver, and the email's contents and attachments, may be subject to public disclosure, except as otherwise provided by Virginia law.*

In person

When meeting with senators or delegates:

- **Be brief.** A short conversation is all that is needed to make a big impression.
- **Have the bill numbers.** Being able to reference specific legislation keeps the conversation on track.
- **Explain your concern.** It's not enough to say you like or dislike a particular piece of legislation. You should be prepared to say why.
- **Have a specific ask:** This is your chance to make sure they understand that you're not asking for something they *should* do, you're asking for something they *must* do.
- **Reference your locality.** Be sure to remind the legislator that you represent or work for their constituents from a particular town, city, or county. An invitation to visit is always a great way to make this point.
- **Have a business card ready**. You may need to leave it with their assistant. Write the bill number that you want to discuss on the back.
- **Follow up as soon as possible.** A well-written letter or email is one of the best ways to thank your legislator for meeting with you and to remind them of your thoughts and opinions about a particular issue.

CHAPTER 3

Appointed Officials and Staff in Local Government

By Kimball Payne

Included in this chapter:

- **Introduction: Who does the council appoint?**
- **Manager**
- **Attorney/Legal Counsel**
- **Clerk for Council**
- **Assessor**
- **Internal Auditor**
- **Bodies: Boards, Committees, and Commissions**

Introduction: Who does the council appoint?

Every locality is required by state law to appoint a clerk for the governing body. § 15.2-1538 General law § 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 a manager, an attorney/legal counsel, and a city or town clerk (who may be the manager).

In some cases, the governing body may also appoint the property assessor, an internal auditor, treasurer, 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 specific responsibilities.

The 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 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.

Made in Virginia: The council-manager form of government

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.

The eight required duties of the manager

State law § 15.2-1541 stipulates eight required duties for a chief administrative officer (i.e., 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.

What the council should expect from the manager

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

1. **Provide advice**. The manager should make 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.

All council dealings with staff should be handled through the manager unless he or she prescribes otherwise.

2. **Maintain community awareness.** The manager should work to build a great community by anticipating and reacting to changing conditions within the community.
3. **Manage staff.** A manager will recruit, hire, supervise, discipline, and dismiss 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.
4. **Ensure delivery of services.** By 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. **Curate policies.** A manager should regularly make recommendations to improve and clarify local policies.
6. **Communicate transparently.** An effective manager will keep the governing body informed; share information with all council members equally and at the same time, share responses to inquiries from individual council members with all council members, and strive to ensure that council members learn of bad news from the manager first to avoid surprises.
7. **Remain above the fray.** Demonstrating the highest professional and ethical standards to build and maintain trust with the council and the community. This includes staying completely out of partisan politics. 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 May 2025.)
8. **Act as point person.** 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 way 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 should expect from the council

Stay in their lane. 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 eroded confidence on all fronts.

Remember: The council *develops* policy, the manager administers

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 policies enacted by 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.

No surprises. 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 citizens' concerns.

Familiarity with materials. 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, conscientious council members will find time to review these materials before any discussion takes place, since they often contain valuable background information.

Consistency. 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.

Decorum during public meetings. Civil discourse on complicated issues is essential to good governance. When disagreements arise between members of the governing body, the staff should not be caught in the middle. The manager's responsibility to provide professional analysis of an issue and a recommended course of action should be respected, even if it is not politically acceptable to some or a majority of members. Furthermore, attacking or berating staff during a public meeting erodes citizen trust. Issues of staff performance should be taken up with the manager privately. The manager's performance should also be addressed outside of a public meeting.

Choosing a manager

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*, 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.

***Fun fact:** VML member localities can post unlimited job ads on the VML website for free!

Ten steps to hiring a manager

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

1. Determine 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. Identify an interim manager, from existing staff or outside the organization, if necessary.

3. Determine an appropriate level of public involvement in the process, while respecting the confidentiality of potential candidates.
4. Develop a community profile, outlining attributes, opportunities, and challenges for potential candidates.
5. Develop 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. Advertise 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. Conduct one or more rounds of interviews with candidates; determine who will conduct the interviews, and how finalists will be identified.
8. Perform background and reference checks on one or more finalists.
9. Negotiate an employment agreement (see below) with the selected candidate.
10. Introduce the new manager to the community and staff.

Employment agreements

The manager serves at the pleasure of the council, meaning he or she can be terminated without cause at any time. Furthermore, Code of Virginia §15.2-1503 stipulates that all appointments of officers and hiring of other employees by a locality shall be without a definite term. Most professional managers 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 other Virginia localities. An employment agreement must be approved by the council in open session at which point it becomes a public document.

Evaluating the manager

For a healthy working relationship, the manager needs to know if he or she is meeting council's desires and needs. While open communication and frequent feedback throughout the year are important, a formal yearly evaluation can foster a healthy working relationship by highlighting the manager's strengths and accomplishments, identifying areas needing improvement, and setting goals for the next year. 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.

Final thoughts on the manager

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.

Attorney/Legal Counsel

As authorized by state law, § 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.

Most local government attorneys belong to the Local Government Attorneys of Virginia which shares guidance on issues affecting localities.

Responsibilities

The attorney's routine responsibilities include:

- Advise the governing body and all boards, departments, agencies, officials, and employees of the locality; this could include the School Board and the Department of Social Services.
- Draft or prepare ordinances.
- Defend or bring actions in which the local government may be a party.
- Ensure proper legal processes and procedures are followed.
- Provide advice on a multitude of issues from zoning to personnel administration to land acquisition (just to name a few areas).

Additionally, it is normally expected that the attorney will attend all council meetings and often planning commission meetings.

Who does the attorney work for?

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 locality's top administrators on many day-to-day matters. In a very few localities, the attorney reports to the manager but this is not a recommended practice.

When to use outside counsel

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. The local attorney should stay involved, informed, and be the point of contact when outside counsel is used.

Clerk for Council

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 serves at the pleasure of the council and provides a series of important administrative services.

Responsibilities

- Record and maintain the official minutes of the council.
- Record the votes of council members.
- Maintain the locality's code of ordinances.
- Record and preserve resolutions approved by the council.
- Handle the proper legal advertising of notices.
- Ensure that the governing body members comply 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. In some localities, the chief administrative officer also serves as the appointed clerk. He or she may then hire a deputy clerk and delegate some or all of the responsibilities of the position.

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.

Internal Auditor

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 Code of Virginia § 15.2-2511.

Note – Only a few larger localities have an internal auditor of this type.

Bodies: 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. These bodies have a wide range of responsibilities, often set forth in state law. They may serve only the city or town (i.e., the planning commission); or they may serve several local governments (i.e., a regional jail authority or planning district commission). State law requires some of these bodies, but not all.

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.

Advisory bodies

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

Governing bodies

Governing bodies included entities such as the school board or a social services board. They are responsible for managing and operating a certain function of government and 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 can:

- 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.

Selecting members for boards, commissions, and committees

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. 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 media 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 will be 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?

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 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.

The importance of status and support for 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). 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 both the council and 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 compensation for service on 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.

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

Effective Public Meetings

By Sara McGuffin

Included in this chapter:

- **Introduction: The Governing Body at Work**
- **Goals for Meetings**
- **Audiences**
- **Key Roles**
- **Types of Meetings**
- **The Mechanics of Council Meetings**
- **Conclusion: Output – Ordinances, Resolutions, and Minutes**

Introduction: The Governing Body at Work

A city or town council exercises its corporate power through regular public meetings. These gatherings are the council's most visible and essential act of governing during which they deliberate, decide, and vote on important – and sometimes contentious – issues in front of anyone who wants to see.

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. What happens in those meetings, and how they are conducted, defines the success of elected officials both individually and as a body.

> ***"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**

Goals for Meetings

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

Goal #1: Make good public policy (and let staff administer the 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. The relationship between council and staff works best when everyone works to understand the distinction between policy and administration and then stays in their own lane. This is not always easy; staff members need to control their opinions and council members need to allow staff to implement policy without undue interference.

Goal #2: Discern and uphold community values

In the process of making policy, governing bodies must determine the community's values and then uphold them. The challenge is that a community's values can often conflict with each other. For example, citizens want low taxes and high spending (at least on the areas/services that are important to them). Council members are a part of a team that makes the most difficult choices for a community by balancing competing interests. Property owners' 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 public safety…the list is endless!

Goal #3: Engage and educate citizens

All meetings are open to the public. Council members should see this as 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 also raise public awareness and understanding of often complex and challenging issues. Some citizens may have come to hear one agenda item but 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 that are consistent with good order.

Goal #4: Enhance the council's reputation and brand

It follows that if meetings are critical to building support for the council's policies, the meeting process and outcomes 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 whole community. Conversely, meetings that regularly look disorderly, run poorly, or involve emotional outbursts from the dais damage the image and reputation of the locality.

The citizens' window into the work of the council is the public meeting. Of course, there is much more to governing than meetings, but the community will judge the council and the ethics, character and performance of its members largely by what happens at public meetings.

Goal #5: Build trust

According to the latest Pew Research Center report on trust in government, 61% of Americans trust their local government, compared to 21% for the federal government. This lopsided difference has been true for many years.

Former Executive Director of the International City/County Management Association (ICMA), Virginia's own Bob O'Neill, conducted a nationwide study of local referenda and initiatives for increased revenue or spending authority from November 2010 to January 2012. Significantly, of the local referenda and initiatives O'Neill studied, nearly 70% passed at a time when conventional wisdom held that the public would oppose any new taxes. He found that those that were successful had the following in place:

- **Transparency** – A specific, stated use for the money.
- **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.

Public trust is not the only kind of trust that a council needs to build. Building trust between local government officials themselves should also be a goal of every meeting.

Audiences

Council members should be aware of the five different audiences that watch and evaluate their performance during public meetings.

Audience #1: Citizens at the meeting

Citizens in the room are not just the most visible audience at a council meeting; they are the most important. These individuals 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 the most important interactions that council has with each other, citizens, and staff members. As such, the audience at a council meeting has certain expectations. This means citizens should be able to be comfortably seated, have good information, and be able to see and hear what is happening on the dais.

Think about your council meeting room from the perspective of a citizen attending. How does it look from the other side of the table? Are agendas readily available? Can citizens see the staff presentations? Can they hear the other citizens who come to speak?

Meeting attendees also expect information to be presented in an understandable and clear form. 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 background information, alternatives to proposed actions, and reasons for decisions.

Audience #2: Citizens not at the meeting

Many people care about what happens at council meetings, but instead of attending in person they may watch on cable TV or online video streaming. Others may read about what happened in a newspaper or online report, or they may just rely on social media or word of mouth. So, even if no members of the general public are at a meeting, council members should assume the public is aware of what they said and did.

In all cases, the council needs to do what it deems best for the entire community, even when a standing-room-only audience is demanding that the council vote in a certain way. On politically volatile issues, council members may get input from people who do not wish to speak publicly, but still want their views represented. These can be some of the hardest stances for council members to take.

Audience #3: The media

Media attention varies with the size and location of jurisdiction, but most council meetings still have reporters. Some of these are the traditional media like local newspapers, TV, or radio stations. Others are non-traditional media such as online news outlets or community forums with an active social media presence. For better or worse, much of what people know about council meetings is filtered through these entities.

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. On balance, however, the media does more good than harm for the cause of good local government and it's worth maintaining a good relationship with them. Your local media, traditional and non-traditional, is one of the best avenues for council to get information out to the public.

Rules for interacting with the media

- If you are feeling emotional about an issue, defer your conversation to a later time.
- Remember the message you want to convey and tell your story, not the one that the media would like to tell.
- Don't get pulled into conversations that will reflect badly on you, the council, or the locality.
- When you state an opinion, make sure you say it is your opinion, not the opinion of the whole council.
- If you don't know the answer to a question, say so. Tell them you will get back to them. A wrong answer is far more damaging than a delayed one.
- If someone is looking for facts, timelines, details, and so forth, refer them to staff.

Audience #4: Local employees

Local employees, and volunteer board and commission members, are often not thought of as an audience, but they may be the most attentive attendees at any given council meeting. Not only because they are most likely to have a deeper understanding of the content, but also because they have a stake in decisions that may directly affect their work. Moreover, they care about the tone of a meeting as it reflects council's attitudes towards 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 questions that help to bring out key information. At the same time, they don't want council to surprise them with questions they cannot answer satisfactorily. It's fine to ask staff members tough questions provided they've had time to prepare good answers.

In today's polarized world, it is easy be to assume that staff has a "side" in any debate. However, staff follow the policy direction of the council as a body. A solid partnership between council and staff, each remembering their roles, is critical to a well-functioning council.

> ***"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**

Audience #5: Other council members

Members of council may not think of their fellow council members as another audience, but nobody watches the meeting more closely than your fellow members. A local governing body, even in a large jurisdiction, should function as a team. That means that every word spoken, and every vote taken has an impact on the function (or dysfunction) of the team. Talk to each other ahead of time, don't surprise each other on the dais. Respectfully listen to each other in the meeting and outside of it. And after a vote is taken, let the majority rule and do so gracefully.

If you are in the majority on a split vote, sensitivity to dissenters will go a long way when the shoe is on the other foot (as inevitably it will be). When you are in the minority, you must let the matter rest and not try to circumvent majority rule. 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

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." § 15.2- 1423 Be aware that many city and town charters outline specific duties and powers for mayors, and these may vary from place to place.

Before the meeting, the mayor should represent council in helping the manager and staff set the agenda. Mayors should communicate with council members on complex issues ahead 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 the meeting process over content. For mayors who are also voting members of the council, attending to process over content may be difficult but 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, the mayor sets the tone of the meeting. They do this by listening well, demonstrating respect for all, 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.

Local 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 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.

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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, the council will not be able to act on that item.

The clerk is often the person who speaks most frequently with council members. The clerk is typically one of the appointments made by council. However, depending on the locality's charter, the clerk may be an employee of the council or of the manager.

Manager and Staff

The manager and staff's primary contribution to a successful meeting comes before (preparation) and after (implementation). Before a meeting, the manager and staff are responsible for providing the council members with the information needed to make decisions. After a meeting, they are responsible for implementing the will of the council. Most localities have a routine process to ensure that the work desired by the council gets completed in a timely fashion after the meeting.

Most localities also will have a set process for the mayor to review the agenda before publication, and then with council members after publication, to provide any additional information. Some localities have set meeting schedules for going over the agenda with members while others are less formal. Whenever possible, council members, the manager, and staff should share what they expect to happen at the meeting. In this way, the manager and staff can be prepared to assist council in accomplishing its goals for the meeting.

> **There is a delicate balance between staff giving council all it needs to make good public policy without creating the perception that council "rubber stamps" staff decisions. For example, staff presentations 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 sometimes be frustrated that the manager and staff have executive and operational authority in the local government while the council has none. On the other hand, council members have influence as elected officials, with the power of their one vote, and in the policy direction and legal authority of the council as a whole.**

The role of staff reports

Prior to meeting, council is typically provided with staff reports that include recommendations for most substantive items on the agenda. The recommendations should be precisely worded and constructed so that members can use them verbatim as oral motions, if they choose. Frequently, staff may provide options for motions that address both sides of an issue. This helps council members to make clear, concise, and complete motions on the floor and prepares council members for what is likely to be brought forward during the meeting.

Staff also transmits reports and recommendations of committees, boards, and commissions, such as the planning commission, for zoning and land use matters. Such reports are made available prior to every meeting not only to council, but also to the press and public as required by Code of Virginia § 2.2-3707.

Speaker at the podium

The person at the speaker's podium is a role that is often overlooked, but it is an important part of most meetings. They may be an invited guest, a distinguished visitor to the community, or 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 petition or simply speak to the 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 and make eye contact that lets them know their presence is appreciated. (See the "Public Hearing and Citizen Comment" section below for more on making the most of citizen speakers.)

Types of Meetings

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

Annual or organizational meetings

As prescribed by state law, governing bodies convene an annual or organizational meeting in the July after an election. § 15.2-1416 While the Code still says July for cities and towns, VML recommends having the organizational meeting in January due to changes in elections. During the organizational meeting governing bodies establish the days, times, and places of their subsequent regular meetings. **If an inclement weather policy is added, then the governing body can also use this meeting for all hearings and other advertised matters without the need to readvertise.**

At the organizational meeting, councils elect the mayor and vice-mayor, unless those officers are elected directly by popular vote. After being elected by the council, the new mayor immediately takes up the role of presiding officer. Virginia Code § 15.2-1522 requires that each elected official take the oath of office on or before the day on which his or her term of office begins.

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, local attorney, and manager – to establish the locality's senior governmental team.

What constitutes a meeting?

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." § 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. The city or town attorney can provide members with guidance on applying the law to specific situations.

An occasion to celebrate

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.

Regular meetings

State law requires a minimum of only six regular meetings per year, but most city councils meet twice a month. Most town councils meet monthly, although some meet twice a month, and a few meet every other month. Agendas for regular meetings typically include 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.

Regular meetings may begin with a simple call to order and taking of the roll, or with more formal opening ceremonies, such as the Pledge of Allegiance or an invocation. All council meetings begin as open public meetings. As prescribed by the Freedom of Information Act (FOIA), these meetings require advance public notification of agendas and agenda packets and require that minutes be taken. 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 that is closed to the public.

When to meet: Day or night?

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 that extend into late hours of the night, can lead to poor decisions and strained relations.

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. § 15.2-1417 Moreover, unless all members are present, and all agree, only the item(s) specified in the notice may be considered at the special meeting. Special meetings may also 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 sessions, 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. § 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, which may be paired with regular meetings, facilitate council discussion that can lead to better informed decisions during 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.

Retreats are extended work sessions aimed at tackling challenges beyond day-to-day business. Often, retreats focus on strategic planning, conflict resolution, or improving council's processes, as opposed to addressing local issues. When retreats do take up local issues, the focus should be long-range, as opposed to routine business.

It's important to remember that despite their name, retreats are still open, public meetings. Going away for retreats may enhance council team building and dialogue but can also invite criticism for impeding citizen attendance. As an alternative, council could consider a retreat location that remains in the locality, but in a more comfortable and less formal venue and outside normal workdays, such as on a weekend or holiday.

Joint meetings and town halls

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

Joint meetings might be held 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. Joint meetings with volunteer boards and commissions can go a long way towards maintaining or repairing good working relationships between the bodies.

Town halls encompass 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 with sticky dot informal voting, instant feedback electronic polling, and other participatory techniques. Town halls can effectively engage the public in such topics as strategic planning and goal setting, or in determining budget priorities. These meetings 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. Voting on issues by council members rarely occurs at town halls.

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

The procedures for council meetings 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 (*use links or QR codes*):

- **City of Williamsburg**
- **Town of Leesburg**
- **City of Staunton**
- **Albemarle County**

Parliamentary procedure is usually based on Robert's Rules of Order for Smaller Bodies, but it should be tailored and documented to fit the needs and traditions of each governing body.

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 the mayor and typically include only those items ready for decision. The agenda and related materials should go out several days in advance of the meeting. The related materials should include 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 public and the council at the same time. It is usually 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. Finally, it's important to remember that the agenda is a planning and guiding document, not a binding agreement. While the council can deviate from the agenda if the majority agrees, members will generally find it in their interest to abide by it.

Using consent agendas and calendars

Just because an item is on the agenda, does not mean it requires much discussion. One tool to move the council through 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 of the governing body 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.

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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. § 2.2-3710 Virginia law, however, provides for some remote participation, subject to certain conditions and local authority.

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 § 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. 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 prevented 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:

- Adopting or amending zoning or subdivision ordinances, or comprehensive land use plans.
- Rezoning property.
- Adopting budgets and setting tax rates.
- Selling or leasing public property.
- Closing 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 a council meeting, or at the end, balancing the public's convenience with council's need to accomplish its scheduled business. The Code of Virginia § 15.2-1416(D) requires that governing bodies allow public comment at least quarterly.

A time to listen, not to speak

Public comment time is designed for citizens to speak, and for council to listen. Public interaction from the council should be limited to a simple 'thank you,' from the mayor as the presiding officer.

The value of a citizen participation policy

Hearings and open forums can also be frustrating for council members when citizens use them repeatedly 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. 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. As an example, see the City of Hampton Citizen Participation Policy.

Tips for keeping things on track

During a formal public hearing and other citizen comment periods, the mayor should:

- Open the public hearing or open forum, indicating citizen comment is welcome, and setting forth the rules.
- 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.

Conclusion: Output – Ordinances, Resolutions, and Minutes

Council adopts policy mostly in the form of ordinances and resolutions and preserves its proceedings for history in its minutes.

Ordinances

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 § 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 usually codified by a firm specializing in that work. Typically, local codes are no longer printed, but exist only in electronic form online, freely accessible to all.

Resolutions

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. However, 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.

Minutes

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 meeting materials – agendas, reports to council, ordinances, resolutions, presentations, minutes, etc. – available on the jurisdiction's website. Additionally, many localities broadcast their meetings on television or online.

About the Author: Sara E. McGuffin is the town manager of the Town of Amherst and has 25 years of local government experience. She has also served as an elected member of a Board of Supervisors.

CHAPTER 5

Working as a Team

By Sara McGuffin

Included in this chapter:

Introduction: Governing is a Team Sport

Being an elected official can be an exercise in frustration. When candidates become elected officials and show up for their first council meeting, they quickly realize they will not be able to accomplish anything as one person. They are now members of a governing body – a team. That team has lots of power and authority, but it is corporate power, and individual members have just one vote.

In this chapter we will look at what it takes for a group of elected officials, some of whom may have been elected by running on opposing sides of the same issues, to function as a team. Just as in sports, an individual player can have a good or a bad game, but in the end, what really matters is if the team wins. And in local government parlance, "winning" means providing effective governance for their community.

Making the Transition: Campaigning to Governance

The transition from campaigning to governing is difficult. However, there are behaviors and strategies that can make it easier to stop thinking as an individual focused on voters and begin thinking as a member of a team focused on the community.

Counting counts: Nobody gets anything passed by themselves. Before you bring your ideas to a vote, be sure you've considered how many you can count on. Too often, elected officials think that if they have the best ideas, they will win the day at the meeting. However, wins take work. Make sure you've put the time and energy into securing the votes needed from your fellow members of council.

Communication is key: No good communication happening outside of meetings almost guarantees no good communication happening inside meetings. Talk with your fellow council members, even the ones you don't agree with (especially the ones you don't agree with). If you and a fellow council member don't see eye-to-eye on an issue, something as simple as a call to chat about something you do agree on (love of dogs, shared alma mater, kids of similar age, etc.) can go a long way to starting a dialogue on the issues that matter most.

Think deliverables (not promises). Campaigning is about all the things that people want. Governing, on the other hand, is about what can be delivered. The language of campaigning is full of absolutes and aspirations. The language of governing is full of perspectives and pragmatism. It can be difficult to make the trade-offs and compromises necessary to "get the ball down the field" for a partial win, but the alternative is often a complete loss.

Learn to take the loss. No matter how much work a council member puts into an initiative, there are always votes that don't go the way they want. Of course, it is frustrating to be on the losing end of a vote but, like baseball players at the end of a game holding out their hands and saying, "good game", be gracious when you win and accept it gracefully when you lose. Learning to do this will help the council function more effectively and help individuals find opportunities for compromise in the future.

Run a marathon (not a sprint). A campaign platform consists of a variety of issues that the council member wants to accomplish as soon as possible after the election. But you must take the long view or a bad meeting, or a string of bad meetings, will distract you from accomplishing your goals. The effectiveness of the council and its members will be judged by its work over years, not days or weeks.

How to be a Team

It can't be overemphasized how important it is for a local government council to function as a team. When a council is working as a team, one disruptive or dissenting member will not throw the council off their game. When the teamwork isn't there, however, all it takes is one contrary member for the council to lose its focus and fragment. Fortunately, there are some practices that can help councils function as a team, even when times are hard.

Scale matters

Though they are both legislative bodies, a local council is fundamentally different from a state legislature in terms of scale 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.

Have a clear set of expectations for council and staff. As mentioned in the previous chapter, having rules of procedure to guide council's actions and the mechanics of meetings can provide a way to cool things down when temperatures rise.

Have a plan. At the beginning of each new council term, hold a meeting to discuss what the newly formed (or reformed) team wants to accomplish. This can be in the form of a vision statement, a work program, a list of goals, or a strategic plan. The format of the document is less important than the work and energy that goes into the conversations. Moreover, the guidance it creates for the coming year can direct staff as to where the new council would like to put its energies.

Connect your budgeting process to your plan. In whatever fashion council frames its goals for the term, apply those expectations to the budget process. Make sure that the process engages council to think about the goals you set and how the budget meets those goals.

Respect your colleagues. If your council is elected by district or ward, show respect and, when appropriate, even deference to your colleagues when a request is centered in their district. If a colleague holds a position on a committee or commission, show respect for their experience and knowledge in that role. This does not prevent you from your beliefs or conscience, but it is a small courtesy that can pay big dividends when situations are reversed.

Why Conflict is Normal and Necessary

In representative democracy, conflict is normal and even essential. This is true at the national, state, and local levels. City and town council members will differ in political philosophy and positions on the issues of the day; they will differ on the relative importance of community needs and the priority of programs to address those needs; they will differ in assessing the performance of staff and on the effectiveness of services; they will differ on how much to tax and how much to spend. And, of course, individual personalities can clash. In fact, 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 a governing body contains both the predisposition for conflict, and the internal capacity to manage and resolve it.

How to diffuse conflict

Sometimes, conflict can't be resolved. In those cases, the goal for the team should be to work together in a professional fashion that does not create harm for the locality. But other times, conflict can be reduced. Here are some ways that you can reduce conflict when it occurs.

Share your stories. Talking about things not related to the business of council can help keep everyone grounded. It may be a big, substantive question that everyone answers at a retreat, like "What is your 'why?'" It could be a short exercise at the beginning of each work session that asks each to answer, "What happened great in our community this week?" It can also just be a check in about fun, personal things (pets, hobbies, etc.). Sharing your stories helps everyone to reframe each other as people, not just positions.

"Slow your roll." I've borrowed this phrase from my mayor, Dwayne Tuggle. He uses this tactic when tensions are high during meetings. In a nutshell, it recognizes that speed is the enemy of good decision-making. Under pressure, council members become more positional, more personal, and less willing to listen to each other. "Slowing your roll" can mean taking a recess at a meeting, adjourning when the council is not acting effectively, or just putting a pause on responding to that email or social media post.

Differences of opinion are not reasons to dislike someone. When conflict arises, remember to disagree with the points and policies not the person. This can be difficult for local government council members who often want to serve because they care deeply about an issue or set of issues. But it's important to keep in mind that as soon as a debate becomes personal, it isn't going to a good place. Once that happens, nobody's priorities will be heard.

Don't adjudicate over social media. When used judiciously for issues that the council is addressing as a team, social media is a great way to create a well-informed populace. But, by the same token, social media is a terrible place to argue with each other or with citizens. When that happens, council is contributing to a climate in which people with different opinions become enemies. This, in turn, perpetuates and fuels criticism of the governing body and decreases the likelihood that the people's work will be done.

Conclusion

It is important to accept and understand that conflict is a feature, not a bug, of local governing bodies. In fact, an absence of conflict can leave citizens wondering how everyone can possibly be of the same mind. They might suspect that council is disengaged and only does what one or two members, or the staff, tells them to do. So, councils should debate, deliberate, and argue in a civil, professional and respectful manner. This will ultimately make the team work better for the good governance of the city or town.

Being elected takes courage, stamina, and grit. Very few people run for office because it is a job with a tremendous amount of work and a lot of headaches. The willingness of elected officials to serve in the face of all the challenges is an honorable calling, filled with love for the place you live. When working with your fellow council members, remember why you ran, who you serve, and how you want to be remembered.

About the Author: Sara E. McGuffin is the town manager of the Town of Amherst and has 25 years of local government experience. She has also served as an elected member of a Board of Supervisors.

CHAPTER 6

ABC's of Local Government

By Kimball Payne

Included in this chapter:

- **Introduction: The origin of local government in Virginia**
- **Types of local governments**
- **Mayors and council**

Introduction: The origin of local government in Virginia

The United States Constitution says nothing about local governments, leaving them to the States. In Virginia, as in the other states, all local governments are tools of the state, created by specific action of the state legislature to fulfill state purposes and to address local concerns. As creatures of the State, the powers of local governments are defined and limited by the Virginia Constitution, State Code and the annual State Budget.

The history of local government in Virginia goes back to colonial times and early efforts to provide for settlement, defense, and commerce in the colony. In 1634, the General Assembly divided the colony into eight "shires," now known as "counties." In 1639, Jamestown was designated the "chief town" of the colony and the location of the governor's residence. In 1699, with Jamestown declining, the capital was moved to a new town known as the "City of Williamsburg." On July 28, 1722, Williamsburg was granted a charter incorporating it as Virginia's first city. As settlement moved westward, new counties, towns and cities were created by acts of the General Assembly to provide for the more efficient delivery of services such as law enforcement, tax collection, and courts.

> ***"… the public good, the real welfare of the great body of the people, is the supreme object to be pursued: and that no form of government whatsoever has any other value than as it may be fitted for the attainment of this object."***
>
> **- James Madison, Federalist Papers #45**

Types of local governments

Article VII of Virginia's 1971 Constitution establishes four types of local governments: cities, towns, counties, and regional governments. These are defined accordingly:

Cities are independent incorporated communities of 5,000 or more; however, the 1971 Constitution grandfathered cities under 5,000 that existed prior to July 1, 1971.

Towns are communities of 1,000 or more (with the same grandfathering language as cities).

Counties are defined simply as "any existing county or any such unit hereafter created."

Regional governments (none currently exist) were defined as "a unit of general government organized as provided by law within defined boundaries, as determined by the General Assembly."

The 1971 Constitution also identified two other local bodies:

- The Local Electoral Board Article II, Section 8
- The School Board Article VIII, Section 7

Cities, towns, and counties further explained

Cities are independent of counties; residents vote for city council members and constitutional officers. Cities are required to provide services on behalf of the state, including social services, courts, public health, mental health services, and election administration.

Since 1987 there has been a "temporary" moratorium on the creation of new cities and the institution of annexation proceedings by cities. § 15.2-3201 The moratorium has been extended routinely by the General Assembly and currently goes through 2032.

Towns are geographically and politically part of the county; residents elect their council members and participate in the election of members of the county government body and constitutional officers. Town residents pay both town and county property taxes and receive services from both.

There are procedures for incorporating towns § 15.2-3600-3605 and for relinquishing a town charter. § 15.2-3700-3712 Towns are authorized to make boundary adjustments or institute annexation proceedings with adjoining counties.

Mayors and council

All cities and towns – except for the City of Richmond (and a very few towns) * – are organized under the council/manager form of government which vests the legislative authority and responsibility in the elected council. Administrative authority and responsibility are vested in a manager who is appointed by council.

**The City of Richmond and a few towns operate with a "strong mayor" who has executive authority.*

Virginia by the numbers

- Virginia has 38 cities, 191 towns, and 95 counties.
- Largest city is Virginia Beach (approx. 452,000 in population, 2025)
- Smallest city is Norton (approx. 3,366 in population, 2025)
- Largest town is Leesburg (approx. 49,932 in population, 2025)
- Smallest town is Clinchport (approx. 65 in population, 2025)

Distinctive features of Virginia's local governments

- Virginia is the only state with all independent cities that are geographically separate from the counties.
- The council/manager form of government is the most popular.
- School boards are fiscally dependent (in other states most school districts have independent taxing authority).
- Virginia has fewer units of local government than most states.

Make up of city councils:

- Most have 5-7 Members including the mayor.
- Terms are 4 years except the City of Alexandria which has 3-year terms and the City of Fairfax which has 2-year terms.
- The mayor is directly elected by the voters in 22 cities and is elected by the council in 16 cities.
- Elections are staggered in all but 3 cities.
- Councils are elected at large in 24 cities; 14 cities have elections by wards or a combination of wards and at large seats (or super ward) seats.

Make up of town councils:

- About 60% of the 190 towns have 7 member councils.
- 66% of the towns have 4-year terms for council members; most others are 2 years.
- The mayor is directly elected in most towns.
- Elections are staggered in most towns and members are elected at large.

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.

SECTION 2
LEGAL CONSIDERATIONS

- **Sovereign Immunity** - by Michelle Gowdy
- **Freedom of Information Act (FOIA)** - by Michelle Gowdy
- **Virginia Conflict of Interests Act (COIA)** - by Michelle Gowdy
- **Legal "Quirks"** - by Lawrence Spencer
- **Elections** - by Josette Bulova
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CHAPTER 1

Sovereign Immunity

By Michelle Gowdy

Included in this chapter:

- **Introduction: What is Sovereign Immunity?**
- **Differences: State, County, and Locality**
- **Immunity for Officers and Employees**
- **Lawsuits: Notice of a Claim**
- **Risk Management**
- **Conclusion: Exceptions to Sovereign Immunity**

Introduction: What is Sovereign Immunity?

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.

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 Virginia Supreme Court case of *Messina v. Burden, 228 Va. 301, 321 S.E. 2d 657 (1984)* summarizes the doctrine of sovereign immunity as a "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.

In addition to sovereign immunity that derives from a long history of court cases, statutory immunity applies to two areas:

1. Recreational Facilities § 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 § 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.

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 A and Appendix B at the end of this chapter.

Differences: State, County, City and Town

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.

In *Commonwealth v. Mattocks, Record No. 250586 (Va. Feb. 19, 2026)*, the Supreme Court of Virginia held that sovereign immunity bars a group of Department of Corrections employees from suing the Commonwealth for unpaid overtime. This case was under a 2021 statute (the Virginia Overtime Wage Act) which had an explicit wavier of sovereign immunity; the General Assembly removed that waiver in 2022. The Commonwealth filed a plea of sovereign immunity arguing the overtime was prior to 2022, but the court found that the immunity issue was subject matter jurisdiction determined at the time the suit is filed.

Counties

Counties, like towns and cities are political subdivisions of the Commonwealth but are considered to be more closely a part of the Commonwealth than municipal corporations (cities and towns) and therefore most county attorneys argue that their counties 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. Qualified immunity is explained below.

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

Cities and Towns: Governmental functions vs. proprietary functions

The functions that cities and towns carry out are in two categories for sovereign immunity analysis: governmental or 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. In short, governmental functions include all work related to public safety, health and welfare.

In the 2024 General Assembly Session, Delegate Webert introduced HB704 which stated that in any case in which a locality is the owner of, or operator through medium of a driver of, or otherwise is the insured under the policy upon a vehicle involved in an accident, or is self-insured, the defense of governmental immunity shall not be a bar to action or recovery of damages arising from such accident against such locality. This bill died.

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)*.

In the 2026 General Assembly Session there were numerous bills related to speed cameras that included language for governing bodies to cede sovereign or sometimes qualified immunity. Also in the 2026 General Assembly Session, Senator Surovell introduced SB228 which stated if a locality or political subdivision may provide liability insurance, including self-insurance, to cover damages or other expenses in certain civil actions arising out of an act or omission of certain officers, employees, board or commission members, or volunteers while such person is acting within the scope of his official duties, they waive sovereign immunity. This bill was continued to 2027 but is indicative of how legislators are watching the issue of sovereign immunity.

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." (public safety) *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)*.

Some other proprietary functions. Maintenance of a crosswalk; clearing and maintaining water and sewer lines; routine street maintenance.

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.

Not proprietary but…

In the case of Ellis v. Jolly Docket No. 240930 (Dec. 11, 2025) a city employee driving a trash truck went through a stop sign and collided with another vehicle. The occupant filed suit and the city argued that the city and employee were protected by sovereign immunity. After the appeals, the Supreme Court found that the employee was driving "normally" and therefore was not protected by sovereign immunity. The Court remanded the question of whether the city was protected.

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 V. 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 people 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.

Individual immunity

Note that in addition to sovereign immunity, the state code and case law provide individual immunity in certain cases.

Good Samaritan immunity. "Good Samaritan" or Good Samaritan law immunity protects people who voluntarily render emergency aid from civil liability for ordinary negligence, so long as they act in good faith and without compensation. § 8.01-225

Recreational use immunity. In Virginia, this concept appears in the recreational use statute § 29.1-509, which gives landowners immunity when they allow the public to use their land for recreation without a fee, subject to statutory exceptions.

Lawsuits: 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." Under this section "Every claim cognizable against any county, city, or town for negligence shall be forever barred unless the claimant or his agent, attorney, or representative has filed a written statement of the nature of the claim, which includes the time and place at which the injury is alleged to have occurred, within six months after such cause of action accrued." The courts have been generous in accepting what constitutes sufficient notice. 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 to put its employees at risk of being sued. 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.

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.

Risk management resources

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).

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 management strategy so that your locality can demonstrate a commitment to addressing any identified deficiencies.

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.

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

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

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. This 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 for 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.

Other types of insurance. 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.

Conclusion: 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 (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)*

About the author: Michelle Gowdy is the Executive Director of the Virginia Municipal League. Previously she served as the league's General Counsel. She began her local government career in 2009, working as an Assistant County Attorney in New Kent County. She later became the New Kent County Attorney in 2010 and spent a brief amount of time as the James City County Attorney in 2015 prior to joining VML.

Appendix A: Functions covered by sovereign immunity

Note: The below are listed 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, *Maia's Adm'rs v. Eastern State Hospital, 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 B: 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
Street and sidewalk maintenance	Normal maintenance

CHAPTER 2

Freedom of Information Act (FOIA) **By Michelle Gowdy**

Included in this chapter:

- **Introduction**
- **Meetings**
- **Records**
- **Conclusion**

Introduction

The Virginia Freedom of Information Act or the "Act" (FOIA) was enacted by the General Assembly in 1968. Local public officials are required to read and familiarize themselves with the law as well as receive a copy within two weeks of being elected. § 2.2-3702(ii) All local government officials including the executive director and members of each industrial development authority("IDA"), economic development authority ("EDA"), and members of any boards governing any authority established pursuant to the Park Authorities Act are required to take FOIA training within 2 months of assuming office and at least once every two years thereafter. § 2.2-3704.3 Each local and regional public body must designate a FOIA Officer, whose contact information must be readily available.

The Freedom of Information Act Advisory Council ("FOIA Council"), through its staff, provides local officials with timely information, training, and will issue advisory opinions about the act that will assist in compliance.

> Use the link or QR code to visit the FOIA Council website.

This chapter has two major sections – meetings of a public body and records of a public body. The term "public body" will be used to generally describe any locally elected public body, such as city and town councils, as well as any county board, IDA, EDA, and committees of all such bodies. Where a difference exists in the act's requirements for a specific type of local elected public body, the difference is noted.

Purpose of the act

FOIA generally determines how local public bodies must conduct their meetings, from city council sessions to a citizen advisory committee recommending where to locate a new sidewalk. The act also regulates the public's access to local government records.

The guiding principle of FOIA is openness. The act aims to "[ensure] the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted." § 2.2-3700(B) The section further declares that "the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." *Id.*

Thus, FOIA attempts to ensure that Virginia's citizens have the ability to observe how their elected public officials are conducting public business.

Definition of a "public body"

The open meeting requirements apply whenever a public body holds or participates in a meeting. The definition of "public body" is very broad. § 2.2-3701 City and town councils and county boards of supervisors obviously are included. All committees and subcommittees are included, regardless of whether any members of the local governing body serve on the committee. Citizen committees are included if the committee is charged by the public body appointing it with either carrying out some function for the public body or advising it. Elected local constitutional officers and private police departments are included for the purpose of access to public records but are not subject to the public meeting requirements. FOIA specifically states that having citizen members does not exempt a body from the act. Id. Accordingly, a citizens' committee formed by a city or town council to advise where a park or school should be located would be a public body subject to FOIA.

Designating a FOIA Officer

All local public bodies, including regional bodies shall designate and publicly identify one or more FOIA officers who will be responsible for FOIA requests. In addition, the Officer must be trained once every 2 years by either the FOIA Council or their locality's attorney. § 2.2-3704.2 The name of the designated officer/officers must be provided to the FOIA Council by July 1st of each year.

Posting of rights & responsibilities

Any county, city, or town with a population of more than 250 must post rights and responsibilities on their website. § 2.2-3704.1 A template of the rights and responsibilities is available on the FOIA Council website and can be easily adapted to any locality.

Any locality with a population of more than 250 shall also include a link on their official government public website to an online public comment form that can be found public notice of meetings on the FOIA Council's website.

Cost of responding to a request

Remember that cities, towns and counties with a population over 250 and any school board shall post on their website a written policy (i) that explains how the public body assesses charges for accessing or searching for requested records, and (ii) the current fees charged, if any, for accessing and searching for the requested records.

If a locality intends to charge to produce a record, it shall notify the requestor in writing of the right to ask for a cost estimate (even if the FOIA request was not in writing).

Public notice of meetings and public hearings

General notice requirements that are spelled out in the act must be followed in order to hold any meeting of a public body.

Notice of date, time and location of a public meeting should be posted on the official government website if there is one, and also the usual places: in a public location where notices are usually posted and at the office of the clerk or if there is no clerk, the office of the chief administrator. §2.2-3707 The notice must state the date, time and location of the meeting and must be posted at least three days before the date the meeting is to take place. § 2.2-3707(D) For regular meetings, a simple way to comply with this requirement is to post a single notice listing the information for all meetings for the upcoming year. This way, nobody will forget to give notice of a regularly scheduled meeting. For special emergency meetings, the notice must be reasonable given the circumstances. The notice must be given to the public and anyone who has requested individual notice, at the same time the notice is given to the members being called to attend. § 2.2-3707(F)

The state code also contains numerous specific notice and advertising requirements for particular types of public business. These specific subject matter requirements apply only if the public body is discussing the relevant type of public business. Examples include notice of zoning actions § 15.2-2204 and adopting budgets. § 15.2-2506 In all cases, the more general requirements in FOIA need to be followed in addition to any other requirements. For zoning actions, if the newspaper makes a mistake in your public notice after a locality has submitted a correct and timely notice; that notice is deemed to have met the requirements so long as the notice was published in the next available edition of a newspaper having general circulation in the locality event if it's after the hearing. § 15.2-2204

Continuing a meeting due to weather or hazardous conditions

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. § 15.2-1416 Also, notice of the continuation of a meeting must be given to the public at the same time as it is sent to the members of the public body conducting the meeting. § 2.2-3707

Annual request for meeting notices

Any person may file an annual request for notice of all meetings with the clerk. In that case, the public body must notify the person making the request of all meetings. Sending the annual schedule of all regular meetings will assist in complying with this obligation. If the requester supplies an e-mail address, all notices may be sent via e-mail, unless the person objects. § 2.2-3707(F)

If a citizen submits an e-mail address and other personal contact information to a local governing body or any of its members for the purpose of being notified of meetings and other events, that e-mail address and other personal information need not be disclosed to others who request it, unless the citizen has indicated his approval for that disclosure pursuant to Code of Virginia § 2.2-3705.1(10). Personal contact information includes addresses, email addresses and telephone numbers.

Meetings

The fundamental principle of FOIA is that all meetings of public bodies are open to the public. Code of Virginia § 2.2-3700(B) makes this clear:

"Meetings shall be presumed open, unless an exemption is properly invoked. The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of governments. Any exemption from public access to…meetings shall be narrowly construed and no…meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law."

Nevertheless, the Act contains numerous exceptions to the open meeting requirement. Some issues may be discussed in a meeting closed to the public. For instance, public bodies may hold a closed meeting if an open discussion will lead to the release of information that certain other state laws require to be kept secret. § 2.2-3711(A) (26), (33), (34) Still, the fact that a meeting may be closed does not mean that it must be or even should be closed. Furthermore, any exceptions are to be narrowly construed.

In 2023, the Virginia Supreme Court ruled that the public must be able to physically attend meetings. However, the Court made clear that physical attendance is not "absolute," but rather is subject to a rule of reason:

"…a public body is not required to rent an arena if a topic is likely to generate larger than normal public interest; rather it must provide the 'normal' in-person access and take steps to allow members of the public who cannot be accommodated in the meeting room access by other means. Conversely, a public body may not select, design, or arrange a meeting room in a manner that artificially limits or removes the ability of the public to attend in person" (Suffolk City Sch. Bd. v. Wahlstrom, 886 S.E.2d 244 (Va. 2023).

What is a meeting?

City and town council meetings, county board meetings and committee meetings of a public body are certainly meetings regulated by the act. Like the definition of public body, the definition of meeting is broadly construed under Code of Virginia § 2.2-3701, intending to capture any meeting where public business is transacted or discussed. A council work session is also a meeting, as is any other "informal assemblage" of as many as three members of a public body (or a quorum, if quorum is less than three members) where public business of the locality is discussed.

FOIA applies to public body gatherings irrespective of the meeting's location. It doesn't matter if a meeting is held in the council chambers or at a council retreat held out of the locality. The Virginia Supreme Court has specifically ruled that Virginia's FOIA applies even if the meeting is out of state.

Attendance at a VML Annual Conference or a National League of Cities meeting is sometimes a touchy subject. Because of the broad definition of public meeting, some councils and boards consider attendance at a state or national conference to be a meeting, and will comply with the notice requirements of the act (discussed below) to be on the safe side, even though there is no plan to discuss the locality's public business. This action sometimes invokes a negative response from the media or citizens who complain that they cannot attend the out-of-town meeting. Conversely, if the council doesn't consider attendance at a conference to be a meeting, then the complaint becomes one that the council has left town for a private or secret meeting. The best practice is to announce the conference at a council meeting and state that the locality's business will not be discussed. Do not describe the conference as a meeting of the locality, and while at the event strictly avoid discussing town, city, or county business while attending the conference.

Code of Virginia § 2.2-3701.2 defines "meeting" as a gathering of three or more members of a public body to discuss public business (see call out box). It is not a meeting 1) when the discussion or transaction of any public business is no part or purpose of the gathering or attendance, 2) the gathering was not prearranged for the purpose of public business, or 3) if the attendees are at a public forum, informational gathering, meeting of another public body, debate, or candidate appearance, that is held to inform the electorate and no public business is being transacted, even if the performance of members is a topic of discussion or debate at the gathering. Finally, a staff meeting of employees of public body for business purposes does not constitute a meeting under the § 2.2-3701 definition.

What is the "business" of the public body?

For a topic to constitute the "business" of a public body, it must relate to a subject that falls within the purview of that public body. It must be something that is either before the public body or likely to come before the body in the foreseeable future. The consideration of topics that are on the Board's agenda or soon will be is the business of the legislative body. *Gloss v. Wheeler,* No. 210779, 2023 Va. LEXIS 22 (May 18, 2023). In footnote 10, the Court also cited Roger C. Wiley's summary provided within a previous Freedom of Information Act Guide, namely that "'work sessions, retreats and other informal gatherings of the public body at which public business is discussed are meetings covered by FOIA just as certainly as more formal assemblies, regardless of whether a formal agenda will be followed, or votes taken."

Meeting agenda packet

The agenda packet and all materials furnished to the members of the council (except documents that are exempt from disclosure, such as advice of the town or city attorney or personnel records of an individual employee) must be made available for public inspection at the same time they are distributed to the members. § 2.2-3707(G) Any records that are exempt from disclosure do not need to be made available. The practical problem is for staff to remember to cull any exempt documents when making the public copy of the agenda. The better practice is to not include exempt documents as a part of the agenda package, but to send them to the members of the body separately.

Beginning July 1, 2026, public bodies subject to FOIA shall post their proposed agenda on an official government website if any are available prior to the meeting. No final action may be taken on items added to the agenda after the meeting begins unless they are time sensitive or subject of a legal, closed meeting. § 2.2-3707(G)

Number of public officials needed to constitute a meeting (the Rule of 2)

Obviously, any meeting of a council qualifies as a public meeting. For the purposes of the act, such a council meeting is created if a majority of council, or three members, regardless of how many are needed for a majority, get together and discuss public business. § 2.2-3701 Therefore, if three members of a council meet on their own to discuss or act on government business, that creates a council meeting for purposes of FOIA, even if it is not considered a meeting under the locality's rules. If a public body or committee of a public body has only three members, then two members make a quorum, and members should not discuss the business of the body or committee outside of properly convened public meetings, inconvenient as that may be.

Meeting minutes

Minutes must be taken at all open meetings. § 2.2-3707/(I) Minutes must be written and include the meeting's date, time, and location, along with attendance, a summary of discussed matters, and any votes taken. Minutes of council committee meetings are required to be taken only if a majority of the members of the council serve on the committee. Draft minutes and any audio or video recording made of a meeting are available to the public for inspection and copying. § 2.2-3707(I) This means that draft minutes must be disclosed when requested even if they have not yet been approved by the public body. Once finally approved, minutes of meetings of local governing bodies must be posted on their locality's website, if any, within seven working days.

Recording meetings

Citizens have an absolute right to photograph and make video or audiotapes of public meetings. While the council may establish rules for where the equipment may be set up so meetings are not disrupted, the recording equipment may not be excluded altogether. The rules should not include any content related restrictions. § 2.2-3707(H) Council may not meet in a location where recordings are prohibited. If a courtroom, for example, has a standing order forbidding any form of recordation, public body meetings must be held elsewhere. § 2.2-3707(H)

Electronic meetings

Generally, in the absence of a declared state of emergency, a local governing body and many other public bodies may not hold all-virtual public meetings, including a conference call, pursuant to Code of Virginia § 2.2-3707, 2.2-3708.2 and 2.2-3708.3. In all these situations public bodies are encouraged to provide public access both in person and through electronic means and provide avenues for public comment when customarily received.

There are a few exceptions, but a written policy must be in place and voted on annually:

Individual members participate remotely § 2.2-3708.3

Public bodies may hold meetings where one or more members participate by electronic means as long as a quorum of members is physically present at the meeting location, and the meetings comply with the heightened procedural requirements found in § 2.2-3708.3. These require that the public body has adopted an electronic meeting policy (which must be adopted annually) and the member has one of the following situations:

- The member has a temporary or permanent disability or other medical condition that prevents their physical attendance.
- A medical condition of a member of the member's family requires the member to provide care that prevents their physical attendance.
- The member's principal residence is more than 60 miles from the meeting location.
- The member is unable to attend due to a personal matter and identifies with specificity the nature of the matter. However, the member may NOT use this provision more than twice or 25% of the meetings per calendar year, whichever is greater.

If remote participation is approved, it must be recorded in the minutes along with the reason for electronic participation. The remote location need not be open to the public.

All virtual electronic meetings outside a state of emergency § 2.2-3708.3

Local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards and any board with the authority to deny, revoke, or suspend a professional or occupational licenses may NOT hold electronic meetings outside a state of emergency.

Bodies that are NOT any of those listed above, may hold all-virtual public meetings subject to procedural requirements and limitations to include the adoption of a policy (which must be adopted annually) and:

- The meeting notice should indicate that the meeting will be electronic.
- Public access is provided via electronic communication means.
- Means of electronic communications must allow the public to hear all members of the public body participating and see them if possible.
- A phone number or other live contact information is provided to alert the public body if the audio or visual fails and the meeting must cease until transmission is restored.
- A copy of the proposed agenda, all agenda packets and any other public meeting materials must be available in an electronic format and at the same time such materials are provided to the public body.
- The public is afforded the opportunity to comment through electronic means when public comment is customarily received (this includes written comments).
- No more than 2 members of the public body are participating from the same remote location.
- If closed session is convened transmission of the meeting must resume prior to the certification of closed session.
- The public body may only convene all electronic meetings 2 times or 50% of the meetings per calendar year whichever is greater.

Electronic meetings during a state of emergency § 2.2-3708.2

If the Governor has declared a state of emergency pursuant to Code of Virginia § 44-146.17 or the locality in which the public body is located declared a state of emergency pursuant ton Code of Virginia § 44-146.21 and if it is impracticable or unsafe to assemble a quorum and if the purpose of the meeting is to provide for the continuity of operations or the discharge of its lawful purposes, duties and responsibilities – the local government may convene an electronic meeting if:

- Public notice is given using the best available method and contemporaneously with the notice provided to the public body.
- Public access is provided through electronic means.
- Public comment is allowed if customarily received.

Voting

All votes must be made publicly. Secret ballots are not allowed, unless specifically permitted by some other provision of law. § 2.2-3710(A) This section, however, specifically authorizes each member of council to contact other members of a council or other body "for the purpose of ascertaining a member's position" on public business without making the position public § 2.2-3710(B) Further, nonbinding votes or "straw polls" may be taken in closed session, but they have no legal effect until repeated in open session.

Closed meetings

A closed meeting is a meeting of a council or other public body from which the public is excluded. It may be held only for specific reasons, which are delineated in the act. Closed meetings must be convened during an open meeting of the public body (the specific procedures are described below). After the closed portion of a meeting, the council must reconvene in open session to certify that the closed meeting portion was carried out legally. There are a few exceptions to the requirement that a closed meeting be held as a part of an open meeting. They are discussed below.

Purposes for closed meetings

Code of Virginia § 2.2-3711 sets out many permissible reasons for holding a closed meeting, some of which don't apply to local governments. A city or town council or board of supervisors will generally need to hold a closed meeting for one of eight possibilities:

- Personnel matters - subsection 1;
- Real property acquisition or disposition - subsection 3;
- Privacy of individuals unrelated to public business - subsection 4;
- Prospective location of a new business or expansion of an existing one - subsection 5;
- Consultation with legal counsel pertaining to actual or probable litigation - subsection 7;
- Consultation with legal counsel regarding specific legal matters - subsubsection 8;
- Terrorism - subsection 19; or
- Award of a public contract involving the expenditure of public funds subsection 29.

Procedures for closed meetings

To go from an open meeting to a closed meeting, there must be a recorded vote in open meeting. The motion must include the following elements:

- The subject must be identified (example: new park at the east end of city);
- A statement of the purpose of the meeting (acquiring land for park); and,
- A reference to the code section authorizing the meeting. § 2.2-3712(A)

The degree of specificity required in stating the subject of a meeting varies with the nature of the issue.

For example, for discussion about a pending lawsuit, the motion should name the suit. After all, the pleadings are public and the suit may well have been the subject of a newspaper article. On the other hand, a discussion of a sensitive personnel matter should not contain as much specificity in the motion. Identifying the employee who is the subject of the closed meeting would partially negate the reason

for having the closed meeting – protection of the employee's privacy. The council will need to exercise discretion in the wording of closed meeting motions.

Nonetheless, in no case will a general statement be sufficient to satisfy the first and second requirements for the closed meeting motion. "Personnel matters, pursuant to FOIA" is NOT adequate for a motion for a closed meeting.

During a closed meeting, only the topics identified in the motion may be discussed. § 2.2-3712(C) To discuss more than one topic, the council should either include both topics in one motion, which is the preferred method, or come out of closed meeting to certify the first topic and reenter after making a new motion on the second topic. The council may record minutes, but that is not required and generally not a good idea. § 2.2-3712(I)

Code of Virginia § 2.2-3712(H) states that any official vote or action must be held in open session. Many local governments, therefore, take no more than a straw poll during a closed meeting, or take no votes at all, no matter how informal.

Certification. To go back into open meeting, there must be a roll call and vote asserting that only matters lawfully exempt were discussed and only the matters identified in the motion were considered. Any member who disagrees and intends to vote against the certification motion must state how the closed meeting did not satisfy the requirements of the Act, before the vote is taken. § 2.2-3712(D) A record of the vote must be kept in the public body's minutes.

Records

A major purpose of FOIA is to set out the rules for public record disclosure. The general rule in FOIA concerning records is that they are open to public inspection and copying. However, many categories of records are exempt from public access. Most of these categories do not apply to local governments. The fact that a record may be exempt from disclosure does not require it to be withheld. Each exemption section states in the opening sentence that the records "may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law." § 2.2-3705.1 - § 2.2-3705.7 However, if you disclose, be consistent.

Some records are prohibited by other laws from being disclosed at all. The custodian has no discretion to permit their disclosure. Common examples include certain tax records that Virginia Code § 58.1-3 requires to be kept confidential, most social services records, and health records protected by the federal HIPPA law.

FOIA applies broadly to records of the public body, regardless of form. It does not matter whether the records are on paper, or in an electronic form, or in some other medium, such as emails, databases, GPS maps, text and voice mail messages, audio and video recordings, or even a note scribbled on a paper napkin can be public records if they are about, and created while conducting, the business of a public body. A Facebook page or Twitter post can be a public record if it meets these criteria.

Responding to requests for records

Custodian of records

The records provisions of the Act use the term "custodian of the records" as the person who has the responsibility to respond. Some sections mention the obligation of the public body, but the responsibility is clearly with the custodian. If suit is brought over a violation, however, the public body can expect to be named as a defendant.

A records request should not be denied just because it was directed to the wrong official if the recipient knows or should know that the records are available from another official. In this case, the recipient of the request should respond to the request with the contact information for the other public body or its FOIA officer or just work with the other official to provide the records. § 2.2-3704(B)(3)

If the locality stores archived records off-site, and the records are in control of a third party, it is still the public body's responsibility to retrieve those records if they are requested. § 2.2-3704(J) The Library of Virginia is the custodian of local records once they have been properly archived there. Id.

Procedures for handling requests

Any citizen or member of the media may request an opportunity to inspect and/or copy public records. The request does not have to refer to the Act but only needs to identify the requested records with reasonable specificity. § 2.2-3704(B) There is no authority to require the request to be in writing, nor may the custodian of the records refuse to reply to a request if the requester refuses to put a request in writing. Some public bodies nevertheless ask for the request to be reduced to writing voluntarily. This is a useful policy because it helps the custodian better understand what is being requested. That helps the requester, since the custodian can shorten the time researching records, thereby reducing the potential cost to the individual. If the individual making the request declines to reduce the request to writing, a helpful option is to confer with the individual and write down the request, allowing the person to see the note and hopefully sign it, so no confusion will exist. The requester does not have to say why the records are being requested, and the public body or its FOIA officer should not ask what they will be used for.

The custodian or FOIA officer may, however, require the persons asking to see or copy records to give a name and address. § 2.2-3704(A) The act is not clear about what happens if the requester refuses. VML suggests that if the requester does refuse, the language that the custodian "may require" the information necessarily implies that the custodian may refuse to allow access to the records.

The act does not give any rights to people who are not residents of Virginia, or to media representatives if the media entity does not publish or broadcast into the state. § 2.2-3704(A) The right to refuse out of state requests for records has been affirmed by the courts. As a practical matter, however, it is often easy for someone from another state to find a Virginia citizen who will request the records.

Types of responses

There are five possible and permissible responses to a request (discussed in detail below):

1. Provide the records within five working days;
2. If the response is made within five working days, obtain seven additional days to respond, and in the case of a request for criminal investigative files pursuant to Code of Virginia § 2.2-3706.1, 60 work days in which to provide one of the responses below;
3. Claim one or more specific exemptions from all or a portion of the request;
4. Say that the records do not exist; or
5. Say that the records are kept by another public body and give the contact information for that body or its FOIA officer.

The initial response must be made within five business days of the receipt of the request, pursuant to Code of Virginia § 2.2-3704, regardless of which response is used. If the custodian fails to respond within the times required, Code of Virginia § 2.2-3704 considers that to be a denial of the request and makes it a violation of the act. In counting the five business days, if you receive the request on a Monday, day one is Tuesday and then the five days would expire the next Monday.

Notably, the public body is not required to create records if they do not exist or to compile information into a new record. § 2.2-3704(D) However, simple extraction of information from an electronic database into a separate document or file is not considered to be the creation of a new record. Subsection D encourages public bodies to abstract or summarize information in a manner agreed to with the requester.

NOTE: The extent to which FOIA applies to courts is unclear, but a clerk of court must make non-confidential court records available to the public upon request no later than 30 days after the request is made. The clerk may charge a fee for the actual cost of producing the records. § 16.1-69.54:1 and § 17.1-208

1. ***Provide the records.*** The first response, providing the records, is straightforward. The custodian simply makes them available. If the individual asks to receive copies, the copies need to be made within the five days, if possible, or at such later time the custodian and requester agree.
2. ***Obtain seven additional days to respond.*** Similarly, if it is "not practically possible to provide the...records or to determine whether they are available," § 2.2-3704(B)(4), within the five days, the custodian may send a written response to the person making the request, explaining the conditions that make the response impractical. After complying with this requirement, the custodian will have an additional seven business days to respond. The added seven days does not begin until the end of the fifth day of the initial period. For example, if the custodian sends a letter on the second day after receiving the request, he or she will still have a total of 12 workdays to respond. In the case of a request for criminal investigative files pursuant to Code of Virginia § 2.2-3706.1, the custodian may send a written response to the person making the request and invoke an additional 60 workdays to respond to the request. § 2.2-3704(4)

   Additionally, a public body may petition a court for even more time to respond to a request. However, VML recommends that you first try to negotiate with the requester. The additional time will likely be granted if the public body can demonstrate that the volume of records requested is so large that it would disrupt its operations to respond in the prescribed time and that it is unable to reach an agreement with the requester for the time to respond. § 2.2-3704(C)
3. ***Claim a partial or full exemption to the request.*** If one or more of the many exemptions apply, the custodian may, within the five-business day limit, send the requester a written explanation of why all or some of the records are exempt. The explanation must identify the subject matter of the records (example: performance evaluations) and must cite the section of FOIA that authorizes the exemption. § 2.2-3704(B)(2)

If only a portion of the requested records is exempt, the non-exempt parts must be made available within the five days, unless additional time is properly invoked.

Charges for responding to a request

The public body may charge the requester for searching and copying records. The costs must be reasonable, not to exceed the actual cost "incurred in accessing, duplicating, supplying, or searching for the requested records." § 2.2-3704(F) A public body may not charge for overhead items, such as utilities, debt payments and the like. The hourly salary rate of any local employee who spends time researching and assembling records for the request may be charged, as may the actual copying costs. The time limit to respond to a FOIA request is tolled during the time that elapses between notice of the cost estimate and the response. If the public body receives no response from the requester within 30 days of sending the estimate the request is deemed withdrawn.

In responding to a request for duplication of part of a geographic information system database by making copies of GIS maps, the locality may base its charge on a per acre cost if the area requested exceeds 50 acres. § 2.2-3704(F)

If the custodian determines that the cost of responding will be more than $200, the requester may be required to pay a deposit in the amount of the projected costs before any information is disclosed. The time limits are tolled until payment of the deposit.

Format of records

Confusingly, the custodian must provide computer records in any "tangible medium identified by the requester," except that it need not produce the material found in an electronic database in "a format not regularly used by the public body." § 2.2-3704(G) The subsection is further muddied by a statement that provides – not withstanding this limitation – that the public body should try to come to an agreement with the requester regarding the format of the documents to be supplied. Thus, a public body does not have to disclose electronic records in a format it does not regularly use but it must comply with any request for records maintained in a medium the public body uses in the regular course of business.

Emails and text messages

Emails have generated much controversy since they began being used in government business operations. Emails that deal with public business are public records. Emails kept on the home computer of a council member or local government employee that relate to the transaction of public business are public and subject to inspection and copying by a citizen who makes a request to see the records.

Text messages have become the subject of many FOIA requests as well. These must be produced if requested and are subject to the records retention rules as well. If you are transacting public business, the ownership of the device used to send a text message about that public business is irrelevant. If you conduct public business via text message, just like with emails or other records that pertain to the transaction of public business, you are obligated to retain those records under the Public Records Act and all the FOIA rules apply.

Draft documents

Draft documents are disclosable records. The specific mention of draft records in FOIA now is to the minutes of a public body. Code of Virginia § 2.2-3707 specifically states that draft minutes are available for inspection. Some local governments once had policies that denied the public viewing of draft minutes. Those policies are invalid.

Exemptions

The list of hundreds of types of public records that may be held exempt from disclosure by the custodian is set out in seven separate, lengthy sections. The Act uses the terms "exemption" and "exclusion" more or less interchangeably. Fortunately, the relevant Code sections are arranged by subject area to make it easier to find the exemptions that may apply. Consult your local attorney or the FOIA Council for advice on which exemption applies.

The current sections are:

- Exclusions of general application to public bodies. § 2.2-3705.1
- Exclusions; records relating to public safety. § 2.2-3705.2
- Exclusions; records relating to administrative investigations. § 2.2-3705.3
- Exclusions; educational records and certain records of educational institutions. § 2.2-3705.4
- Exclusions; health and social services records. § 2.2-3705.5)
- Exclusions; proprietary records and trade secrets. § 2.2-3705.6
- Exclusions; records of specific public bodies and certain other limited exemptions. § 2.2-3705.7

Criminal incident information

Most of the rules for criminal incident information are set out in Code of Virginia § 2.2-3706 and § 2.2-3706.1. Both sections discuss the disclosure of law enforcement and criminal records. Due to the continuing tweaks to these code sections; it is recommended that you consult your local attorney or the FOIA Council.

Conclusion

The Freedom of Information Act includes many requirements and restrictions pertaining to public access to government meetings and information. The fundamental principle woven throughout FOIA is that the public is presumed to have free access to government records and meetings. The Act sets out the specific types of meetings that may be closed to the public and records that may be withheld from disclosure. These exemptions protect the operation of government reasonably well. FOIA will continue to evolve to meet the changing expectations of the public and government agencies.

In the area of electronic information, expect to see continued changes as the General Assembly makes the act more relevant in the fast-changing electronic age. For example, application of the act to the use of email, instant messaging, and government posts on social media will likely be revisited many times!

As required under Virginia Code § 2.2-3702, "Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall…read and become familiar with the provisions of this chapter." In addition, within 2 months of taking office and once every two years all local elected officials must complete training.

About the author: Michelle Gowdy is the Executive Director of the Virginia Municipal League.

CHAPTER 3

Virginia Conflict of Interest Act (COIA)

By Michelle Gowdy

Included in this chapter:

- **Introduction**
- **Purpose of the Act**
- **Regulation of Council Member's Actions as a Citizen**
- **Council Members' Participation as a Public Official**
- **Disclosures**
- **Enforcement & Penalties**
- **Advisory Opinions**
- **Conclusion**

The Virginia State and Local Government Conflict of Interests Act ("COIA" or the "Act.") regulates the financial relationships of council members and mayors with their localities and with any other governmental agencies that are related to the local government. The Act is intended to be the sole body of law for governing city and town council members' financial involvement in contracts or other transactions with their own localities and with other governmental entities. While this chapter refers to city and town councils it is equally applicable to boards of supervisors and counties, along with regional bodies. Many of the Act's rules and restrictions also apply to other officers and employees of local governments, including locally elected constitutional officers.

COIA regulates how involved a council member may react to an item being considered by council if the member has a financial interest in that item. The Act also defines what constitutes bribery or taking unfair advantage of information gained by reason of being on council. It sets penalties for violations and provides a procedural framework for its enforcement. As well as the definition of what constitutes a permissible or impermissible gift and whether family members' interests must be considered.

The Act is codified in Title 2.2, Chapter 31 of the Code of Virginia § 2.2-3100 and following. While this chapter describes the general operation of the law, the reader should consult the law's specific language for a better understanding (code references are given throughout this chapter). Furthermore, a council member with questions about a contract or transaction should consult the city or town attorney for the member's locality or the Conflict of Interest and Ethics Advisory Council ("The COIA Council").

> Use the link or QR code to visit the COIA Council website.

The 2014 General Assembly created the COIA Council to review and post online disclosure forms filed by state officials who are subject to the Act; in 2026 legislation was passed to require local officials to also file their disclosure firms online. However, the local requirement was staggered with localities who have a population over 250,000 will file electronically in January of 2028, a population of 100,000 or more January of 2029 and the rest in January of 2030.§ 2.2-3115 The Advisory Council also issues formal opinions about specific conflicts and offers informal advice, education and training. The duties and responsibilities of the Advisory Council are discussed throughout this chapter.

Your locality's attorney is a primary source of advice about application of the Act, but the locality's Commonwealth Attorney and the Advisory Council are also good resources, and in some circumstances their opinions provide legal protection from prosecution for violations of the Act. § 2.2-3121

Purpose of the Act

The first section of the Act, Code of Virginia § 2.2-3100, sets out the purpose of the law, citing three main goals:

1. To help ensure that the government will fully represent the public in its operations;
2. To give citizens confidence in public officials and the government so they will trust the government by creating a clear set of rules for government officials; and,
3. To assemble all the laws affecting conflict of interest in a single location in order to create uniform rules. (While COIA largely accomplishes this purpose, additional rules are stated in the Virginia Public Procurement Act and in various other code sections.).

The Act contains three general areas of regulation (listed below). The act also has procedural, enforcement, and penalty provisions.

Areas of regulation

The Act regulates the financial relationships of council members with their localities in three general categories (discussed in detail below):

1. General provisions covering bribes and other illegal behavior.
2. Regulation of financial interests a council member or other officer or employee may have in business dealings with his or her locality or with agencies related to his or her locality (the Act calls this a personal interest in a contract).
3. Regulation of the level of involvement a council member, officer or employee of a locality may have in an item being considered by the locality that involves the official's business, property or other personal financial interest (the Act calls this a personal interest in a transaction).

1. Generally prohibited conduct

Bribes and other illegal behavior. Code of Virginia § 2.2-3103 prohibits public officials from taking or soliciting bribes and from allowing money to influence their actions. This section applies to a person's actions as a government official; COIA does not apply to private individuals or businesses that may offer the bribes. Their actions are governed by other provisions in the state criminal code.

The Act prohibits a council member from soliciting or accepting money or benefits for doing his or her work as a public official. § 2.2-3103(1) For example, a council member may not take money (other than a properly reported campaign contribution) to vote in favor of a rezoning to help a developer build a project. Similarly, council members may not offer or take money to get a government job offer for themselves or for someone else, or in exchange for obtaining a contract or business deal with the local government. § 2.2-3103(1) - (2)

A knowing violation of these prohibitions is a class 1 misdemeanor. Enforcement and penalties for COIA violations are discussed in greater detail later is this chapter.

2. Undue influence

One step below the outright bribery rule is the prohibition on taking certain gifts or opportunities while serving as a public officia. § 2.2-3103 (5), (6), (8), (9) and 2.2-3103.1 The act prohibits a council member from accepting money, loans, gifts, services, business opportunities, or other benefits if it is reasonable to construe that the benefit was given to influence the council member in his or her duties. An exception is made for political campaign contributions but only if the contribution is used for a political campaign or constituent service purposes and is reported as required by campaign disclosure laws.

A typical example of this issue for cities and towns occurs when a vendor or contractor gives Christmas gifts of substantial value to the members of council. Whether the gift complies with the act is a judgment call in most cases. Is a Christmas turkey reasonable if the developer is also giving the same gift to his employees, his business associates, and his materials suppliers? What if the gift is a box of cookies for the whole staff? The circumstances of the specific case usually indicate whether the gifts are appropriate.

The following items are exempted from the prohibition on gifts § 2.2-3101:

(1) coupons and tickets that are not used.

(2) honorary degrees.

(3) scholarships or financial aid awards that were awarded in the same manner as they would be to the general public.

(4) campaign contributions that are properly received and reported.

(5) a gift-that relates to the private profession or volunteer service of the officer or a member of the officer's immediate family.

(6) food or beverages consumed while attending an event at which the filer is performing official duties related to public service.

(7) food or beverages received at or registration of attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer.

(8) unsolicited awards of appreciation or recognition.

(9) a devise or inheritance.

(10) travel disclosed under the Campaign Finance Disclosure Act. § 24.2-945, *et seq.*

(11) travel paid for or provided by a government entity.

(12) travel provided to facilitate attendance by a legislator at a regular or special session of General Assembly or other meeting approved by the House or Senate Committee on Rules.

(13) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to §501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment.

(14) gifts with a value less than $20.

(15) attendance at a reception or similar function where food, such as hors d'oeuvres, and beverages that can be conveniently consumed by a person while standing or walking are offered.

(16) gifts from relatives or personal friends as the Act defines "personal friend".

Overturning an Advisory opinion from the Council, in 2020 the General Assembly changed the definition of gift and does NOT include tickets or registration or admission fees to an event that are provided by an agency to its own officers or employees for the purposes of performing official duties related to their public service.

Use the QR code or the link to see the 2020 Opinion that redefined "gift."

Definition of a "relative." For purposes of Code of Virginia § 2.2-3101 and what is not a gift when received from a relative, that term is defined as the recipient's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person whom the recipient is engaged to marry, the recipient or recipient's spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step- brother, or step-sister or the recipient's brother's or sister's spouse or the recipient's son-in-law or daughter-in-law.

The Act limits who can be considered a personal friend for the purposes of the disclosure exemption. The reason for this limitation is to ensure that the term "personal friend" is not applied loosely, allowing anyone's gift to qualify for the exemption from disclosure by the recipient. Personal friends are discussed further below.

When does the gift limit of $108 apply? Code of Virginia § 2.2-3103.1 pertains to prohibited gifts. This provision applies to all candidates, officers, and employees of local governments and advisory agencies, and members of their immediate family. These individuals may not solicit, accept or receive a tangible gift that is valued at over $108 or a combination of gifts within a year with an aggregate value of over $108 if it is given to them by (1) a lobbyist, (2) a lobbyist's principal, or (3) a person, organization, or business that is seeking to be or already is a party to a contract with the local agency of which he is an officer or employee. However, the limit only applies to individuals who are required to file a disclosure form prescribed in Code of Virginia § 2.2-3117. Therefore, it does not apply to officials of localities with a population under 3,500.

Why is the gift limit $108?

The COIA Council is empowered every five years to adjust this amount for inflation. In 2025 they raised the original $100 limit to $108.

"Personal friends" explained. An official may accept a gift with a value in excess of $108 if the gift was from a personal friend. The following factors will be considered in determining whether someone qualifies as a personal friend: (a) the circumstances under which the gift was offered; (b) the history of the relationship, to include its nature, duration and previous gift exchanges; (c) to the extent known, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement and (d) whether the donor has given similar gifts to other persons required to file disclosure forms. § 2.2-3103.1

A lobbyist or a lobbyist's principal cannot be considered a personal friend whose gifts are exempt from these limits. A person, organization, or business also cannot be considered a personal friend if that entity or person is a party to a contract with the local government or agency for which the officer or employee works. This is true whether the contract has already been awarded or if the person, organization, or business is just seeking to be a party to a contract.

Some may wonder how an officer or official would even try to argue that he or she has a personal friendship with an organization or business. In this context, the terms "organization" and "business" include those who are officers, directors, owners, or have a controlling ownership interest in the organization or business. § 2.2-3101

Gifts to influence actions. Council members are also prohibited from taking benefits if they know the benefits are being offered to influence the member's decision or vote. § 2.2-3103(5) Therefore, even if the gift is not unreasonable, the council member may not accept it if the circumstances or statements of the giver make it clear that the gift is being given to influence the council member.

A further prohibition is aimed at gifts given by a private party looking for a specific action by the government. § 2.2-3103(8) This subsection prohibits a council member from accepting a gift from a private party whose interests can be affected by the council member's actions, where the timing of the gift would lead a reasonable person to question whether the gift is being given to influence the council member. For example, if the day before an important council vote on a rezoning, the applicant for that rezoning gives the council member $2,000 and calls it a campaign contribution, it would be reasonable to think the money was given to influence the vote. Also, if a council member accepts gifts so often that it creates the appearance that he or she routinely accepts gifts simply for doing his or her job, that behavior constitutes a violation. § 2.2-3103(9) Violations of these two prohibitions may not be the basis for a criminal charge.

Local governments can adopt ordinance limiting the dollar value of gifts. Local governments may adopt an ordinance to limit the dollar value of gifts to officials and employees of the locality. § 2.2-3104.2 The ordinance can include a required gift disclosure provision. While a public official may have nothing to fear legally once a gift is disclosed, keep in mind that the appearance of impropriety is often more harmful than the impropriety itself. A $50 limit is often used. While this amount is arbitrary, setting a limit does make it simpler for all involved to know what behavior is permissible. Even if the locality adopted an ordinance prohibiting acceptance of gifts over a fixed amount, its officers or employees may accept a gift of greater value given by a § 2.2-3104.1 charitable organization in recognition of the recipient's meritorious public service.

3. Personal interest

It is a violation of the Act for a public official to use information not available to the public for his or her own or another person's economic benefit. § 2.2-3103(4) For council members, a violation of this prohibition is sometimes alleged unfairly. For example, a council member who simply pays attention to plans submitted to the locality that are available to the public, and then buys a nearby property, has not violated the Act, but the public may still believe that the council member had advance knowledge of the business opportunity. Once again, the perception may be more problematic than the reality.

Regulation of Council Member's Actions as a Citizen

Personal interest in a contract

The Act limits what financial interests a council member may have in business dealings with his or her locality and with agencies related to his or her locality. § 2.2-3107 The Act calls this a "personal interest in a contract." While this chapter's discussion is limited to the restrictions on council members, the Act also sets forth different restrictions for school board members § 2.2-3108 and for local government employees. § 2.2-3109 Council members need to keep in mind the restrictions on the employees of a city or town as they carry out their duties and watch over the affairs of the locality.

According to Code of Virginia § 2.2-3107(A), "no person elected or appointed as a member of the governing body of a county, city or town" shall have "a personal interest in a contract" with his or her city or town or with certain other related government agencies (the definition of a personal interest in a contract is described below.)

The council member may not have a personal interest in a contract with any agency of his or her locality, including the operating departments of the city or town. In addition, he or she may not have a personal interest in a contract with any government agency that is under the council's ultimate control. For example, if the council appoints a library board, then council members would have ultimate control over the library. Therefore, a council member could not have a financial interest in a contract with the library board. In a city where the school board is appointed by the city council, council members would likewise be prohibited from having an interest in a contract with the school system.

This section of the Act also prohibits involvement in a contract with any agency if the council appoints a majority of the members of that agency's governing body. For example, if the locality is a member of a regional jail and its council appoints four of the jail board's seven members, then a council member would be prohibited from being involved in a contract with the jail.

Definitions of "personal interest"

The Act only prohibits a council member's participation if he or she has a personal interest in the contract with one of the agencies described. A council member may have a personal interest in a contract, or a transaction as defined below. § 2.2-3101

Personal interest. The definition of a personal interest is the key building block of the Act. The term is used throughout. A personal interest exists if any one of the following tests is met:

1. The council member owns at least 3 percent of the equity of a business.
2. The council member has annual income from a business that is or reasonably could be in excess of $5,000 or owns an interest in property worth more than $5,000.
3. The council member has a salary, fringe benefits, or other compensation, from a business, or gets rent or other benefits from the use of property involved in a contract or transaction that exceeds or reasonably could exceed $5,000 annually.
4. The council member's ownership interest in property exceeds $5,000.
5. The council member's liability for a business exceeds 3 percent of the equity of the business.
6. The council member has an option on real property and, upon exercise of the option, his or her ownership will meet the levels in either test 1 or 4, above.

Immediate family. In addition to the council member, if any person in the council member's immediate family has one of the six types of a personal interest then the personal interest exists for the council member. The term "immediate family" always includes the person's spouse. The term also includes any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

As this definition demonstrates, if a council member's spouse has a personal interest in a business that would like to contract with the city, the contract is prohibited even though the council member is not involved in the contracts.

Personal interest in a transaction. A personal interest in a transaction exists when an officer or employee or immediate family member of one has a personal interest in property or a business and that property or business is:

- The subject of the transaction; or,
- The member or the property or business in which the member has an interest may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the member's agency considering the transaction.

A personal interest in a transaction does not exist when:

- An elected member of a local governing body serves without renumeration as a member of the board of trustees of a not-for-profit entity and the member and his immediate family has no personal interest in the entity.
- An officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency and the personal interest in the transaction is the result of benefits provided to the member or his immediate family.

Personal interest in a contract. If the council member's involvement meets any one of the six definitions of a personal interest, the next step is determining whether the council member has a personal interest in the contract in question. According to the Act's definition, a council member has a personal interest in a contract with a government agency if that contract is with the council member or with a business in which he or she has a personal interest. § 2.2-3101

In looking at a particular contract, it is important to ask: Is a council member or his or her business or property involved in the contract? Does that council member have a personal interest as defined by the Act? The answers to these questions will help determine if the contract is prohibited under the Act.

The "appearance of impropriety" – Situations where legally defined conflicts do not exist

Some situations are not legally defined as conflicts under the Act, even though they may appear to be natural conflicts. For example, if a council member earns a total salary of $4,900 per year from a business, that business could contract with the locality, because the council member would not meet the income level to have a personal interest for purposes of the Act. As the third test of the definition – salary – shows, the salary must exceed $5,000 per year to create a personal interest.

Note also that an official's personal interest in a contract or transaction is based only on the official's financial interest. If a council member serves on the board of a charitable entity, the fact that the council member may have divided loyalties between the charity and the locality, or may support the policy goals of the charity does not create a legal conflict under the Act, as long as the council member serves on the charity's board for less than $5,000 compensation per year and doesn't have an ownership interest in the charity. § 2.2-3101

Exceptions to conflicts in contracts

The Act sets out a series of exceptions to the prohibitions on having a personal interest in a contract. Several exceptions are specific to council members. § 2.2-3107(B)

1. A council member may be an employee of the locality as long as the employment began before the member's election to council. § 2.2-3107(B)(1) This section of the law also allows employment and service on council if the person was an employee prior to July 1, 1983. If an employee of locality serves on council, he or she will sometimes run into potential conflicts when matters come before council that affect the locality's employees such as salary and disciplinary decisions. (This issue is explored below, in the section on personal interests in a transaction).
2. A council member may buy goods or services from his or her locality as long as they are made available to the public at uniform prices. § 2.2-3107(B)(2)
3. A council member may sell goods to his or her locality if the following conditions are met, pursuant to § 2.2-3107(B)(3):
   - The purchase must be made by competitive sealed bidding. Therefore, if the contract is being solicited by a request for proposals, the exception doesn't apply.
   - The contract must be for goods, not services, and the need for the goods must have been established prior to the person's coming on council. (Example: the city needs a tractor, and a council member owns a tractor dealership. If the city had bought tractors prior to the council member's election, the member's dealership may continue to bid on the contract).
     - The council member who wants to sell to the locality must play no role in preparing the specifications for the purchase.
     - The remaining members of council must pass a resolution in writing that the council member's bidding on the contract is in the public interest.

   Remember: This exception does not apply to providing services, only to contracts for buying goods. For example, a council member who is an accountant, or the member's firm may not have a contract to provide auditing services to the member's locality.

Exceptions that apply to all local government officials and employees

The following eight exceptions to the prohibition on having a personal interest in a contract apply not only to council members, but to all other local government officials and employees as well. § 2.2-3110(A)

1. Any sale, lease, or exchange of real property between a local official and his or her locality is allowed as long as the official doesn't participate on behalf of the locality in making the deal, and the fact that the official wasn't involved is recorded in the public record of the locality or governmental agency involved in the transaction. The reason for this exception is that each parcel of real estate is deemed to be unique. If a city needs a certain lot or parcel, the fact that a council member or city employee owns it should not prevent the purchase of the needed land by the city. § 2.2-3110(A)(1)
2. The prohibition does not apply to contracts for the publication of official notices, presumably so that the local newspaper may be used for ads required by state law even when a council member is an owner or employee of that paper. This is a balancing of needs; the state code requires many local government notices to be run in the local paper. Without this exception, those publication requirements could not be met in such a situation. § 2.2-3110(A)(2)
3. For counties, towns and cities with a population under 10,000 contracts between a council member and his or her locality are allowed, despite the general prohibition, if the total of those contracts does not exceed $5,000 per year. Further, contracts up to $25,000 are allowed if the contract is awarded by competitive sealed bidding. This higher level only applies if the public official has filed a statement of economic interests form. Every council member except those in localities with populations of 3,500 and under must file that form annually, so this requirement does not create an added obligation. § 2.2-3110(A)(3)
4. If the sole personal interest a local official has in a contract comes from employment by the contracting business for more than $5,000 per year the business may still be able to contract with the locality. For this exception to apply, neither the local official nor any member of his or her immediate family may have any authority to participate in making the deal with the locality, and must not actually participate on behalf of either the business or the locality in negotiating the deal. A typical example of this might be a contract with a large engineering firm that employs a council member but the member or member's spouse plays no role in soliciting the contract or negotiating its terms. § 2.2-3110(A)(4)
5. If a council member is employed by a public service corporation, a bank, a savings and loan association, or a public utility, and the member discloses that employment and refrains from participating on behalf of the city or town, then the utility, bank, etc., may contract with the locality. § 2.2-3110(A)(6) Without this exception, all employees of the local electric power company or local bank might effectively be barred from seeking public office in the locality.
6. The prohibition does not apply to any contract for goods or services below $500 in value. But if a locality normally purchased paper on an annual contract, for example, could it split up a year's worth of paper contracts so that each is less than $500? While the section is silent on splitting up a larger contract to meet this exception, the consensus is that splitting a contract solely to evade the $500 limit would violate the law. § 2.2-3110(A)(7)
7. Program grants made to a local public official are allowed if the rates or amounts paid to all qualified applicants are uniform and are established solely by the agency administering the grants. § 2.2-3110(A)(8)
8. If the spouse of a local official is employed by the locality, the personal interest prohibition does not apply if the spouse was employed by the agency five or more years prior to marrying the other official. § 2.2-3110(A)
   - If one spouse is the supervisor of the other spouse, the conflict does not exist if the subordinate spouse earns less than $35,000 per year. § 2.2-3110(B)

Council Members' Participation as a Public Official

Personal interest in a transaction

The rule concerning a personal interest in a transaction sets out the level of involvement a council member may have in an item being considered by the governing body (the transaction) that involves the membership, property, or other personal financial interest. § 2.2-3112

As with a personal interest in a contract, the first step is to determine whether the council member has a personal interest in the transaction. The same definition of a personal interest is used in the transactions provisions as in the contract provisions, but the definition of personal interest in a transaction goes beyond the definition of a personal interest in a contract.

Definitions of transaction and personal interest in a transaction

Transaction. In the context of a city or town council, a transaction is defined as any matter considered by the council, a council committee or subcommittee, or any department, agency, or board of the locality including the local planning commission, if any official action is taken or is being contemplated. § 2.2-3101

Personal interest in a transaction. This term is broadly defined as a personal interest of a council member "in any matter considered by his [locality]." § 2.2-3101 Specifically, a personal interest in a transaction exists if a council member or immediate family member has a personal interest (as defined in Part II) in the property, business, or governmental agency – or represents/provides services to any individual or business property – and the property, business, or represented/served individual or business either (1) is the subject of the transaction, or (2) may realize a reasonably foreseeable benefit or detriment as the result of the transaction.

A typical example of representing or servicing an individual or business would be a council member who is an accountant and whose accounting firm handles the books of the business that is the subject of the transaction. Another common example occurs when the council member or member's spouse is a principal in an engineering firm that represents an applicant for a land-use permit before council. In these cases, the council member may well have a personal interest in the transaction unless he or she is not directly involved in the representation. In practice, if a matter comes before council or a council committee or involves any department of the locality, and a council member has a personal interest in the subject matter or represents the subject business, the council member must then follow the Act's requirements for his or her participation as outlined in Code of Virginia § 2.2-3112 (discussed below in "Levels of transactions" section).

Exceptions and limitations on conflicts

A personal interest in a transaction does not exist if the council member serves on a not-for-profit board without pay, and neither the council member nor his or her immediate family has a financial interest in the not-for-profit entity (See definition of personal interest in Code of Virginia § 2.2-3101).

No prohibited personal interest exists when an employee or council member of a locality is appointed by the locality to an ex-officio role in another governmental agency and the appointee's interest in the transaction exists solely due to the locality's employment of the appointee or appointee's spouse (See the definition of "personal interest in a transaction" in Code of Virginia § 2.2-3101).

The Act provides in Code of Virginia § 2.2-3112(C) that if an employee, but not a council member, is disqualified from participating in a transaction, the employee may still represent his private interests before the council as long as the employee is not paid for the representation and discloses the nature of his or her interest. This exception appears not to apply to council members.

Additionally, Code of Virginia § 2.2-3112 sets out the rules for a locality's employees other than council members who have a personal interest in a transaction with the locality. The section also contains a list of exceptions that apply to the employees of the government agencies in the locality. Those rules and exceptions do not apply to council members. For example, an employee's spouse may contract with the locality to provide services (e.g., accounting) if certain conditions are met. In contrast, a council member's spouse could not have a contract for the same services to the locality.

Levels of transactions

The fact that a council member has a personal interest in a transaction before council does not always require the member to disqualify himself. The Act's requirements for participation, if a personal interest in the transaction does exist, set out three levels of transactions § 2.2-3112(B):

1. If the council member is in a firm that represents the subject of the transaction, but the council member does not personally represent the subject in the transaction, the member may participate in the council discussion after making the declaration requirements of Code of Virginia § 2.2-3114(G) or § 2.2-3115(I).
2. If the transaction affects a business, profession, occupation or group of three or more members to which the council member belongs, he or she may participate in the transaction only if the council member completes a disclosure form, described in the "Disclosures" section. § 2.2-3112(B)(1)
3. If the transaction affects the public generally, the council member may participate. A council member may, for example, obviously vote on raising property taxes, even though that vote affects the member, because it also affects the public generally. In comparing items 2 and 3, some transactions are considered to affect the public generally, even though not every member of the public is affected. For example, the business license tax applies only to business owners, but it is considered to affect the general public.

Additional exception

Disqualification under the provisions of Code of Virginia § 2.2-3112(C) does not prevent any employee who has a personal interest in a transaction with his or her agency from representing himself, herself, or immediate family members in such transaction provided the employee does not receive compensation for such representation and complies with the disqualification and relevant disclosure requirements of the Act.

Effects of disqualification

If a council member is disqualified from participating in a transaction, the Act requires several steps § 2.2-3112:

1. The council member must disclose the interest that causes the disqualification by identifying the interest, including the name and address of the business or property. § 2.2-3115(F) The disclosure is required whether the law requires the disqualification or the council member voluntarily disqualifies himself out of an abundance of caution. The disclosure can be made in a written record sent to the clerk or made verbally in a public meeting and recorded in the minutes of that meeting.
2. The disclosure must be kept for five years in the records of the council.
3. The council member may not vote on or participate in discussion on the transaction. It is a best practice for the council member to sit in the audience during the discussion and the vote on a matter for which the member has been disqualified.
4. The disqualified council member may not attend the portion of a closed meeting at which the transaction is discussed.
5. The disqualified council member may not discuss the matter with other members or with anyone in the local government who is involved in the transaction.

Savings clause for certain votes

The Act allows the remainder of council to vote when disqualifications rob the council of a quorum. § 2.2-3112(D) The council may act by a vote of the majority of the members who are not disqualified. Even if the law requires a unanimous vote, it only has to be by a unanimous vote of the remaining members. The Advisory Council issued a formal advisory opinion 2017-F-001 in 2017 confirming the quorum analysis above. The opinion states in part that when five members of a seven member board are in attendance and two persons are disqualified from voting, the three remaining members do constitute a quorum. One caution – the Virginia Supreme Court has ruled that when there are disqualifications, and a vote is taken using this section, the disqualified members of council must remain present to maintain a quorum. If the disqualified members leave the meeting, such that fewer members are present than required for a quorum – a quorum does not exist and the meeting cannot continue. *Jakabcin v. Front Royal 271 Va. 660, 628 S.E.2d 319 (2006)*

In order for a council to sell or lease land, state law requires a three-fourths vote of all members elected to council. § 15.2-2100 The Act allows a council member to participate in a discussion and vote on a proposed sale, lease, or similar conveyance of land, if the council member's only personal interest in that sale is that he or she is employed by the business that is contracting with the locality for the land deal. § 2.2-3112(D)

Disclosures

If a transaction affects a group, business, or profession as set forth in Code of Virginia § 2.2-3112(B)(1), the council member may participate if he or she certifies in good faith that he or she can represent the public fairly in the transaction. The certification requires the following elements to be identified (§ 2.2-3115(H):

- The transaction.
- The nature of the personal interest.
- The fact that the council member is a member of a business, profession, occupation, or group that will be affected by the transaction.

- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If the transaction affects a party that the council member's firm represents, but the council member is not involved on behalf of the firm, the disclosure requires the following elements to be identified § 2.2-3115(I):

- The transaction involved.
- The fact that a party to the transaction is a client of the council member's firm.
- A statement that the council member does not personally represent the client.
- A statement that the council member is able to participate fairly, objectively, and in the public interest.

If either of these disclosures are required, the council member must either state it at the meeting or file it in writing with the clerk of the council or the manager. A written disclosure should be filed before the meeting or, if that is impracticable, by the end of the following business day. § 2.2-3115(H), (I) In both cases, the disclosure is public. VML advises that it is better to make the disclosure at the meeting, orally, when the transaction is about to be considered. It is also recommended that the person sit in the audience for the discussion and vote. This conveys a clearer message of self-disqualification than simply handing the clerk a written statement. If the disqualification is handed in with no announcement, the public may wonder why the council member is not participating.

Annual Statement of Economic Interests form

In addition to transaction-specific disclosures, each council member of every locality with a population of more than 3,500 must file the Statement of Economic Interests form. The Statement of Economic Interests form must be filed annually on or before February 1 for the preceding calendar year. § 2.2-3115

This disclosure form will be created and provided by the Advisory Council at least 30 days prior to the filing deadline. Forms should be disseminated by the clerks of the governing bodies to their respective members not less than 20 days before the filing deadline. The forms must be available for review by the public no later than six weeks after the deadline and shall be maintained in the clerk's office for five years. § 2.2-3115(D)

Note: *The local requirement will change in January of 2028; localities who have a population over 250,000 will file electronically in January of 2028, a population of 100,000 or more January of 2029 and the rest in January of 2030. § 2.2-3115 The forms will require the disclosure of holdings in excess of $5,000, which is a change from the previous threshold of $10,000. § 2.2-3117*

The city or town council may also adopt an ordinance to require other officials and employees of the locality to file the Statement of Economic Interests form pursuant to Code of Virginia § 2.2-3115(A). Typically, this provision is used for the city or town manager, but some localities require various other employees to file the form. The council also may require members of boards, commissions and councils whom it appoints to file a disclosure form. § 2.2-3115(B)

In localities with a population of more than 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers must file an annual disclosure that is limited real estate interests. § 2.2-3115(G)

The section clarifies that no local government officer or employee is required to file any disclosures not specifically mentioned in the article. § 2.2-3115(C)

Who files disclosure forms?

Per Code of Virginia § 2.2-3115, the following local officials are required to file the State and Local Statement of Economic Interests:

- Members of the board of supervisors.
- Members of the city council.
- Members of the town council, if the town has a population exceeding 3,500.
- Members of a school board.
- Members and the executive director of any industrial development authority or economic development authority.
- Citizen members of the Northern Virginia Transportation Authority and the Northern Virginia Transportation Commission.
- Persons holding positions of trust appointed or employed by the governing body if the governing body has passed an ordinance requiring them to file.

- Persons holding positions of trust appointed or employed by school board if the school board has adopted a policy requiring them to file.
- Members of the governing body of any entity established in a county or city with the power to issue bonds or expend funds in excess of $10,000 in any fiscal year if the governing body of the appointing jurisdiction has required them to submit this form.

Per Code of Virginia § 2.2-3115, the following local officials are required to file the Financial Disclosure Statement:

- Members of the governing body of any entity established in a county or city with the power to issue bonds or expend funds in excess of $10,000 in any fiscal year unless required to file the Statement of Economic Interest by the governing body of the appointing jurisdiction.
- Non-salaried citizen members of local boards, commissions, and councils if the governing body has designated them to file.

Per Code of Virginia § 2.2-3115(G), the following local officials are required to file the Real Estate Disclosure:

- Planning commission members
- Members of board of zoning appeals
- Real estate assessors
- County, city, or town managers
- Executive officers

Note: Nothing precludes a locality from requiring others to file.

Enforcement & Penalties

Criminal penalties

A knowing violation of COIA is a class 1 misdemeanor. § 2.2-3120 According to the Act, a violation is knowingly made if an official acts or refuses to act when he or she knows that the behavior is either prohibited or required by the Act. An example of refusing to do a required act would be refusing to file a disclosure form. A class 1 misdemeanor has maximum penalties of one year in jail and a fine of $2,500.

Three other specific violations have a lower, class 3 misdemeanor penalty (maximum $500 fine):

- Failure to disqualify oneself from participating in a transaction.
- Failure to file the annual statement of economic interests.
- Failure to file the statement of reasons for a disqualification in a transaction.

Additional consequences for violations

In addition to the criminal consequences, a council member who is found guilty of a knowingly violating COIA is also guilty of malfeasance in office. In that case, the judge may order the forfeiture of the member's council seat. § 2.2-3122

If a contract made by a locality is found to involve either a council member who violated the general provisions relating to bribes, insider information, undue influence § 2.2-3103, or a violation of the "personal interest in a contract" provisions, the council may rescind the contract. In that case, a contractor, even if innocent of wrongdoing, may not receive the full profits they anticipated in the deal. The contractor may only receive a "reasonable value." § 2.2-3123

If a council action involves a violation of "the personal interest in a transaction" requirements, the council may rescind the award of a contract or other decision made. In rescinding the action, the best interests of the locality and any third parties are to be considered. § 2.2-3112(D)

If a council member violates any of the general provisions related to bribes and other illegal behavior, the rules regarding personal interest in a contract, or the rules regarding personal interest in a transaction, any value the member received from the transaction must be forfeited. If the violation was knowingly made, the judge may impose a civil penalty equal to the value received. § 2.2-3124

Any person required to file a disclosure form shall be entitled to an extension of the time limit for good cause shown. Good cause includes (i) the death of a relative, (ii) a state emergency declared by the Governor or by the President of the United States or a governor of another state if such emergency interferes with the timely filing of disclosure forms, (iii) being a member of a uniformed service and on active duty on the date of the filing deadline, or (iv) failure of the electronic filing system. § 30-356.2(A)

If a person is unable to file the disclosure form on time because it was not made available until after the deadline, the person shall receive a five-day extension upon request. The head of the agency for which the person works or the clerk of the governing body of the locality responsible for providing the disclosure form to such person shall be assessed a civil penalty in the amount equal to $250. If the disclosure form is provided to the person within three days prior to the filing deadline, the person shall receive a three-day extension upon request, and no civil penalties will be assessed against the head of such person's agency or the clerk. § 30-356.2(B) This does not apply to statements of economic interest required to be filed as requirement of candidacy. § 30-356.2(C)

Advisory Opinions

Commonwealth's attorney

The law allows some opportunity to avoid a problem by setting up a process for a local official to obtain an opinion on a COIA question from the local Commonwealth's attorney. The Commonwealth's attorney is required by Code of Virginia § 2.2-3126(B) to issue advisory opinions on whether a situation constitutes a violation. In addition to issuing opinions, the Commonwealth's attorney is charged with prosecuting violations of the Act by local officials. If the council member gives the attorney all the relevant facts and the attorney determines that the council member is allowed by law to participate, the council member may not be prosecuted for doing so. § 2.2-3121(B) If the Commonwealth's attorney opines that the facts constitute a violation, the council member then may ask the attorney general to review and override the local opinion. The law makes it clear that any written opinions are public records and are therefore available to the public.

If the council member obtains a written opinion from the Commonwealth's attorney or the Conflict of Interest and Ethics Advisory Committee (COIA Council) based on a full disclosure of the facts, the council member may introduce the favorable opinion from the attorney upon challenge. § 2.2-3121(C) However, keep in mind that the town or city attorney cannot provide legal protection from prosecution for a violation that the Commonwealth's attorney or the Conflict of Interest and Ethics Advisory Council are legally authorized to grant.

The Virginia Conflict of Interest and Ethics Advisory Council

The Advisory Council is another resource that may be used to help localities and local officials avoid a conflicts of interest or ethics problems. It has the authority to issue formal advisory opinions and guidelines relating to ethics and conflicts issues. Additionally, the Advisory Council may issue informal advice in response to specific questions. Any informal advice issued by the Advisory Council is exempt from mandatory disclosure under the Virginia Freedom of Information Act. However, if the recipient invokes the immunity provisions of Code of Virginia § 2.2-3121 or § 30-124, the record of the request and the informal advice shall be deemed to be a public record and released upon request.

Formal advisory opinions can be found on the Advisory Council website (https://ethics.dls.virginia.gov) along with the adopted procedures for issuing formal advisory opinions. Formal opinions are public records but may have some personal information redacted.

Another role of the Advisory Council is to provide training on ethics and conflicts issues. These training seminars are available to lobbyists, state and local government officers and employees, legislators, and other interested persons. The written materials for these training sessions will also be published by the Advisory Council, when it is deemed appropriate. § 30-356 (7), (9)

Conclusion

The Virginia State and Local Government Conflict of Interests Act determines when public officials and employees have personal interests in public contracts or transactions, if those interests conflict with the official's' public duties, and how the officials should behave considering such a conflict. The Act dictates the terms for disclosure of public officials' personal and financial interests and decides when officials must disqualify themselves from participating in a public business transaction. The Act also defines other types of conduct that public officials are prohibited from engaging in, including involvement in bribery, influence peddling, or misuse of insider information.

Council members should always consult the Act's specific language when a potential conflict seems possible. Inquiries about specific contracts or transactions should be directed first to the local city or town attorney. However, keep in mind that the town or city attorney cannot provide the legal protection from possible prosecution that the Commonwealth's Attorney or the Conflict of Interest and Ethics Advisory Council can.

About the author: Michelle Gowdy is the Executive Director of the Virginia Municipal League.

CHAPTER 4

Legal "Quirks"

By Lawrence Spencer

Included in this chapter:

- **Introduction: "Ball of Confusion"**
- **Advertising Requirements**
- **Ordinances, Resolutions, Motions & Proclamations**
- **Conclusion**
- **Appendix A: Advertising FAQs**

Introduction: "Ball of Confusion"

In 1970, Motown hit makers The Temptations released their single "Ball of Confusion". While I'm sure other people have their own associations with the song, as a local government attorney the first thing I think of when I hear it is Title 15.2 of the Code of Virginia.

For those who are not local government attorneys – and don't associate songs with Code of Virginia sections – Title 15.2 is full of little-known, confusing sections that, if overlooked, can cause problems for localities. However, recent amendments to the Code have attempted to harmonize what were previously widely differing requirements. For example, Code of Virginia § 8.01-324 (I) and (J) now permit the publication of ordinances and resolutions, under certain conditions, in online-only news publications thus dragging the Code (slightly) into the 21st century!

This chapter will focus on the sections of Title 15.2 that deal with:

- The various advertising requirements* that are necessary to hold the public hearings to adopt a budget, approve a rezoning application, etc.
  - * *Failing to follow the required notice provisions makes an ordinance that is adopted by a local governing body void.*
- The differences* between ordinances, resolutions, motions, and proclamations.
  - * *Failing to give an action of a local governing body the proper label can result in a legal challenge.*

Advertising Requirements

Note: The sections of the Code of Virginia that are listed below should be reviewed in their entirety for the complete notice requirements; this chapter only provides a summary of the more common notice requirements.

Annexations (voluntary). At least 30 days 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." § 15.2-3204

Bonds Issuance. Before authorizing the issuance of bonds, the governing body shall hold a public hearing and notice of the hearing shall be published twice in a newspaper published or having general circulation in the locality. The first notice must appear no more than 28 days before and the second no less than seven days before the hearing. § 15.2-2606 (A)

Boundary Line Adjustment (voluntary). Before adopting an agreement to adjust local boundary lines, the governing bodies shall advertise their 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. § 15.2-3107

Budget Adoption. Before adopting a budget, the governing body shall hold a public hearing to receive public comments on the proposed budget. § 15.2-2506 Notice of the public hearing shall be provided as set out in Code of Virginia § 15.2-1427. Any locality not having a newspaper of general circulation may provide for notice by written or printed handbills, posted at designated public places. Please note that the budget cannot be approved until seven days after the public hearing. § 15.2-2506 and § 15.2-2503

Budget Amendment. 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. § 15.2-2507 Notice must be provided as set out in Code of Virginia § 15.2-1427.

Certain Fees and Levies. 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. § 15.2-107

- Notice for a public hearing to impose or increase public utility fees must be published twice in a newspaper of general circulation. The first notice must be published no more than 28 days before and the second notice appearing no more than seven days before the meeting. § 15.2-1427
- Notice for a public hearing to impose or increase zoning and subdivision fees must be published in a newspaper of general circulation. The first notice must be published no more than 28 days before and the second notice appearing no more than five days before the meeting. § 15.2-2204

Charter Amendments. If a locality decides to hold a public hearing on a proposed charter amendment, notice of the public hearing must be published once in a newspaper having general circulation in the locality in accordance with the Code of Virginia § 15.2-1427. § 15.2-202

Comprehensive Plan, Zoning Ordinances and Amendments. The notice requirements for land use matters 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 Code of Virginia § 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 identify 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 twice in some newspaper published or having general circulation in the locality, with the first notice appearing no more than 28 days before and the second notice appearing no less than five days before the date of the meeting referenced in the notice; 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. The local planning commission and governing body may hold a joint public hearing after public notice as set forth in this subsection. If a joint hearing is held, then public notice as set forth in this subsection need be given only by the governing body. In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, 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. Before adopting an ordinance or resolution to initiate a condemnation proceeding, the governing body shall hold a public hearing, but the section 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. § 15.2-1903

Most local government attorneys 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 as provided in Code of Virginia § 15.2-1427 (F). 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. 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. § 58.1-3924

Delinquent Tax Sales. 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. Note: There are a number of other steps in the delinquent tax sale process. § 58.1-3965

Franchises or Leases of Public Property for a Term in Excess of Five Years. Before a city or town (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 in accordance with Code of Virginia § 15.2-1427 in a newspaper having general circulation in the city or town. § 15.2-2101 (A) 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. § 15.2-2101 (B)

Ordinance Adoption by Counties. A county may not adopt an ordinance until notice of the intention to adopt the ordinance has been published advertised by reference twice with the first notice being provided no more than 28 days before and the second notice no less than seven days before the meeting referred in the notice 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. § 15.2-1427 (F)

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 Code of Virginia § 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. And as shown in this chapter, other statutes may incorporate this advertising requirement.

Precinct, Polling Place or Election District Changes. 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, the Code does not require a locality to hold a public hearing on the proposed changes. § 24.2-306

Vacating or Altering Public Rights of Way. 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 the first notice appearing no more than 28 days before and the second notice appearing no less than seven days before the hearing. § 15.2-2006

Sale or Lease (for less than five years) of Public Property. 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 Code of Virginia § 15.2-1813, § 15.2-1800 (B).

Tax Increases. 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. § 58.1-3007

Tax Increases as a Result of Reassessments. 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. § 58.1-3321

The advertising requirements are quite specific:

Notice of the public hearing shall be given at least seven 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. Additionally, in a county, city, or town that conducts its reassessment more than once every four years, the notice for any public hearing held pursuant to this section shall be published on a different day and in a different notice from any notice published for the annual budget hearing. 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.).

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, some 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.

The Code of Virginia provides that "no referendum shall be placed on the ballot unless specifically authorized by statute or charter." § 24.2-684* Virginia's laws do allow localities to hold referendums on issues such 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. However, 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 or by holding a public hearing. § 15.2-202 In either case, public notice must be given in accordance with Code of Virginia § 15.2-1427.

**Some local governments have the authority in their charters to conduct referendums. See City of Virginia Beach City Charter § 3.09 as an example.*

Notices for public hearings

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.

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

The Code of Virginia provides that in the performance of its duties a governing body may adopt "ordinances, resolutions and motions." § 15.2-1425 Since the state code uses three different terms, it is reasonable to expect that there would 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, the Code of Virginia provides that a governing body may authorize the issuance of bonds by "ordinance or resolution." § 15.2-2607 At other times a statute will specify what type of action is to be taken by the governing body. For example, Code of Virginia § 58.1-3270 provides that the governing body of a county or city may adopt a "resolution" providing for the annual assessment of real estate. Some local charters prescribe what actions must be done by ordinance. Blacksburg Town Charter § 3.15 (a)

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 a legal proceeding challenging the 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:

> *"…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 instanter. 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."*

Considering 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 to minimize the risk of litigation.

Conclusion

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 follow 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 costly litigation that could have been avoided with 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.

About the author: Lawrence Spencer is the Town Attorney for the Town of Blacksburg, VA.

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Appendix A: Advertising FAQs

What happens if the advertisement for a public hearing does not run?

Sometimes newspapers make mistakes and only part of an advertisement is published, or the advertisement fails to run at all. What should a locality do in such situations? In 2022, the General Assembly finally addressed this issue. In any instance in which a locality 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 even if it's after the hearing. Still with this new language, the locality should consult with the local government attorney when publication errors occur.

How are the days for advertising requirements calculated?

Sometimes questions come up as to the proper method to use when calculating days for notice of publication requirements. The Code of Virginia can help determine the proper dates when calculating the publication dates for ads:

> *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."* § 1-210 (A)

There is also a 1983-1984 Opinion of the Attorney General at page 479 of the Annual Report, which applies § 1-210(A) in calculating the days a rezoning notice had to be published. At that time, the Code of Virginia provided 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? 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. § 15.2-1416

CHAPTER 5

Elections

By Josette Bulova

Included in this chapter:

- **Introduction**
- **State obligations, local responsibilities**
- **Making changes to elections**
- **Conclusion**

Introduction

The publicly held election is the very foundation of the United States' system of government. The conduct of elections, however, is largely determined by each state. In Virginia, the General Assembly, under the authority of the Constitution of Virginia, determines the state's election laws § 24.2-102 *et. seq.* and the State Board of Elections is the body tasked with making policies and procedures. The board's members – who are appointed by the Governor – supervise and coordinate the electoral process while local electoral boards are entrusted with the responsibility to administer elections.

State obligations, local responsibilities

While the offices that oversee elections – electoral boards, officers of election, and general registrars – are created by the Constitution of Virginia, the people filling those offices are employees of the county or city in which they serve, unless otherwise specifically provided by law. § 24.2-110

Not only are the people serving in these election entities local employees, but the locality is also 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 local electoral board, as well as the minimum wages for the board secretary and the general registrar. However, the state reimburses the locality for only a portion of those costs.

The locality is not only required to pay the balance of the operating costs for the general registrar and electoral board, but it is also responsible for:

- Election officers' pay, assistant and deputy registrar salaries, and fringe benefits.
- Polling place rental fees and ballots.
- Voting machine and electronic pollbook warehousing, programming, and maintenance.
- Telephone, postage, and printing, including ballots.
- Office equipment, general office supplies, and electricity.
- Training expenses and mileage reimbursement.
- Office space for the electoral board and the general registrar.

If the locality adopts satellite polling locations, it must also provide the resources to operate all satellite locations in the jurisdiction.

What else does the state pay for?

Other items provided and funded by the state are the operating costs of the Virginia Election and Registration Information System (VERIS), as well as state oversight for campaign finance using the Committee Electronic Tracking (COMET) and Campaign Finance Management (CFM) systems. One-time funding is occasionally granted when establishing new programs, like the voting drop box.

Local electoral boards

Each county and city in the Commonwealth has an independent electoral board responsible for conducting all federal, state, and local elections to public office within its jurisdiction. § 15.2-3543 The electoral board is composed of three qualified voters in the locality 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, then the composition of the board must change to align with the term limits of its board members.

Board members' terms are staggered so that one member is appointed each year, with each term beginning January 1 and running through December 31 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 when the board member's term expires, or within 30 days of vacancy. The court must fill the vacancy from the recommendations filed by the political party entitled to make the appointment.

Primary duties of the local electoral board

Local electoral boards are principally operational rather than policy-making bodies. One of the greatest responsibilities – and sources of authority – for the local electoral board is the power to appoint. In addition to the general registrar, all officers of election are appointed by the board. Election officers are appointed for a term of one year, and the general registrar serves a term of four years.

Other duties of the local electoral board

- Determine if candidate names are qualified to be on the ballot.
- Approve and determine the number of voting machines, election officers, and ballots to use in any election.
- Approve and recommend polling places within the precincts established by the local government.
- Develop a security plan, conduct adequate and accurate tests on machines, and coordinate with local departments.
- Assist in conducting absentee voting, post-election canvassing, and counting provisional ballots.
- Appoint and train all election officers.
- Appoint, remove, and conduct annual performance reviews of the general registrar.
- Determine the results of local elections and certify 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.

Scan the QR code or use link to learn about other responsibilities and expectations of electoral board members.

Primary duties of the general registrar

While all election matters fall within the purview of the local electoral board, voter registration, campaign finance, reporting management, 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 in the jurisdiction. Only the court has the authority to change any decision made by a registrar (§ 24.2-114).

Other duties of the general registrar

- Serve as administrative officer for the electoral board.
- Follow local, state, and federal legislation that may impact voter registration or elections.
- Provide voter registration and election education to the public.
- Notify voters of changes in polling places or elections.
- Check candidates' petitions to determine the number of qualifying signatures on them.

Primary duties of the governing body

#1 – Establish the size and shape of each precinct – the smallest form of local election district – within the confines of state and federal election law

- **Cities** – Each city precinct must be located within the jurisdiction and be composed of compact and contiguous territory with clearly defined and observable boundaries, as codified in Code of Virginia § 24.2-305. Additionally, a precinct cannot have more than 5,000 registered voters when it is created. The city must also establish at least one polling place for each precinct.
- **Towns** – Only one precinct is created in each town, unless the council of that town establishes more than one in accordance with Code of Virginia § 24.2-308.

#2 – Provide funding for the electoral board to establish adequate facilities at every polling place

Per Code of Virginia § 24.2-310, polling places must be either inside the precinct itself or within one mile of the precinct's boundary. Additionally, they must be in a public building whenever practicable. If more than one polling place is located within the same building, each polling place must be in a separate room or a clearly defined and separate space. The "adequate facilities" provided by the electoral board includes making polling places accessible to voters as required by the Americans with Disabilities Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Virginians 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.

#3 – Reapportionment

As of 2026, all localities with a population of 400,000 or more must elect members of its governing body from single-member districts. Per Code of Virginia § 24.2-304.1 - § 24.2-304.6, if members of either the council or the school board are elected from districts (or wards) instead of at large, then the council is required to reapportion the representation in these districts every ten years. Reapportionment follows the decennial census conducted by the federal government and is based on the resulting population figures.

#4 – Redistricting

The total population, rather than the voting age population, is used in redistricting. Typically, 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 Virginia Division of Legislative Services also begins working with general registrars to verify precinct boundaries and local election districts. Per Code of Virginia § 24.2-311, the local council will have to make several decisions before beginning the redistricting process. Some of these decisions are:

- Which agencies and interest groups will be involved in the redistricting process.
- Who will staff the redistricting effort, will outside legal counsel be required, or will a consultant need to be hired.
- The budget for items such as staff, office space, equipment, and mailing change notices to voters.
- A schedule for the process, including times for public hearings and input.
- The timing of the redistricting.

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 has determined some of the criteria that must be used. For example, the Constitution of Virginia requires election districts to 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. 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 and competition.
- Considering the convenience for voters.
- Ensuring effective election administration.

After 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 this to be completed a minimum of 75 days before the next November general election; otherwise, it must wait until after that election.

Finally, the general registrar must notify voters of their new election precincts or election districts, typically done by mailing new voter registration notices to affected voters. Code of Virginia § 24.2-307 requires this to 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 before each election.

Redistricting in Virginia: Recent developments

Traditionally, the census is taken in the first year of the new decade, and the figures are released to the localities in late winter or early spring of the second year. The Virginia General Assembly formed a bipartisan redistricting commission in 2021, comprised of members of the House of Delegates and the State Senate, as well as appointed citizens. This commission was tasked with creating maps that were fair, non-partisan, and amenable to everyone for state and federal districts. The redistricting commission was evenly split between Democratic and Republican legislators, resulting in gridlock. When the commission was unable to reach a consensus, the maps were drawn by the Virginia Supreme Court. However, these maps did not account for the districts and homes of incumbent legislators, leading to nearly 50% of legislators retiring or losing their seats.

Making changes to local elections

Preclearance requirements

Before 2013, Virginia and most 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 U.S. Supreme Court found the coverage formula used to apply this section of the U.S. Voting Rights Act unconstitutional in 2013 in *Shelby County v. Holder*, the requirement was dropped. However, when the Virginia General Assembly passed the Voting Rights Act of Virginia in 2021, it included a modified reinstatement of the preclearance process that only applies to localities.

Code of Virginia § 24.2-129 now requires that localities 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.
- 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.** § 24.2-311, § 24.2-312, and § 24.2-313

Moving elections

During the General Assembly session of 2000, state law was modified to give localities the option to hold elections in either May or November. This provided local governments with the option and flexibility to conform to the needs of their communities. However, in 2021, the General Assembly mandated that all localities move their elections to November as of January 1, 2022. Although the month has changed, localities still have the discretion to hold elections in an even or odd year and with staggered terms. Recent legislation created a study to consider moving all elections to even years. It's important to note that this would require a constitutional change to extend all terms of local office for one year, as well as charter changes for every locality. Other considerations include the potential for partisan elections, more expensive campaigns, and increased costs to administer elections.

Ranked choice voting

According to Code of Virginia § 24.2-673.1, "ranked choice voting" means a method of casting and tabulating votes in which voters rank candidates in preferential order. When voting using this method, number one is the highest ranking, number two is the next-highest, and so on consecutively. The person with the highest number of votes in this method of voting does not "win" unless there are only two candidates. During each round, either a candidate or candidates are elected in a process where the last-place candidate is defeated. Tabulation ends when the number of candidates elected equals the number of offices to be filled.

The decision to conduct an election by ranked choice voting must be made in consultation with the local electoral board and general registrar by a majority vote of the local governing board that office serves. As of July 1, 2026, all local governing bodies have the authority to conduct elections using this method.

Sunday voting

The 2026 General Assembly passed legislation mandating absentee voting be made available for a minimum of five hours between the hours of 11:00 a.m. and 5:00 p.m. on the second and third Sunday immediately preceding all elections in accordance with Code of Virginia § 24.2-701.1. Current law allows localities to choose to have Sunday absentee voting, recently passed legislation now expands the ability to additional Sundays following the required second and third Sundays.

Conclusion

Election laws are created by the Virginia General Assembly which dictates that the State Board of Election make the policies and procedures. The local electoral boards administer the election; the local general registrar conducts the election; and the local governing body funds the election. Understanding how each body works together is crucial for smooth, safe, and fair elections.

About the author: Josette Bulova is the Policy Communications Coordinator for the Virginia Municipal League. She is a registered lobbyist. Her areas of policy expertise include education and elections.

CHAPTER 6

Human Resources

By Josh Didawick

Included in this chapter:

- **Introduction: Why Human Resources Matters**
- **Compensation**
- **Grievance Procedures**
- **Workforce Training & Development**
- **Information Systems & Records Retention**
- **Drug Testing in the Workplace**
- **Conclusion: Emerging Issues**

Introduction: Why Human Resources Matters

Unlike some businesses where automation is the trend, the services provided by local governments are almost always performed by people. This means that the costs associated with maintaining an effective workforce tend to make up a large percentage of a locality's annual budget. Public sector human resources managers and staff play a critical role in recruiting, hiring, and developing an effective workforce to carry out the public's business. As such, human resources policies, practices, and systems merit close attention when seeking to increase the productivity and efficiency of local government operations.

A locality's capacity to maintain a quality workforce depends upon its ability to:

1. Attract, recruit, and select qualified applicants for jobs.
2. Evaluate and compensate employees 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.

Every locality should have a human resources system with 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, guidelines for handling disciplinary matters, and retention. These standards must be administered consistently across the workforce to withstand legal tests and challenges.

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. In fact, applicable state and federal laws define much of a local government's human resources system. For example, Virginia has enacted several laws regarding employment dealing with discrimination (§ 2.2-3905 is the main provision).

Finally, each locality should establish personnel policies and accurate job descriptions and review them periodically to ensure compliance with new laws and emerging trends.

Compensation

The wages or salaries, benefits, and other incentives provided to employees are compensation for the work they perform. A jurisdiction competes for employees in the labor market, and seeks to retain those employees, by offering competitive compensation.

Local governments with more than 15 employees are required to adopt both a **classification plan** and a **uniform pay plan.** § 15.2-1506 The classification plan is a means to organize and compensate employees fairly, while the uniform pay plan will determine the range of the salary paid at each classification level.

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

Employee Pay. Beyond a base rate of pay, this compensation also includes pay increases (whether for merit or cost of living adjustments), and other pay conditions such as overtime, shift differential, call-back pay, emergency pay, and bonuses.

Employee Benefits. The range of employee benefits offered by Virginia local governments is determined by local policies and state and federal laws. The benefits offered to local government employees may include some combination of the following (list is illustrative only):

- Health, life, dental, disability, and voluntary insurance
- Annual, sick, personal leave, and/or paid time off (PTO)
- Paid holidays
- Participation in a local retirement system, the Virginia Retirement System (VRS), and/or a deferred compensation plan (e.g., 401K, 457, etc.)
- Family and medical leave
- Parental leave
- Wellness programs
- Flexible work schedule
- Remote working arrangements
- Employee assistance programs (EAP)
- Dependent care
- Flexible spending accounts (medical and dependent care)
- Tuition assistance/reimbursement
- Student loan repayment assistance

Special 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 21 days of paid leave during the federal fiscal year when requested and supported by proper documentation. § 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 when certain conditions are met.

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 to clearly document the reasons for terminating an employee to prevent this benefit from being used inappropriately. § 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. § 60.2-507

Workers' compensation. Workers are generally covered for injuries and disease that arise from their employment. Chapter § 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.

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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. § 65.2-100 - § 65.2-1300

The benefits are covered by one of the following:

- A state compensation fund to which the locality contributes through payroll taxes.
- A local compensation fund that the locality operates as an individual self-insurer.
- 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 § 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, purchasing coverage through an insurance company, or insurance pool as authorized by State Code.

Collective bargaining

Collective bargaining is the process by which employees in a bargaining unit have representatives to 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. § 40.1-57.3 However, in 2020 the Virginia General Assembly passed HB582, which went into effect on May 1, 2021, and gave local governing bodies the option to collectively bargain with public employee unions. § 40.1-57.2

It's important to keep in mind the following points:

1. HB582 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.
3. Governing bodies can choose the conditions of employment applicable to collective bargaining.

The passing of HB582 was a tremendous change for Virginia local governments and created a new dynamic for employees and managers to navigate. Many local government HR and legal departments must now do additional work to maintain the organization, election, and negotiation processes, as well as administering the contracts.

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. Using a locally developed grievance procedure has the advantage of providing continuity with local human resources policies and enables the locality to handle its own grievances.

The grievance process

In general, a grievance moves through an employee's chain of command, often starting with the supervisor then going to the department director and chief administrative officer in subsequent steps if the grievance has not been resolved at an earlier step.

The last step of the grievance process is a hearing before either a panel or administrative hearing officer. Grievance panels may be made up of a standing grievance panel, a pre-selected list of potential grievance panel members, or there may be a process by which panel members are selected each time there is a need for a hearing. Some organizations use an administrative hearing officer appointed by the Supreme Court of Virginia in lieu of a grievance panel.

State law requires, at a minimum, that:

- Each jurisdiction with more than 15 employees must have a grievance procedure. § 15.2-1506
- The procedure must have no more than four steps. §15.2-1507 (5)(a)
- The procedure must specify time limitations for both filing and responding to the initial, written grievance. § 15.2-1507 (5)(b)

While local government employees must be covered by a local or state grievance procedure, they can also file their grievance directly with the Governor's Council on Human Rights or the local Equal Employment Opportunity Commission office (see next section) if they feel they have been subjected to discrimination.

Special procedural guarantees

State law gives certain groups of public employees special procedural guarantees. Contact your lawyer immediately before initiating any disciplinary actions.

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 § 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 § 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 § 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.

Workforce 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. 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 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.

Certifications and Licensing

Some professions and occupations regulated by the Department of Professional and Occupational Regulation (DPOR) 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.

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.

Information Systems & Records Retention

Because of local, state, and federal record-keeping and reporting requirements and the need to retrieve human resources records quickly, the individual or department tasked with human resources responsibilities is often the primary source for such information in local government. Human resources records include both descriptive information about a local government's workforce as well as a large amount of personally identifiable information about 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 paying employees accurately and on time and ensuring that withholding and reporting is made at the state and federal levels. Another benefit is that changes to employee benefits and HR policies will have a downstream effect on those finance and budget functions. Finally, integration with those functions can lead to better organization-wide human resource decision making.

Cyber diligence is critical

The amount and importance of the information maintained by local governments make them high-value targets for cyber criminals. 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.

Records: Access and retention

Access to and disclosure of human resources information are governed by several state laws, including the Virginia Freedom of Information Act § 2.2-3700-2.2-3715 and the Government Data Collection and Dissemination Practices Act § 2.2-3800-2.2-3809. One or more employees are often designated as "records custodians." 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. 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. When federal and state requirements differ, the longer of the two requirements should be followed. However, it is inadvisable to keep records for too long and it is important to properly document the disposal of records.

Use the QR code or link to access the Library of Virginia's Records Management website.

Drug Testing in the Workplace

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. § 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** requires all employers to develop and implement testing programs for employees in safety-sensitive positions (e.g., those with commercial driver's licenses, certain roles in transit, and aviation). 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 certain conditions are met.
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** 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.

More recently, Virginia legalized some possession and use of marijuana. Localities should review their employment policies and work with legal counsel to ensure compliance with these types of changes. While some possession of a substance may be legal, organizations still have the ability to restrict what is brought into the workplace and prohibit being under the influence of intoxicants on the job.

Conclusion: Emerging Issues

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 for their community, elected officials and leaders need to remain up to date on HR-related issues and topics. While any list of emerging issues in public sector HR will always be subject to change, below are several topics that public sector leaders should be prepared to address in their organizations.

Twenty-first century employment trends. As older workers retire from the workforce, the younger workers replacing them are not anticipated to stay with one employer for as many years as their predecessors. As such, employers should expect to retain employees for shorter periods of time – although opportunities for employees to learn new skills and take on new challenges can help keep them engaged longer. 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.

It's important to keep in mind that these trends are not all working against local government. In fact, the mission of local government often resonates with those who have more time in the workforce outside the public sector. When the circumstances are right and opportunities arise, bringing this outside experience into a local government organization can be mutually beneficial.

Artificial Intelligence (AI). The increasing use of artificial intelligence is already having significant effects on the workplace. Local governments will want to be proactive in understanding how these tools can benefit them while also understanding potential hazards. Organizations should establish clear policies around the use of AI and large language models (LLM) to realize their benefits while them responsibly.

Diversity, equity, and inclusion. Teams and organizations that welcome diversity have a competitive advantage over those that do not because they tend to engage people with different backgrounds, disciplines, and thought processes. Creating an environment within a workforce where individual contributions are recognized and valued will pay dividends over the long run in efficiency and responsiveness.

Workplace flexibility. Technology means that many local government employees can now do their job from anywhere. Increased opportunities for employees to work remotely, and/or provide flexible work schedules, can be leveraged as competitive advantages for employers in recruitment and retention, and can make local government a more attractive employment option for certain positions under the right circumstances.

Employee wellness. Making initiatives and education available to promote the wellbeing of employees and their families can have numerous benefits. Health insurance companies, employee assistance programs (EAP), and deferred compensation record keepers are all able to assist localities in addressing employees' physical, mental, and financial health.

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

About the author: Josh Didawick is director of human resources for the Town of Leesburg. Prior to joining Leesburg, he was director of human resources for the City of Staunton and worked for the City of Memphis, TN and the City of Winchester. Mr. Didawick has served as board member and president of the Virginia Chapter of PSHRA, as well as on several committees and task forces for PSHRA's national association.

SECTION 3
MONEY

- **Budgeting** - by Stephanie Dean Davis, Ph.D.
- **Revenue Sources** - by Stephanie Dean Davis, Ph.D.
- **Economic Development** - by members of the Virginia Economic Developers Association (VEDA)
- **Public Procurement** - by William H. Hefty
- **Risk Management** - by Marcus Hensel

CHAPTER 1

Budgeting

By Stephanie Dean Davis, Ph.D.

Included in this chapter:

- **Introduction**
- **The Operating Budget**
- **The Capital Budget**
- **Auditing, Reporting, Policies, and Monitoring**
- **Conclusion**
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Introduction

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.

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.
- Plan for the rational distribution of resources.
- Establish performance objectives and desired outcomes.
- Evaluate the performance of departments and programs.
- Explain to citizens the services funded with their tax dollars.
- Ensure that funds are expended as planned.

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.

Types of budgets

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 the appropriations cease on the last day of the fiscal year.
2. **Capital Budget.** Addresses improvements with longer life spans, long-range returns, and relatively high costs. Capital budgets typically appropriate funds through the life of the project.

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

- Hold a work session early in the budget cycle to give input on budget priorities.
- Develop a strategic plan that specifies the goals and strategies approved by the governing body.
- Review the results of any citizen surveys, forums, or other types of citizens' 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 Annual Comprehensive Financial Report (ACFR).

Preparing the budget

Budget preparation involves many technical and procedural considerations. The individual responsible for preparing the budget varies. In the smallest of localities, it may be the mayor. In many towns and cities, it is the manager, and in still others it may be a budget or finance director.

The individual or staff that prepares the budget has technical expertise and can offer guidance, but ultimately it is the governing body's responsibility to set policy priorities and adopt a budget that reflects the needs of the community. 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.

The Operating Budget

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 Appendix C shows a suggested sequence of events for developing capital and operating budgets.)

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 Appendix A.

Steps in developing an operating budget

#1 – Forecast of Revenues & Expenditure. Before the manager can issue budget instructions to department heads, they must undertake a preliminary forecast of revenues and expenditures. In doing so, 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 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 manager or budget officer 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 manager or budget officer is evaluating the departmental budget requests, the finance officer will need to re-evaluate previous revenue estimates based on more recent data. The results of this evaluation may necessitate further additions or deletions to the budget.

#2 – Work Sessions. After the manager has submitted a proposed budget to the governing body – but before any public hearings are 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.

#3 – 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 (*see Section 2, Chapter 3 for the timelines*). In a year when tax increases are recommended or major service reductions 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 may advocate for items that have not been included.

Questions to ask when reviewing the budget

Evaluating the budget can be a daunting task, given the complexity and breadth of local government operations. The members 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. Questions to consider when reviewing an operating budget include:

- *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?*

#4 – Amendments & Adoption. In amending the budget, the members of the governing body should consider information from the public hearings, input from 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 during 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.**

#5 – 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 which 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

What to know about state funding

- Uncertainty about state funding complicates the budget development process. 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. The earliest that the final disposition of the state budget is known is sometime in April, after the veto session has been held.

What to know about the school budget

- Concurrently with the locality's budget process, the school superintendent prepares a recommended budget for the school board's consideration. The school board holds public hearings on the superintendent's budget, makes any changes it deems desirable, and then forwards the school budget to the governing body for its consideration and approval.
- Local appropriations for education can be among the most controversial decisions when adopting a budget. Maintaining good communication between the governing body and manager, and the school board and superintendent, will minimize the potential for misunderstandings. To further reduce friction, some governing bodies have developed policies for determining the share of local revenue that will be allocated to schools.

Executing the budget

Although the governing body will oversee the locality's fiscal condition through periodic reports on actual revenues and expenditures, the manager and staff are primarily responsible for executing the budget. It is important that the manager monitor revenues and maintain control of expenditures to prevent a budget deficit and accomplish the policy and program goals contained in the budget.

A common method by which managers control expenditures is by establishing allotments which 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. Allotments control the rate of spending during the fiscal year and require 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.

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.

Recent trends in budget execution

Place more responsibility on department heads. 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, some localities choose 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.

Abandon the "use it or lose it" mentality. The "use it or lose it" approach to budgets 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, regardless of need. Moreover, the "use it or lose it" approach does not allow the flexibility to shift funds for the overall financial betterment of the local government as conditions change. 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. Abandoning "use or lose it" allows for normal expenditure of funds throughout the year which can then be assessed after the fiscal year ends.

The Capital Budget

A capital budget is derived from a capital improvements program (CIP) which, in its most basic form, 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 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 communities, regardless of size, need to consider their needs for capital 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. 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.

Preparing the CIP

While the CIP process can be organized in various ways, it is essential that it be coordinated from a single point. 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.

Planning commissions

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 when preparing the CIP, and to hold public hearings.

Planning for the CIP

Long-range planning should precede the development of a CIP. This planning can take several forms as outlined below.

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 in accordance with 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 alternative financing mechanisms that may be considered acceptable for financing those projects.

The role of the governing body: Consideration, approval, and adoption

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

Important steps in the development of a capital improvements program (CIP)

1. Establish a calendar that coordinates with the operating budget calendar (see sample budget calendar in the "Resources" section of this chapter).
2. 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 a valuable source for demographic information.
3. Inventory existing facilities.
4. Review projects by the engineering, finance, and planning staff, culminating in review by the manager.
5. Engage the planning commission, or other designated entities, to evaluate projects in accordance with the Comprehensive Plan.
6. Hold a public hearing for input and awareness.
7. Prepare a draft CIP plan, including a plan for financing the projects.
8. Final review by the manager.
9. Have the governing body review the CIP
10. Approve a capital budget that reflects the first year of the CIP

Contents of a capital improvements program (CIP)

A CIP typically includes the following items:

- A message from the planning commission, or similar entity, explaining how it arrived at its priorities.
- A summary schedule of expenditures and financing by year and operating impacts resulting from the CIP projects.
- 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 individual projects.

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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.

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 criteria used to develop the CIP.

Auditing, Reporting, Policies, and Monitoring

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. If 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.

The annual comprehensive financial report

The Government Finance Officers' Association recommends that the audit statement be an annual comprehensive financial report (ACFR), 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 (fund balances). In other words, the balance sheet provides a snapshot of the government's assets, liabilities, and fund equity on a given date. The categories of fund balance, nonspendable, restricted, committed, assigned and unassigned will be shown on the combined balance sheet.

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.

The importance of financial policies

Financial policies serve as tools to support good financial management decision-making that ensures the long-term financial resiliency of a community. Financial policies include fund balance, debt management, investments, operating budget, revenue, capital budget, and grants.

The community's long-term financial resiliency 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 inject a cautionary note into 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. Financial policies that address non-recurring revenues and expenditures should be adopted to support good financial management.

Maintaining an appropriate level of unassigned fund balance, commiserate with 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 support unpredictable revenue shortfalls. Using the fund balance to finance operations should be resisted unless the balance has grown beyond an appropriate level or in fiscal stress. As noted above, fund balance usage (considered a one-time revenue source) 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 17 percent of total operating expenses). However, small communities may consider larger fund balances due to constraints on their ability to diversify revenues as compared to cities and counties.

Adoption of other financial policies, in consultation with a financial advisor, serve to guide decision making regarding the timing and financial commitments of capital projects, investments of local funds, and appropriate methods of financing. For example, grant management policies serve to support good grant management efforts and ensure the local government does not overextend itself with local match requirements and long-term program commitments.

The necessity of fiscal distress monitoring

In 2018, the General Assembly passed Item 4-8.03 (Chapter 2) which sets 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.

Conclusion

Thoughtful financial management and budgeting are essential for the effective delivery of government services. As such, there is no greater responsibility of local government officials than to develop and monitor a budget that reflects the needs of their constituency within the limits of available revenues. Budgets reflect the priorities but also the character of a community. It's worth repeating, 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.

About the author: Stephanie Dean Davis, Ph.D. is a Collegiate Associate Professor and Certificate Program Director in the School of Public and International Affairs at Virginia Tech. She manages the Graduate Certificate in Local Government Management.

Appendix A. Legal requirements

The legal requirements governing budget preparation and adoption are set forth in the Code of Virginia [Title 15.2, Chapter 25] (summary included in the resources section of this chapter). 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 proposed increases or decreases.

Accompanying Documentation. 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,

Note – Many local governments exceed these minimum requirements by also 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 seven days 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.

Appendix B: Applicable Code of Virginia sections

Summary of Code of Virginia Title 15.2 Chapter 25

Section	Summary
§ 15.2-2500	Establishes a uniform fiscal year for all localities and school divisions, running from July 1 to June 30.
§ 15.2-2501	Requires localities and school divisions to establish necessary funds for accounting and budgeting.
§ 15.2-2502	State agencies must notify localities of estimated state funds within 15 days after the General Assembly adjourns.
§ 15.2-2503	Budget estimates must be submitted by April 1; governing bodies must approve budgets and tax rates before the fiscal year begins.
§ 15.2-2504	Budgets must show prior year appropriations, expenditures, and changes for the upcoming year.
§ 15.2-2505	Allows inclusion of reserves for contingencies and capital improvements in the budget.
§ 15.2-2506	Requires public notice and hearings before budget approval; no funds may be spent without appropriation.
§ 15.2-2507	Budget amendments exceeding 1% of total expenditures require public notice and a hearing.
§ 15.2-2508	Governing bodies may require information from departments and constitutional officers.
§ 15.2-2509	Auditor of Public Accounts devises bookkeeping and accounting systems for local governments.
§ 15.2-2510	Localities must file annual financial statements and audits with the Auditor by December 15.
§ 15.2-2511	Requires annual audits of local government records; delays must be publicly disclosed.
§ 15.2-2511.1	Allows localities to return surplus tax revenues to taxpayers via ordinance.
§ 15.2-2511.2	Defines fraud, waste, and abuse; requires anonymous reporting systems and investigations.
§ 15.2-2512	Circuit courts may order audits of county officers or boards upon petition by residents.
§ 15.2-2512.1	Establishes procedures for identifying and addressing fiscal distress, including state intervention and appointment of emergency fiscal managers.
§ 15.2-2513	Localities with special budget provisions may opt to follow this chapter's provisions instead.

Appendix C: Sample budget calendar

Note: 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. Italicized items refer to capital budget only.

	What	Who
1	Develop preliminary forecast of revenues and expenditures.	Budget/Finance Officer
2	Hold work session to discuss resource constraints and preliminary budget priorities.	Manager/Governing Body
3	Invite department heads to develop proposals for capital improvements program (OP).	Manager
4	Submit OP proposals.	Department Heads
5	Meets with department heads to discuss proposed OP projects.	CIP Committee
6	Develop master schedule of all proposed projects and financing plan.	CIP Committee
7	Submits OP recommendations to manager.	CIP Committee
8	Submits recommended OP to planning commission and governing body.	Manager
9	Hold work session on proposed CIP.	Manager/Governing Body
10	Holds public hearing on proposed CIP.	Planning Commission
11	Consider resolution adopting CIP.	Governing Body
12	Issue operating budget instructions and worksheets. Hold work session with department heads and other personnel involved in budget preparation.	Manager
13	Submit budget requests to manager/budget officer.	Department Heads
14	Refine revenue estimates.	Manager/Finance Officer
15	Evaluate department operating budget requests.	Budget Officer
16	Meet with department heads to discuss manager's preliminary recommendations/denials.	Manager/Budget Officer
17	Finalize recommended operating budget and submits to governing body.	Manager
18	Hold work session on manager's recommended operating budget.	Manager/Governing Body

19	Hold public hearings on proposed operating and capital budgets.	Governing Body
20	Amend proposed budgets.	Governing Body
21	Set tax rate and adopt operating and capital budgets.	Governing Body
22	Prepare budget allotments.	Budget Officer
23	Implement and monitor budget	Manager/Budget Officer

Appendix D: Options for 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 fully fund 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. Several financing tools are available to local governments, 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 §§ 15.2-2600 - 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.

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Types of debt commonly issued by local governments:

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 Bonds. 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. 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 several 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 to share issuance costs, negotiate long-term and volume-discounted preferred pricing, and participate in bond issues of sufficient size to achieve attractive pricing.

Appendix E: Related agencies and publications

Auditor of Public Accounts
https://www.apa.virginia.gov

Publications include the annual *Comparative Report of Local Government Revenues and Expenditures,* available online at http://www.apa.state.va.us/Local20Government.aspx

Virginia Department of Taxation
www.tax.virginia.gov

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

International City Management Association (ICMA)
www.icma.org
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-c1.aspx.

Governmental Finance Officers Association (GFOA)
www.gfoa.org
The association's Elected Officials' Guide series includes booklets on:

- Fund balances and net assets
- Performance measurement
- Multi-year budgeting
- Procurement
- Revenue forecasting
- Public retirement plans
- Auditing
- Rating agency presentations
- Debt issuance
- Risk management
- Internal controls
- New reporting model
- Investing Government finance

Order online at www.gfoa.org/eog or www.gfoa.org/publications

Weldon Cooper Center for Public Service
www.coopercenter.org

Governmental Finance Officers Association (GFOA)
www.gfoa.org

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

- Fund balances and net assets
- Performance measurement
- Multi-year budgeting
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- Public retirement plans
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- Debt issuance
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- New reporting model
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Order online at www.gfoa.org/eog or www.gfoa.org/ publications

Virginia Municipal League (VML)
www.vml.org

Chapter 2

Revenue Sources

By Stephanie Dean Davis, Ph.D.

Included in this chapter:

- **Introduction: Lessons in Revenue from Recent Events**
- **State & Local Tax Structure**
- **Local Tax Revenues**
- **Other Local Revenue**
- **Revenue from the Commonwealth**
- **Conclusion: The Uncertain Future for Federal Revenues**
- **Appendix A: Resources**
- **Appendix B: Chart (Taxing authorities available to local governments and state-imposed restrictions)**

Introduction: Lessons in Revenue from Recent Events

Council members need to understand revenue sources to make proper decisions about the level of services their locality can provide and the long-term financial commitments it can afford. In recent years, two events have severely affected local government revenues. The Great Recession of 2008 significantly impacted assessed real property values which resulted in a period of decreased property tax revenues which are the largest revenue source for Virginia local governments. Then, in 2020 the COVID-19 pandemic brought significant losses for meals and transient occupancy taxes. Local governments that relied heavily on those revenue sources struggled to balance their budgets. The economic lesson from these events is that local governments must diversify their revenues sources to mitigate the impact of economic events on their budgets. The challenge is that they must do this in a politically acceptable manner within the allowances of State Code while ensuring they maintain adequate reserves.

State & Local Tax Structure

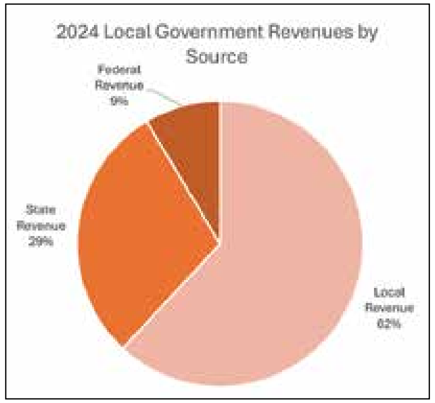
Local governments finance their operations with revenues they generate from taxes and fees, and from revenue received from the state and federal governments. In addition, there may be balances that are carried forward from the prior fiscal year that can be used to help fund the budget.

Fun fact: In fiscal year 2024, Virginia's cities, counties, and largest towns collected more than $48.4 billion in revenues, generated by local, state, and federal sources.

Local authority to tax

The locality's authority has 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. § 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.

Local Tax 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 governments' 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 to ensure that certain properties are valued uniformly throughout the state: 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.

Types of Local Revenue

The table included in Appendix B 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 49 percent of local revenues for counties and cities combined; when all four categories of local property tax are combined, the total is more than 63 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 Tax Rates in Virginia Cities, Counties, and Selected Towns.)

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 FY2024, localities received $19.5 billion in general property taxes, representing 65 percent of local revenues.

Frequency of assessments

Cities are generally required by law to reassess every two years § 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 every one-to-six years.

Challenges to assessments

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.

Special assessment districts

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 as define. 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, sewer or invasive plant species.

Exemptions and tax relief programs

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. 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; however, there are some that are state mandated.

The General Assembly formerly had a role in granting 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. 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). § 58.1-3400 The service charge relates to the cost of providing police, fire, and refuse collection services to the exempt property.

Tax Relief Programs

Local Option	State Mandated
Real property tax relief plans for the elderly and disabled.	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.
Land-use value assessments for agricultural and other types of open-space real estate.	Real property tax exemption for the primary residence of any veteran and surviving spouse of a veteran who has a 100 percent service-connected, permanent and total disability.
Substantially renovated or rehabilitated property.	Real property tax exemption of the surviving spouse of any member of the armed forces of the United States who died in the line of duty with a Line of Duty determination from the United States Department of Defense who occupies the real property of his or her principal place of residence.
Tax relief for property used for pollution control, solar energy, or energy conservation.	
Property exempted by legislative action.	

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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 localities 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.

Car tax relief measures

The Personal Property Tax Relief Act (PPTRA) of 1998, beginning in fiscal year 1999, changed the way local governments collect revenue due from personal property on vehicles with the state paying a portion of the personal property tax on behalf of the taxpayer. As a result of lower-than-expected state revenue growth and higher-than-forecasted costs, the State did not achieve its goal of eliminating the car tax.

Beginning in tax year 2006, Virginia established a new system for providing personal property tax relief on qualifying vehicles. Under this system, the state pays a fixed annual amount of $950 million to local governments to offset the cost of tax relief. This amount is capped and does not increase over time, regardless of changes in vehicle values or population growth. Each locality receives a portion of the $950 million based on the amount it was reimbursed in 2005, and that amount remains the same every year going forward.

To implement this relief, local governments must adjust their personal property tax rates. Vehicles assessed at $1,000 or less will receive 100% tax relief. For vehicles about $1,000 assessed values, localities must first set a standard tax rate for all personal property, which applies to the portion of a vehicle's value above $20,000. Then, they must set one or more reduced tax rates for the portion of a qualifying vehicle's value up to $20,000. The combination of revenue from the reduced rate, the standard rate, and the state reimbursement must closely match what the locality would have collected if it had taxed the full value of all qualifying vehicles at the standard rate.

Additionally, starting in tax year 2016, localities are required to ensure that the state reimbursement fully covers the tax on the first $20,000 of value for any qualifying vehicle leased by an active-duty military member or their spouse, provided they are contractually responsible for the tax. This applies only to vehicles that would otherwise be exempt if owned by the military member or spouse.

Further, 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. § 58.1-3668

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).

Machinery & Tools Tax

The Machinery & Tools Tax is a form of personal property tax. A key difference is the requirement that machinery and tools used in manufacturing, mining, processing, etc. 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. § 58.1-3507

Local Sales & Use Tax

The Local Sales & Use tax is levied by every city and county in Virginia at the maximum rate of one percent. It is collected by the state along with the state sales tax. The local one percent is then returned to localities based on point of sale. One-half of each county's one 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. In 2022, the state's sales tax was eliminated on food for home consumption and essential personal hygiene products; the local one percent still applies. Of the 4.3 percent, 1.375 percent is remitted to local school divisions for K-12 funding, 0.9 percent is allocated to transportation, and 2.025 percent is retained in the state's general fund.

Several areas in the state have an additional regional or local tax. Code of Virginia § 58.1-605.1 authorizes up to an additional one percent of sales and use tax for the purpose of capital projects for the construction or renovation of schools in the locality. The additional sales tax for school construction must be approved by voter referendum. Code of Virginia § 58.1-605.1 provides for additional sales tax in certain counties and cities up to 0.70% percent for regional transportation improvements. The City of Williamsburg and the Counties of James City and York have approved an additional one percent Historical Triangle retail sales tax for the promotion, marketing and advertising of the Historic Triangle Area.

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 a 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 allowed to keep their 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 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 one 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 an excise tax added to the price of certain prepared foods and beverages sold for human consumption. The tax also applies to prepared foods sold at grocery and convenience stores. Any county, city, or town is authorized to levy a meals tax, but the amount of the tax cannot exceed six percent in counties; a similar limitation does not apply to cities and towns. Towns may preempt a county from imposing a meals tax within the town's boundaries. The 2020 General Assembly eliminated the need for a voter referendum for counties to impose the meals tax. 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, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days and is in addition to the state and local sales tax. It may be imposed by local ordinance; it is not uniform statewide and can vary by locality. Cities and towns are authorized to impose this tax with no rate limitations, while counties are capped at a rate of two percent for the base rate. 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 websites such as Airbnb.com.

As of September 1, 2021, the retail sales and use tax and transient occupancy taxes on accommodations began to be computed based upon 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 (OTC) 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 list 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. Virginia currently does not allow a tax on vaping products.

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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. § 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 anymore 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 fiscal year 2022, the tax rate is 7 percent for companies renting ten or fewer vehicles on sharing platforms whereas companies with a 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.

Other sources

Fines & Forfeitures. Revenue from these sources comes primarily from the activities of the sheriff, 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 specific 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.

Types of state aid

Some of the major sources of state aid are described below. 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 programs.

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 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 salary and expenses for constitutional officers – sheriffs, commissioners of revenue, treasurers, commonwealth's attorneys, and circuit court clerks – depending on the type of constitutional office. State funding typically covers all or a part of the cost of salaries, and local governments pay most of the non-personnel and other costs including health insurance. State 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 this 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 has historically been 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.

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.trs.virginia.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.

Conclusion: The Uncertain Future for Federal Revenues

Federal support for local governments has declined over the years with states and local governments funding a larger portion of services to citizens. While federal revenue remains a cornerstone of local government finance in the United States, recent legislative changes and economic headwinds are reshaping the nature and reliability of this support. Localities must now navigate a more constrained fiscal environment, balancing reduced federal aid with rising service demands and administrative responsibilities. According to the U.S. Census Bureau's Quarterly Summary of State and Local Tax Revenue, local governments have seen modest growth in their own-source revenues in 2025, but federal transfers remain essential, particularly for smaller jurisdictions and those with limited tax bases. These transfers include direct grants, formula-based funding, and pass-through funds from state governments.

About the author: Stephanie Dean Davis, Ph.D. is a Collegiate Associate Professor and Certificate Program Director in the School of Public and International Affairs at Virginia Tech. She manages the Graduate Certificate in Local Government Management.

Appendix A: Resources

Auditor of Public Accounts
https://www.apa.virginia.gov/

Publications include the annual Comparative Report of Local Government Revenues and Expenditures.

Virginia Department of Taxation
www.tax.virginia.gov

Publications include Local Tax Rates (annual), Assessment Sales Ratio Study. (annual), and Rulings of the Tax Commission (periodic).

Virginia Government Finance Officers Association
www.vgfoa.org

Virginia Resources Authority
www.virginiaresources.gov.

VML/VACO Finance
www.valocalfinance.org

Weldon Cooper Center for Public Service
www.coopercenter.org

Publications include Tax Rates in Virginia's Cities, Counties & Selected Towns (annual).

National League of Cities
www.nlc.org

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

Open Data Portal
www.data.virginia.gov

Information on Tax, Funds & Finance
www.virginia.gov/services/government/tax-and- finance

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Appendix B: Chart

(Taxing authorities available to local governments and 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 § 58.1-3522	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	§ 58.1-3510.4 - 58.1-3510.7	Yes
Taxes on Individuals			
Sales & use	Cities & counties; not towns	§ 58.1-600	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.
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

Tax	Local Government with Authority to Levy	State Code Section	Any Restrictions?
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. Replaced by Virginia communications sales & use tax.
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 3

Economic Development

By members of the Virginia Economic Developers Association (VEDA)

Included in this chapter:

Introduction: What is economic development?

Economic development is a set of programs and policies that aid in the creation, retention and expansion of jobs; the development of a stable tax base; and the enhancement of quality of life for residents. At its core, economic development is about creating sustainable economic opportunities for the citizens, regions and communities served.

The roles of state and local governments

State and local governments play a significant role in economic development by ensuring competitiveness and fostering a conducive environment for business. Key factors include:

- **Zoning and assistance** – Streamlined zoning processes and proactive assistance can make communities more attractive to businesses.
- **Ease of doing business** – Companies prioritize locations with clear, efficient processes and supportive regulatory environments.
- **Engaged economic developers** – Communities need economic developers who are attentive and responsive to business needs, offering personalized support and resources.

By understanding these dynamics and leveraging the collective efforts of all stakeholders, elected and appointed officials can significantly enhance their community's appeal to site selectors and companies during their initial online searches. This collaborative approach ensures that economic development truly becomes everyone's business, leading to sustainable growth and prosperity.

Successful strategies

While there is no "one-size-fits-all" method in economic development, proven successful strategies include:

- Build economic capacity through workforce development, industry partnerships, site development and entrepreneurialism.
- Leverage community partners to position an area to attract, expand, retain, and form businesses.
- Create an inclusive economy with opportunities for all residents.
- Raise awareness and motivate stakeholders through engaged leadership.

How to create an environment for economic development

Successful economic development is the process of growing slowly and consistently; it's how a community plants the seeds of its future while benefiting from decisions made in its past. Economic development affects local government revenues, employment opportunities, and business prosperity. A favorable business environment attracts new ventures and helps retain established businesses, ensuring long-term economic stability and growth.

An environment that is friendly to both businesses and talent will balance economic vitality with social, environmental and cultural goals. In this section, we look at three strategies to foster an environment friendly to economic development.

Reasons to be business-friendly

- **Create jobs** – Businesses provide jobs to the local population, reducing unemployment and improving the community's economic health.
- **Increase tax revenues** – Business activities boost tax revenues, which can be reinvested into community development projects such as infrastructure, education and healthcare.
- **Build community pride** – Economic development can create a sense of community, a place where people want to live, work and play, thus enriching the civic fabric of the locality.
- **Encourage innovation** – A dynamic economic environment fosters innovation and technological progress, which are critical for competitiveness in the global market.

#1 – Think like the client

"Thinking like the client" involves understanding and anticipating the needs of businesses that are seeking to expand or launch into a new area. This client-centric approach ensures that the development initiatives are not only attractive but also practical for businesses. To create an environment friendly to both businesses and talent, consider doing the following things:

- **Anticipate needs** – Successful economic development strategies anticipate the current and future needs of businesses, including infrastructure, workforce and regulatory environments.
- **Customize solutions** – Tailoring solutions to fit different industries' unique challenges and opportunities can make a community more appealing to diverse businesses.
- **Use responsive governance** – Responding to the business community's concerns and feedback helps refine policies and procedures that could otherwise hinder economic development outcomes.

#2 – Act in the present

Business-friendly starts with understanding that the relationship between business and the community is one of mutual interdependence. While a locality can influence the types of business growth within its boundaries, successful businesses today have many choices in where they invest and create jobs. A key feature of being business-friendly is aligning the locality's economic goals and the businesses' economic capacity. Primarily, this means that localities must be able to articulate their vision of their future, how they will measure success and how they will adapt to changing market conditions.

At a minimum, localities that want to make themselves attractive to future economic development will want to consider taking the following actions:

- **Clarify local regulations and processes** – Ensuring that all regulations, requirements and processes are transparent and easily understandable helps businesses comply with necessary legal frameworks without excessive expenditures of time or resources.
- **Streamline processes** – Consolidating and streamlining required governmental processes, such as permit applications and inspections, can significantly reduce delays and increase efficiency, thus saving businesses time and money.
- **Create flexible zoning and permitting** – Adopting flexible zoning laws and efficient permitting processes allows businesses to adapt and grow without unnecessary restrictions.
- **Engage in regional partnerships** – Understanding and leveraging the strengths and assets of neighboring localities can provide additional solutions to businesses seeking places to grow.

- **Secure accessible business contacts** – Providing a clear and accessible point of contact within local government can help businesses navigate various processes and foster a cooperative relationship between the public and private sectors. Investing in your local economic development team is evidence of a commitment to being business friendly.

#3 – Invest in the future

Public investments by localities enable businesses to locate and grow with reduced risk. Localities looking to encourage economic development should include the following investment areas in their development portfolio:

- **Make quality of life improvements** – Safe neighborhoods, healthcare, education, recreational facilities and cultural inclusiveness are all hallmarks of a locality's ability to attract talent as well as businesses.
- **Develop suitable real estate** – Adequate, ready-to-use physical infrastructures such as industrial parks, offices and retail spaces are critical for immediate business operations. Real estate development needs to align with the locality's goals for business development and can range from downtown revitalization to mega-sites.
- **Build a skilled workforce** – Businesses thrive in areas with access to a skilled workforce. Educational institutions and vocational training centers are pivotal in cultivating a skilled pool of workers. Career paths today begin in the K-12 system and extend to a variety of post-secondary systems. Demonstrating investment and outcomes in K-12 is evidence to a business that its future workforce will be ready when needed.
- **Commit to transportation networks** – Efficient transport systems for goods and personnel are essential for operational success. Many transportation network strategies rely on regional and state partnerships but begin with a locality's commitment to the needs of its businesses.
- **Build technology infrastructure** – Robust digital and telecommunications networks are crucial for modern businesses to operate efficiently and compete globally. Additionally, these networks are needed for quality-of-life services like healthcare and education. Virginia's funding model that leverages public/private partnerships to create technology infrastructure is producing results.
- **Encourage workforce housing and childcare** – Housing and childcare have become a national issue that affects business location decisions because the retention and attraction of talent for employers have become key drivers of their productivity.

Key factors for successful economic development

Local incentives

Local incentives can be used to recruit, retain or expand a business, to spur new business creation or to encourage investment. Local incentives are any type of regulatory reform, tax abatement, service improvement, resource commitment or other activity intended to stimulate private sector job creation and investment.

Many state incentive programs require communities to match the state's incentive value at a pre-determined ratio, often dollar-for-dollar. As such, local governments should evaluate the types of incentives they can and will offer, well in advance of having an active economic development project.

Local incentives can be offered in a variety of formats, and they should be specific to the needs of the community and the business(es) being supported.

Common local financial incentives in Virginia

Direct	Indirect
Business, Professional, and Occupational License (BPOL) exemptions	Fast-track permitting
Machinery and tools tax rebate	Dedicated project liaisons
Real property tax exemptions	Design assistance

Low-cost loans	Public infrastructure improvements
Utility tapping or permitting fee waivers	Workforce training programs
Reduced-price land or office space	
Historic Tax Credits	

Site development

Developing sites can be costly so the need for available funding for site acquisition and/or development is critical for any business recruitment strategy. This may include funding through the locality, Economic Development Authority, region or state to enhance site readiness. Opportunities for creative funding to support such strategies also exist. For instance, The City of Staunton is using commercial frontage to help pay off the debt and prepare the industrial section for its Staunton Crossing project. Partnerships with public and private owners are also critical for site development as are grant opportunities through various state and federal organizations.

Businesses often rely on site consultants with initial site determinations often made from a quick computer search using resources such as the Virginia Economic Development Partnership's (VEDP) Virginia Scan or other real estate sources such as CoStar or LoopNet.

Some commonly utilized grant programs include:

- The Industrial Revitalization Fund
- Virginia Business Ready Sites Program
- Virginia Brownfields Assistance Fund
- GO Virginia

Workforce access

One of the largest drivers for businesses choosing where to locate is access to a skilled and available workforce. Local economic development offices play a key role in connecting businesses with state, regional, and local workforce partners like the Virginia Jobs Investment Program and the Virginia Talent Accelerator.

Why workforce development is critical

- **Grow the local economy** – A well-trained workforce attracts businesses and fosters entrepreneurship.
- **Retain talent** – Investing in workforce development helps retain local talent by providing pathways for workers to enhance their skills and advance their career.
- **Create jobs** – Effective workforce programs create job opportunities by aligning skills with industry needs, leading to lower unemployment rates and a more robust job market.
- **Attract businesses** – Companies are more likely to invest in areas with a skilled and adaptable workforce.
- **Target skill gaps** – Training programs that address targeted skill shortages in key industries, ensure that businesses can find qualified workers and reduce the occurrence of mismatched skills in the labor market.
- **Strengthen economic resilience** – A skilled workforce enhances a community's ability to adapt to economic shifts and disruptions, contributing to long-term economic stability and resilience.
- **Reduce social costs** – Effective workforce development reduces reliance on social services by providing individuals with the skills needed to secure stable employment and achieve financial independence.

Transportation networks

Transportation is a fundamental driver of economic development, providing the infrastructure needed for businesses to operate efficiently and generate future growth. Efficient logistics systems are crucial for industry, ensuring the timely delivery of raw materials needed for production and the distribution of finished goods to market. Transportation networks also play a role in meeting business workforce needs. The more efficient and reliable the transportation network is, the greater the area from which a business can draw its workforce.

Knowing and understanding the opportunities and limitations of all modes of transportation are critical to the success of any potential industrial site. Together, these interconnected modes of transportation and logistics networks create a dynamic, flexible and redundant system essential for attracting investment, fostering job growth and sustaining a thriving economy.

Key transportation networks in Virginia include:

- **Interstates and U.S. highways** form the backbone of domestic trade, enabling the rapid movement of goods and services across regions, providing access to markets north and south along the Atlantic Coast and to markets in the Midwest and beyond.
- **Rail systems** support both freight transport and commuter connectivity, reducing congestion and expanding labor markets by allowing businesses to reach a larger, more diverse workforce.
- **Airports** facilitate not only the quick transport of high-value goods, but also essential business travel, strengthening relationships and operations on a national and global scale.
- **The Port of Virginia** opens doors to international markets, enabling the import of raw materials and the export of finished products.

Regional cooperation

While economic development is often driven at the local level, it is important to note that successful project announcements are almost always the result of regional cooperation. Companies choose locations based on regional factors such as proximity to supply chains, access to a skilled workforce, cost of real estate, time for development, and available housing. Just as residents may commute across a region to work, workforce development is an effort that requires collaboration and cooperation across boundaries to be successful.

Furthermore, as the cost of development has increased over the years, the need for regional collaboration has become even more evident as many localities have pooled together to form Regional Industrial Facility Authorities (RIFAs) to help share in development costs as well as revenues gained through the attraction of a new project. In other cases, access to grant funds to help support development is dependent on regional collaboration, ensuring that the benefits extend beyond municipal boundaries and impact a broader array of residents and stakeholders.

Finally, as businesses have continued to turn to local, regional and state economic development offices as a one-stop resource, successful economic development has begun to require more than just the effort of individual public sector practitioners.

Existing business

When considering economic development opportunities for your community, it is important not to lose sight of the importance of supporting existing business growth and retention. In fact, 75-80% of economic growth comes from existing business, and most job creation comes from businesses already in the community. That's why Business Retention & Expansion (BRE) is a core principle of many local economic development offices. BRE starts with building relationships with key businesses and industry stakeholders through regular meetings to help understand their needs. Often, these meetings drive future programming such as workforce development or strategies to address the aging workforce and nurture future talent. Conversations with local businesses can help identify other opportunities through awareness of supply chains and existing relationships with business outside the region.

Redeveloping constrained and challenged sites

Whether it is the revitalization of older buildings and sites in urban areas or the cleanup and repurposing of environmentally compromised sites (e.g., brownfields) in suburban and rural areas, working with constrained or challenged sites and buildings presents both opportunities and hurdles. On the plus side, redevelopment can transform these sites into the highest and best use versions of themselves and maximize site-related tax revenues. It can also greatly improve the "curb appeal" of a locality seeking to attract businesses and new workers. However, redeveloping constrained and challenged sites requires substantially more resources than developing equivalent greenfield sites. Partnerships between government entities and private industry are key to providing the regulatory pathways and necessary resources to transform these sites.

The importance of marketing and storytelling

Economic development in a community hinges on the collective efforts of numerous stakeholders that each contribute to the region's competitiveness and ability to attract new businesses. For elected and appointed officials, understanding how site selectors and companies initially identify potential sites through online searches is crucial to marketing your locality for economic development.

Every community in Virginia boasts unique advantages and faces distinct challenges in economic development. To stand out during an initial site search, it is essential to craft and convey a compelling narrative that highlights a community's strengths. Data is invaluable when illustrating a community's advantages, but it is just as important to weave that data into stories to make the information more relatable.

For example, consider a community with a strong tradition in manufacturing. Sharing success stories of local manufacturers who have thrived can demonstrate the area's supportive business environment, skilled labor force and available resources. These narratives can be more persuasive than statistics alone, painting a vivid picture of what new businesses can expect.

Key components of economic development marketing

Marketing a place is not the sole responsibility of any single entity; it is a shared duty among local governments, EDAs/IDAs, and invested community stakeholders. Elected and appointed officials play a crucial role as supporters, promoting the community's strengths and fostering a positive business climate.

#1 – Have a clear message

A clear and focused marketing message is critical in showcasing a community's strengths. Marketing should emphasize the factors that matter most to companies, such as:

- **Operating costs** – Companies want predictability concerning costs that impact their operations. This includes available incentives.
- **Employee considerations** – Companies prioritize locations that are advantageous for their employees, offering a low cost of living, ample labor supply, and desirable amenities that enhance quality of life.
- **Available infrastructure** – Highlighting readily available infrastructure, including transportation, utilities and technology, can make a significant difference.
- **Local support** – Emphasizing a supportive local government and economic development groups (EDAs/IDAs) that are proactive and business-friendly is vital.

#2 – Engage community business leaders

Local business owners and leaders who can share their growth and success stories are essential to a successful marking effort. These narratives serve as testimonials that can attract other businesses. For instance, a local tech startup that has grown rapidly might highlight the area's supportive ecosystem, from incubators and accelerators to networking opportunities and funding sources.

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#3 – Know your audience

Economic developers must cater to several critical audiences, each with unique needs and interests:

- **Site selectors** – These professionals are hired by businesses to identify suitable locations for expansions or relocations. They rely heavily on online research to shortlist potential sites.
- **In-house company representatives** – Some companies handle site searches internally, with dedicated personnel overseeing property acquisition and expansion.
- **Real estate professionals** – Maintaining regular communication with local real estate professionals is important, as they provide up-to-date information on available properties.
- **Existing businesses** – Encouraging local businesses to invest in economic development organizations can foster a sense of community investment and shared success.

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.

Appendix A: Virginia Economic Development Partnership (VEDP) programs

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

The Virginia Jobs Investment Program (VJIP) – 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.

Appendix B: Online Resources

- Regional Economic Developers Organizations: www.goveda.org/page/REDO
- University Based Economic Development: www.goveda.org/page/HigherEd
- Virginia Small Business Financing Authority: www.sbsd.state.va.us
- 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
  - *Virginia Economic Review*: www.vedp.org/virginia-economic-review
- Virginia Innovation Partnership Authority: www.cit.org
- Virginia Resources Authority: www.virginiaresources.gov
- Virginia Small Business Development Centers: www.virginiasbdc.org
- Virginia Tourism Authority: www.virginia.org

Chapter 4

Public Procurement

By William H. Hefty

Included in this chapter:

- **Introduction: Get to Know the Virginia Public Procurement Act**
- **Emergency, Sole Source, and Cooperative Procurements**
- **Invitations to Bid & Requests for Proposals**
- **Conclusion: Procurement Ethics for Council Members**

Introduction: Get to Know the Virginia Public Procurement Act

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 as outlined in Code of Virginia § 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 it 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 except towns under 3,500 which 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. § 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 VPPA exemption for localities whose governing bodies have adopted, by ordinance, alternative policies and procedures which are based on competitive principles. § 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 VPPA does apply when the locality gets money. The VPPA applies even if the locality is getting money, rather than spending it, so long as there is a benefit to the locality. 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.

The VPPA does NOT apply to real estate. 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.

Who can award the contract?

It is important to note that the VPPA does not require a governing body to decide 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 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 meetings. § 2.2-3705.1(12)

Small purchase procedures

The VPPA allows each governing body to establish a small purchase procedure for its locality. The limits (as of the time of publication of this handbook) are listed below, but please verify by checking Code of Virginia § 2.2-4303 (G):

- $200,000 for goods and non-professional services
- $300,000 for non-transportation related construction
- $80,000 for professional services (basically architects and engineers)
- $25,000 for transportation related construction

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 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 can 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, and Cooperative Procurements

Emergency. A locality may make an emergency purchase without competition as long as an emergency truly exists.

Sole source. A locality also may purchase directly from one vendor if it is the sole source for the purchase. However, it must 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)

Cooperative. 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 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 various state contracts that the Commonwealth has procured competitively, as well as some federal contracts.

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.

Invitations to Bid & Requests 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 must issue an Invitation to Bid unless the procurement is being done using construction management or- design-build § 2.2-4378 *et. seq.* job order contracting § 2.2-4303.2 or the Public-Private Educational Infrastructure Act of 2002 (PPEA). § 56-575.1 *et. seq.*

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 in a newspaper, although that is an option. Bids must be allowed to be received electronically. 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 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 either on the Commonwealth of Virginia's eVA procurement website or published once in a newspaper of general circulation at least ten days before the proposals are due. Notice may also be posted on the locality's website. Proposals must be allowed to be received electronically.

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, four or five firms that submitted proposals are often 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; the cost and scope of the services may be negotiated at this time. 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 and rebid.

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 the amount for professional services identified in Code of Virginia § 2.2-4303 (G) (currently $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 shortlisted, 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 first 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 second but cannot go back and negotiate again with the firm first. And so on.

While the process seems confusing, it is rare that anyone goes past the firm first, 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.

Term Contract

The VPPA also allows for a locality to issue a Request for Proposals for architectural or engineering services that allows 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. These "term contracts" can save considerable time and effort for localities. Many localities in Virginia use this method to simplify procurement for architects and engineers to complete smaller studies and projects. § 2.2-4303.1 The sum of all projects performed in a contract term cannot exceed $10 million, and the fee for each single project cannot exceed $2.5 million.

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 $300,000, 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, they permit the locality to choose the contractor, or team of design professionals and contractors, 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 (immediately after 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.

PPEA also provides for solicited or unsolicited proposals from the private sector.

The fourth exception, job order contracting, is a 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 must be in writing and state the grounds for the protest; it must 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.

Who can file protests?

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).

No local favoritism

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 considered, a contract cannot be awarded to a firm just because it is from the local community.

What happens after the protest is received?

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.

Conclusion: Procurement Ethics for Council Members

The VPPA contains a special set of ethical rules for anyone involved in procurement transactions, including local council members if they approve the contract or are otherwise involved in the procurement or the contract. These rules 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.

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.

About the author: William H. Hefty is an attorney with the Richmond law firm of Hefty, Wiley & Gore, which represents numerous local governments and other public bodies in Virginia.

Chapter 5

Risk Management

By Marcus Hensel

Included in this chapter:

- **Introduction**
- **Beyond Traditional Risk Management**
- **The Role of the Governing Body**
- **Risk Transfer vs. Risk Financing**
- **Conclusion**

Introduction

From public safety and utilities to parks and waste management, local governments provide essential services to their communities every day. But by providing these services, they expose themselves to a range of risks that can lead to real losses from service disruptions, liability claims, and infrastructure damage. As the challenges of providing services become more complex, local governments need to be intentional and strategic in how they make decisions, manage uncertainty, and protect both their operations and their communities from risk.

Beyond Traditional Risk Management

Traditional risk management often focuses narrowly on losses tied to property damage, liability, or employee injuries. It rarely considers how different risks interact to affect long-term strategic objectives. By contrast, **Enterprise Risk Management (ERM)** is a broader, more integrated approach that enables local governments to better anticipate, assess, and respond to risks, including operational, financial, reputational, and strategic uncertainties. This framework helps local governments become more resilient, transparent, and responsive to the communities they serve.

ERM is an entity-wide approach that integrates awareness into everyday decision-making. It helps identify and manage risks in pursuit of strategic goals while aligning with the organization's unique values, culture, and risk appetite (i.e., the amount of risk it is willing to accept).

To get a clearer picture of how this works, let's walk through a scenario…

A town is evaluating whether to invest in upgraded cybersecurity infrastructure and controls after a nearby town suffered a ransomware event. The event disrupted services for several days and resulted in public concern over sensitive data that may have been exposed. However, the town staff and officials are concerned that the one-time cybersecurity upgrades and ongoing costs would significantly affect the budget.

Using an ERM approach, town staff and officials would:

- Align the evaluation with strategic objectives, such as protecting critical infrastructure and maintaining public trust.
- Engage stakeholders, including information technology and information services leaders, department heads, and community representatives.
- Assess risks and opportunities, considering:
    - Who should be involved in decision-making.
    - What governance input is needed.
    - The potential opportunities, including financial impacts.
    - The potential threats or downsides, including financial impacts, and how these might be mitigated.
    - What threats could arise from inaction.
    - The short- and long-term financial impacts.

With the ERM approach, the town can create a transparent record that supports learning and accountability, and, ultimately, a more thoughtful and documented decision.

The Role of the Governing Body

Governing bodies are under increasing pressure not only from regulatory agencies and community stakeholders, but also from the realities of uncertain federal, state, and local funding. In this environment, risk management is an essential part of fiscal responsibility. Governing bodies should try to understand the risks their entities face and ensure that local dollars are protected through proactive planning and budgeting. This includes protecting public assets, supporting the safety and well-being of employees, and reducing the impact on the community when losses occur.

Some of the questions governing bodies should consider include:

- What level of uncertainty is acceptable across areas such as strategy, operations, finances, and hazards?
- What steps are in place to protect assets, such as critical infrastructure and personnel, from loss or disruption?
- How do funding uncertainties (federal, state, and local) affect our ability to manage our short and long-term goals?
- What is the governing body's role in fostering a culture of risk awareness and accountability?

Contract review

One of the most immediate and impactful ways a governing body can exercise oversight and help prevent and reduce risk is through contract review.

Contracts are an important area where risk is often transferred (intentionally or not). 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. **As such, governing bodies should ensure that staff understand the legal and financial implications of contract terms, and that every contract is reviewed by legal counsel before signing.**

With all this in mind, it's important to understand what contract language means.

Indemnity – 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.

Hold Harmless – The contractual provision under which one party, the indemnitor, agrees to indemnify and hold harmless the other party, the indemnitee. A hold-harmless agreement is a form of an indemnity contract.

Subrogation – 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 because of an insurance payment for a loss or as a part of a settlement agreement. The granting, assignment, releasing, or waiver of this right carries enormous implications for local governments.

Assumptions or Extensions of Liability – Refer to any provisions agreeing to assume, extend, or release liabilities or legal responsibilities of a local government entity. This should never be undertaken without the review and approval of your public body's legal council.

Risk Transfer vs. Risk Financing

Every year, local governments should try to evaluate their protections and coverages in relation to their activities, exposures, and operations.

Risk transfer

Most local governments in Virginia participate in local government group self-insurance pools, which were formed under Code of Virginia § 15.2-2700. The purpose of these insurance pools is to provide participating local governments with risk management services as well as insurance coverage. These insurance pools (VRSA or VACORP) are primarily a method of risk transfer.

Risk financing

The local government may decide to finance all or a portion of risks through self-insurance. Regardless of the method used, it is important that local governments evaluate the technique chosen to meet their strategic objectives and goals. These goals include paying for losses, managing the cost of risk, managing cash flow variability, maintaining an appropriate level of liquidity, and complying with legal requirements.

Types of Coverage

Below are the more significant types of coverages used by many local governments to meet their wide variety of exposures.

Automobile Liability – Protects from claims arising from vehicles that result in bodily injury or property damage to others. Coverage includes defense costs as well as damages.

Automobile Physical Damage – Provides coverage for damage to vehicles. This 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.

General Liability – Provides coverage for claims alleging bodily injury or property damage to others. Coverage includes defense costs as well as damages.

Public Officials' Liability – Provides coverage for alleged wrongful acts. Land use and employment discrimination are common examples. The coverage provides defense costs as well as payment of damages.

Law Enforcement Liability – Provides coverage from alleged acts such as excessive force and misuse of force. The coverage provides defense costs as well as payment of damages.

Excess Liability – Provides an additional layer of coverage over general liability, automobile liability, public officials' liability, and/or law enforcement liability. Limits should be based on the activities and exposures of the local government.

No Fault Damage – Provides payments to third-party claimants for damage without regard to fault.

Cyber Liability – Provides coverage for privacy liability, network liability, internet media liability, data breach expenses, extortion, and more.

Property – Protects property from direct physical loss to buildings, contents, and equipment from losses caused by fire, windstorms, and other perils.

Boiler & Machinery – Provides coverage from the breakdown of equipment or other machinery.

Flood – This coverage is for local governments that own property in flood zones. Flood coverage for less flood-prone areas is incorporated into the standard property policy. Most insurance for properties located in flood-prone areas is available through the National Flood Insurance Plan (NFIP), which is administered by the Federal Emergency Management Agency (FEMA).

Earthquake – Protects assets against damage from earthquakes.

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 – Protects the local government from loss of money and other securities due to acts such as theft or embezzlement.

Workers' Compensation – Protects employees in the case of work-related injuries or diseases. Benefits for lost wages, related medical expenses, and certain scheduled benefits for specific losses are outlined in the Virginia Workers' Compensation Act. The limits for workers' compensation are statutory.

Other Coverages – Local governments may have exposures, activities, or operations that may create the need for other coverages. Examples include underground storage tanks, airport liability, and medical malpractice.

Conclusion

By helping protect your entity's budget and ensuring stable, dependable coverage when losses occur (because they will), you support your local government's ability to stay resilient, responsive, and ready to serve the community.

About the author: Marcus Hensel, CPCU, is the Director of Member Services of the Virginia Risk Sharing Association (VRSA).

SECTION 4
LAND & INFRASTRUCTURE

- **Planning & Zoning** - by members of the American Planning Association (Virginia Chapter)
- **Building Inspections & Code Enforcement** - by Michelle Coward
- **Public Works & Utilities** - by Chad Rambo and Trafford McRae
- **Street Maintenance & Construction** - by Terry R. Short, Jr.

Chapter 1

Planning & Zoning

By members of the
American Planning Association
(Virginia Chapter)

Included in this chapter:

Introduction

Planning: The establishment of goals, policies and procedures for a social or economic unit. (Merriam-Webster)

Planning is an essential part of our everyday lives. We think about what we want to accomplish (goal), decide how to accomplish it (policy), and then make it happen (procedure). Planning for our communities is no different. Resources are finite, each community is unique, and land use is constantly dynamic and evolving. As the stewards of our community's physical, social, economic and environmental resources, we must think about what we want our community to be, decide what's needed to get it there, and then set out tasks and programming to implement.

In his book, "The Citizen's Guide to Planning", Herbert W. Smith summed it up this way:

Planning is necessary for the sheer survival of our society in the form that we deem desirable… If our communities are not to be bankrupted by wasteful and uncoordinated development, we must have workable, practical plans for the future.

The American Planning Association (APA) maintains that "the goal of planning is to maximize the health, safety, and economic well-being of residents in ways that reflect the unique needs, desires, and culture of those who live and work within the community."

Moreover, the APA asserts that planning is required to create stronger, more resilient communities, and that it is an elected official's "most effective tool for managing growth, navigating change, and making tough decisions that face communities."

The Comprehensive Plan

In Virginia, planning is mandated by the Code of Virginia, so it's both prudent *and* required. A community's planning is formulated through the development of a **comprehensive plan**. To ensure the plan maintains relevance and keeps pace with changes over time, it must be reviewed at least every five years. Most communities review their comprehensive plans on this schedule, but those experiencing more dynamic growth or change may need to review their plans more frequently to ensure timely response to the community's needs. A review does not mean that changes must be implemented. Instead, the review serves as a reminder for a community to look to the plan. Statutory planning requirements are discussed in more detail later in this chapter.

Key participants in the planning process

Successful planning takes a village – literally! The **governing body** is tasked with the legal responsibility of planning, and they ultimately adopt community goals and objectives as part of the planning process. **Citizens, businesses, and other stakeholders** must be included in the planning process to ensure outcomes reflect community values and characteristics. The **local planning commission and local government planning staff** facilitate these processes on behalf of the governing body.

The Planning Commission

The local planning commission is appointed by the governing body as an advisory group on matters of land use and development. **Every locality must have a planning commission.** Commissioners typically serve for at least four years, and they provide recommendations to elected officials on how their community should be planned – even if those recommendations do not match the political views of those who appointed them. Because of this independence, it's critical that commissioners and elected officials have a compatible, functional relationship to ensure effective dialogue and communication.

The planning commission's duties are set forth in Code of Virginia § 15.2-2210 *et. seq.*, including responsibility for ensuring the development of the community's comprehensive plan.

Planning staff

Planning involves the study of development patterns and their impact on community resources, and most local governments employ professional planners to manage these needs for their communities. Professional planners assist the planning commission and the governing body with their review and update of the comprehensive plan and other planning-related business. With their subject-matter expertise and knowledge of local issues and concerns, planners provide valuable support and guidance that's essential to make long-term decisions that will reap the greatest benefits for the community.

The public and other stakeholders

Public input ensures that planning efforts are relevant and aligned with community character and values. By statute, localities are required to ensure public awareness of local planning efforts through a public hearing process, particularly during comprehensive plan review and adoption. There are numerous ways to engage the public in planning that will be discussed later in this chapter.

The four legal authorities for planning in Virginia

In the United States, most planning and land-use regulation occurs at the local level of government. This includes important plannings tools like the comprehensive plan, as well as zoning codes, subdivision ordinances, and capital improvement programs. The authority to adopt and implement county, city, and town functions falls into four categories: **legislative, ministerial, discretionary,** and **quasi-judicial.** The governing body, planning commission, and planning staff should be aware of these legal authorities to be effective public servants, understand their roles in planning processes, and protect their actions from legal challenges.

Legislative authority

In Virginia, city and town councils (or boards of supervisors for counties) are the legislators who enact local laws. They cannot delegate their legislative authority to another individual or group.

In planning, local elected legislators have the authority to:

- Adopt official local policies, namely through the comprehensive plan.
- Adopt changes to laws in the local code, including zoning text amendments (ZTA) or revisions to the subdivision ordinance.
- Approve the local budget, including the operating and capital programs.
- Approve changes to the zoning map, also known as rezoning cases or zoning map amendments (ZMAs).
- Approve conditional use permits (CUPs), which some local governments might call special use permits (SUPs) or special exceptions.

While other groups, such as local staff or the planning commission, may provide recommendations on these items, only the governing body – those elected by the community to legislate – have the authority to formally approve or adopt them.

Ministerial authority

This category involves the local government's planning staff, such as the zoning administrator, permit reviewers, and inspectors. While lawmakers set policies and adopt laws, the professional staff administers and implements them. For example, so long as an applicant's development proposal follows the zoning ordinance's requirements, planning staff only have the ministerial authority to review and approve that proposal.

A good analogy for ministerial authority would be the local police or sheriff's department. The governing body makes laws on traffic violations (legislative authority), whereas police officers cannot make laws but are tasked with enforcing them (ministerial authority). In this category, local planning staff have no discretion in applying these functions.

Examples of ministerial authority include:

- Site plans, where staff review those documents to ensure that the application complies with local development codes.
- Subdivision plats, where staff must approve the plat, so long as it complies with the subdivision ordinance.
- Certificates of occupancy, which allow the property owner to inhabit or conduct business in the recently completed building.

In some communities, the governing body has delegated ministerial authority to the planning commission. When this occurs, it follows specific enabling legislation in the Code of Virginia. These communities typically have smaller populations that do not require a large planning department to serve, allowing the planning commission to shoulder the burden for some of the ministerial duties.

Discretionary authority

This third category is relatively uncommon. The governing body cannot delegate its legislative authority (see sidebar for one notable exception). However, they can build some discretion into local laws. For instance, a zoning ordinance may give the zoning administrator the authority to waive parking requirements under certain conditions. Whenever discretion is delegated to planning staff in these ways, it must strictly adhere to the enabling statutes in the Code of Virginia and should have very clear parameters for the staff to follow.

Quasi-judicial authority

This last category is unique in local government. If a local jurisdiction adopts a zoning ordinance, then it must also create an appeals body for those laws. That body is the **Board of Zoning Appeals (BZA).** While the local government must have a BZA, the circuit court makes the appointments – not the governing body. The BZA's members are not considered to be the equals of full judges (hence the "quasi" prefix) but they are authorized to hear appeals of decisions made by planning staff to administer and interpret the zoning ordinance. The BZA hears claims for zoning variances, interprets the zoning map, and challenges the zoning administration's interpretation of the zoning regulations.

Exception to the legislative delegation rule

The Code of Virginia authorizes the governing body to delegate its authority to approve conditional or special use permits to the BZA. Several Virginia localities have delegated decision-making authority in this way on certain matters, typically involving minor modifications to setbacks and similar placement requirements for residential development. As a further note, the local government can file a legal challenge to a BZA decision with the circuit court if it does not agree with their opinion.

Public participation in planning

In local government affairs, the public expects access to information and the opportunity to be involved. These expectations are no different when it comes to the planning process. Meaningful public participation is an essential ingredient to successful planning. The American Institute of Certified Planner's (AICP's) Code of Ethics and Professional Conduct includes guidance on how the public should be empowered to participate. According to the Code of Ethics, planning should serve the public interest, have integrity, aspire for equitable outcomes, and safeguard the public trust. Planning staff are responsible for improving public understanding of planning so that the governing body can make decisions using feedback from a well-informed community.

Purpose and value

Planning efforts that disregard public participation may appear to move quickly but typically result in controversy because of public expectations to be involved. Concerned emails to the governing body, lengthy testimony at public hearings, and calls for delay are a near guarantee when public participation is not given the time and attention it deserves.

Why engage the public during planning?

- Debunk myths and misunderstandings between residents.
- Help people understand project tradeoffs.
- Ensure that good plans have longevity.
- Shorten the timeline for development projects that meet the public's goals.
- Create a better plan.
- Establish and enhance trust in the local government.

What successful public participation looks like

Engaging the public is not formulaic. Replicating a one-size-fits-most approach should be avoided. Great examples of effective participation from one community are not guaranteed to work for another community.

However, localities generally have more and better public participation by doing the following:

#1 – Get people aware and involved.

Scheduling a public meeting does not guarantee automatic public participation. People have many competing priorities, so even basic awareness of an important planning effort takes time and effort. It is harder to turn awareness into involvement and participation.

One tactic involves outreach to visible, important institutions that can amplify your planning effort. Other communities have used task forces of civic leaders to broaden awareness, and some have even paid stipends to community advocates to broaden the public's awareness. Most jurisdictions use their website and social media platforms to promote their participation options. The planning staff should develop an outreach strategy that fits the needs for the planning effort.

City of Williamsburg Future Festivals
Source: City of Williamsburg, VA Instagram

Outreach should use **values-based messaging,** which is communication that's meaningful and accessible to the public and speaks directly to their values. When the public hears about the planning effort and how they can get involved, give them the information they need to see how this effort will affect them personally – not just at the broader community level.

Finally, planning processes should go to the people – instead of making people come to them – whenever it makes sense. Set the time and location of public events so that they don't conflict with major holidays and important community functions. Show up at neighborhood festivals, farmers markets, and even sporting events. Public participation can even be fun, with live music, local food, and creative activities that give the public a great experience for their valuable time.

#2 – Use processes and methods that match the planning effort.

Luckily, there are many effective ways to involve the public in planning. The challenge isn't coming up with one – it's using the right one. When considered early on, these questions can help select the best ways to involve the public:

- *Is there a defined geographic area we're planning? How big is that area – the entire city or town, a long boulevard, or just a neighborhood park?*

- *Are we simply updating a previously approved plan, or implementing its vision? Or is this an entirely new effort or overhaul of the "old" plan?*
- *How detailed and complex is the subject matter? Will technical expertise, perhaps even from multiple experts like engineers, historians, and scientists be needed?*
- *Can the community's planning staff take this on and still get their other work done, or does an outside planning consultant need to step in and help carry the load?*
- *How much time is there to complete the planning effort? Is there a legally mandated deadline we must meet? If we're not done in time, will we miss a valuable opportunity of some sort?*

Once the breadth and degree of the task is understood, then the public participation component can be decided and implemented. For smaller projects an open house may do the job, while bigger planning efforts may need multiple events held both in-person and virtually. Sometimes the planning effort must consider different options before settling on a definitive course of action. Public engagement that utilizes scenario-based planning can project different potential outcomes for community review, and lower-cost demonstration projects (i.e., tactical urbanism) can give the public an idea of what is possible.

#3 – Enable the public to produce visible, meaningful contributions

How does the public participate? What can they expect once they've decided to get involved?


In Harrisonburg, a former parking pad is transformed into a community gathering space. *Source: Strong Towns*

One way is with surveys, feedback forms and other questionnaires. They provide anonymity and can be administered in-person or virtually. However, their effectiveness is limited when only a small number of people complete them.

Public meetings allow the public to share and hear ideas from one another, and they provide the governing body and planning commission with valuable, real-time feedback. When participation is desired from specific groups of people, focus groups can be used to understand the group's background and perspectives. For example, a focus group of small business owners could be vital to incorporate their needs into a comprehensive plan's chapter on economic resilience.

Public participation can even be visual and tactile exercises. Visual preference surveys give the public choices between different images to establish what they would like to see their


Arlington County's *Plan Langston Boulevard* process used interactive exercises for public participation.

community look like in the future. Participatory mapping exercises empower the public to sketch what their street, neighborhood, park, or even waterfront could look like. Some planners have used LEGOs and found objects in interactive workshops where participants build models to show what can be possible.

Elements of effective public meetings:

- Clear information on the meeting's purpose, goals and anticipated outcomes.
- Ground rules for participation to ensure that no one person can undermine a meeting for their personal benefit.
- A facilitator who is welcoming, engaging, and trusted.
- Ways for the participants to discuss and resolve relevant issues through collaboration.
- Acknowledgement and validation of each participant's concerns, even if they aren't germane to the planning process.
- Interactive means of providing feedback using dots, sticky notes, comment cards or even digital tools accessible from participant's phones.

Steps in the planning process

Smart policies and smarter decision-making occur when communities take a thoughtful, step-by-step approach to how they plan. The classic adage that "every great organization has a plan" also applies to local governments. Every great plan needs an effective process to get the organization where they want to go. The following are widely used steps that can be used for a comprehensive plan update or any other decision-making effort.

Step 1: Before you plan

Before a community begins to plan, officials should plan for the process. What is the community trying to accomplish? What type of effort is the community expecting? Why is the plan needed or wanted?

These fundamental questions are critical. Regulatory mandates for planning processes will obligate the community to take certain steps in their process, but local officials should strive for more than the mandated minimum. Define what a successful process looks like. Document those process goals and revisit them throughout the effort. Planning staff should also develop a scope of work that outlines tasks, schedules, budgets, and the groups involved.

Step 2: Data collection and analysis

Nearly every planning process begins with finding and analyzing data. For example, successful housing policies require accurate housing data and reliable analysis to understand the issues. The same needs to understand "where are we now?" apply to any topic. Work closely with the planning commission and staff to ensure that everyone can view the data from all angles, which enables a deeper understanding that informs policies and decisions. Ideally, data collection and analysis occur before public participation begins so that the public's involvement can benefit from these data.

Step 3: Identify issues

With this information, planning staff can begin to document the community's needs, problems, or conditions. At this stage, professionals may conduct a SWOC analysis, which lists strengths, weaknesses, opportunities, and challenges. Understanding these points enables the participants in the planning process to determine how to build on those strengths, overcome any weaknesses, capitalize on opportunities, and mitigate future challenges. Public participation can, and should, inform the identification of issues. Staff can collect information on community concerns and needs, using some of the public engagement measures previously mentioned.

Step 4: Develop goals and objectives

At this stage, staff will use the data, analysis, and public feedback to draft goals and objectives. **Goals** are broad aspirational statements, whereas **objectives** are marginally more specific, serving as general strategies to help define actions or recommendations. For example, a goal may be to "Foster access to housing that is affordable." The objectives could be to "Encourage the development of new housing," or "Help reduce costs for existing homeowners." Later in the process, local officials will develop specific actions on how to achieve those aspirational statements.

On the public engagement side, consider small stakeholder groups for developing draft goals and objectives. Generally, the public may struggle with creating long-range goals on their own, but local experts can help draft and refine those statements. Then, the planning commission and governing body can then vet those goals and objectives with the public.

Step 5: Generate and evaluate options

At this stage, the planning process is ready to produce actions, tactics, or recommendations that will achieve the desired goals and address the identified issues. There may be numerous ways to accomplish those needs, so the public should evaluate those options to achieve community consensus on which are the most effective alternatives. Actions will fall under one of four categories:

- **Laws,** such as zoning or subdivision ordinances.
- **Investments,** through the operating or capital budget.
- **Programs,** which are recurring, funded efforts.
- **Initiatives,** which are one-time efforts, like studies and plans.

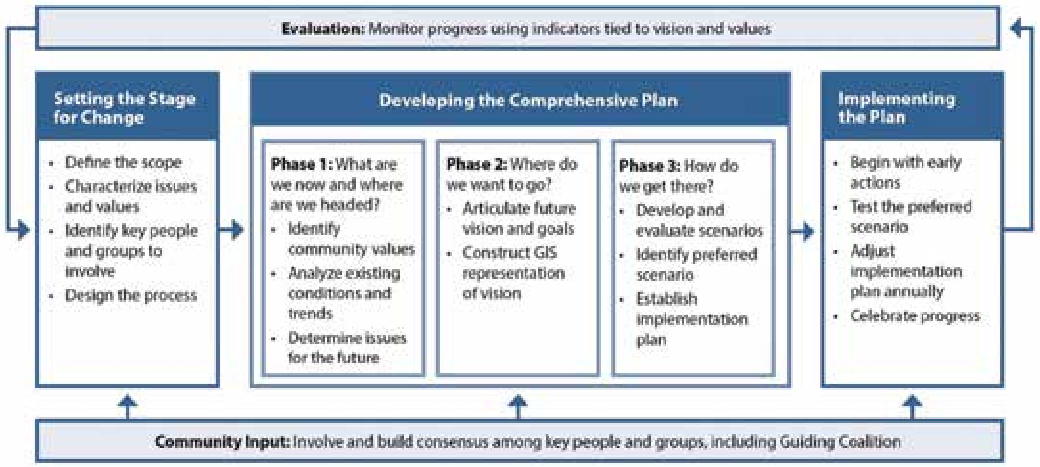
Public participation can help organize these ideas and develop **SMART** recommendations that are **S**pecific, **M**easurable, **A**chievable, **R**elevant to the goals, and **T**ime bound.

Step 6: Select preferred solutions

Using public feedback, planning staff can prioritize recommended actions and select the most effective options for the community's review. After this step, the locality will have a rudimentary plan with goals, objectives, and actions. This stage can also include plan development and adoption.

Next steps

Once the plan is completed and adopted, the community should just be getting started. The plan that is the outcome of this process can inform and guide decision-making moving forward. However, subsequent actions must occur to implement and realize the plan's vision. As local officials begin to act, ensure that you monitor the plan and its performance. Monitoring progress can help determine what tweaks and adjustments might be needed.



An alternative, but related approach to the planning process. *Source: Rouse and McElvaney (2016).*

The Toolbox (part 1) – What are planning's basic policy tools?

The comprehensive plan

What is it?

The comprehensive plan is the community's long-range roadmap for growth and development. More than a technical document or a box to check under Virginia law, it is the shared vision of where the community wants to go and how it will get there. It captures the big picture, helping residents and leaders alike imagine the community's future and chart a path toward it.

At its core, the plan is broad in scope but practical in purpose. It blends maps, charts, and narratives to show how land should be used, where housing and businesses should grow, and what transportation and utility investments are needed. It also highlights how natural and historic resources can be protected and how community facilities – parks, schools, and gathering spaces – can be strengthened to serve future generations.

Most importantly, the plan is built on a foundation of study, collaboration, and public input. It reflects both expert analysis and the voices of the people who call the community home. Once adopted by the local governing body, the comprehensive plan becomes a statement of collective values and priorities, guiding decisions about growth, change, and investment in ways that promote a thriving, resilient, and welcoming future.

The future land use map

Think of the future land use map as a "big picture" version of zoning. Zoning is typically parcel-by-parcel and can be very detailed. The future land use map is broader. Its messaging is different – "This area should grow as a neighborhood" or "This corridor should stay mostly commercial." It's a guide, but it's a critical part of the comprehensive plan and a reference point when considering rezoning, special use permits, and land use policy decisions.

How does it show up on your agenda?

The comprehensive plan returns to your agenda whenever the community needs to revisit its shared vision, whether through a complete rewrite, a periodic check-in, or a focused amendment.

Adoption of a new plan (rewrite/overhaul). Roughly every 15–20 years, localities may take on a full reset of the plan. This is a major undertaking, often involving public workshops, consultant support, and in-depth planning commission review before the governing body considers adoption. It's an opportunity to refresh the community's long-term vision and set a bold direction for the decades ahead.

Five-year review. By law, every comprehensive plan must be reviewed at least once every five years. This review may simply affirm that the existing plan is still serving the community well, or it may spark targeted updates to ensure the plan remains relevant in changing times.

Amendments. Between overhauls and reviews, the plan is often fine-tuned through amendments. These adjustments might update the future land use map to reflect a new development area or conservation zone, add current demographic or housing data, introduce new chapters on emerging issues like broadband, or align the plan with regional transportation priorities or state requirements such as housing strategies.

Each of these actions follows a transparent public process, with hearings before the planning commission and the governing body. Whether large or small, these updates ensure the comprehensive plan continues to reflect the community's values while guiding wise decisions about growth and change.

Topical plans

What are they?

Topical plans are focused planning tools that dive deeper into a particular place or issue. Unlike the broad, long-range scope of the comprehensive plan, topical plans are more targeted and often shorter in length. Even so, they carry weight: once adopted, they become official parts of the community's planning framework.

- **Geography-based topical plans zoom in on a specific area.** These can take many forms, such as a downtown small area plan, a corridor plan for a busy highway, a neighborhood revitalization plan, or a plan for redeveloping an underutilized industrial site.
- **Subject-based topical plans address themes that affect the entire locality.** Common examples include a transportation master plan, a housing strategy, an economic development plan, a historic preservation plan, or an environmental resilience plan.

How do they show up on your agenda?

Topical plans typically appear in two ways:

#1 – Adoption of a new plan. For example, a downtown revitalization plan might come forward to guide future public and private investment.

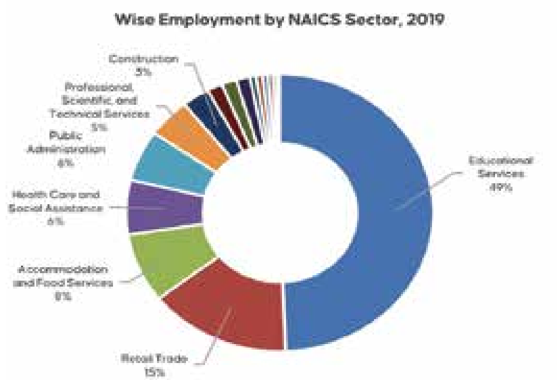
#2 – Amendment to an existing plan. This could involve updating a transportation plan with new traffic counts, revising a housing plan with fresh affordability data, or expanding a neighborhood plan to include adjacent blocks.

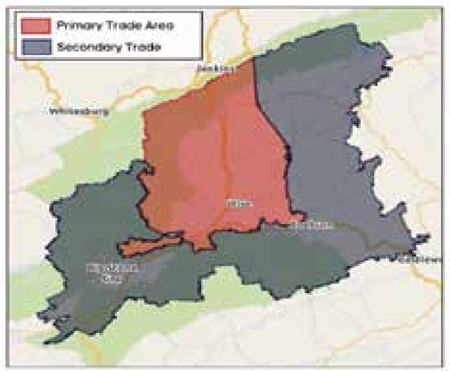
Though narrower in scope than the comprehensive plan, topical plans are powerful policy tools. They provide detailed strategies that inform capital projects, zoning changes, and grant applications, turning the community's vision into action.

Topical plans in the real world: Wise's Economic Development Strategic Plan

In 2023, the Town of Wise adopted the Economic Development Strategic Plan – it's first one ever - to focus directly on growing and sustaining local businesses. While Wise's comprehensive plan sets the town's big-picture vision, the Strategic Plan zeroes in on downtown revitalization, small business support, and partnerships with UVA Wise to create a multi-layered playbook for supercharging innovation and workforce development.

The plan outlines practical tools like forgivable loans, marketing initiatives, and suggestions for development regulations that translate vision into action. By tying everyday projects to long-term goals, it has complemented the town's comprehensive plan and guided local investments and outside funding opportunities.





The Toolbox (part 2) – What are planning's basic regulatory tools?

Virginia's counties, cities, and towns are enabled by the Code of Virginia to enact, administer, and enforce influential laws which regulate land use. These laws are the primary tools used to shape how communities grow and function. They include both zoning and subdivision ordinances. Each are chapters of the local code, which includes all of the local government's laws.

Zoning ordinance

Zoning is a relatively new type of law. New York adopted the first American comprehensive zoning ordinance in 1916 – just over 100 years ago. These laws are exclusive to local governments, permitting the regulation of how land is used, the intensity of new development, and the bulk of new buildings.

The term "zone" originates from the zones or districts used to define what parts of the ordinance apply to a piece of land. With this tool, local elected officials adopt zones based on use to keep compatible uses together and reduce potential nuisance created by incompatible uses. For example, communities typically prefer to avoid having houses next to loud, odorous industrial operations.

Zones usually have uncreative names, such as Residential R-1 or General Commercial C-2. The district title indicates the intention of those regulations – residential zoning allows for housing and commercial zoning allows for business activity like retail stores. The number (R-1, R-2, R-3) designates the intensity. The higher the number, the higher the intensity or density. For example, while R-1 might allow for single-family detached homes, R-3 might allow for mid-rise apartment buildings. Variations on these naming conventions appear in many zoning ordinances, and there is no mandated standard for this labeling.

The zoning map is part of the zoning ordinance. The map shows the community, its properties, and different colors that designate each zone. Find the color, refer to the key, and then turn to that part of the zoning text. If a property is zoned Commercial C-3, then simply turn to the C-3 section in the code and those are the laws that apply. The zoning map might have other types of districts, like "overlays," which is just as it sounds - another layer of regulations. If a property is zoned Residential R-1 and has an Historic District Overlay, then turn to both sections in the ordinance, which will both regulate the given property.

Each zone will have district-specific regulations on use, intensity, and bulk.

Use. Under use, the ordinance will list uses that are permitted on the property. These are "by-right" or "as-of-right" uses. As long as a property owner follows the proper procedures, those uses are lawful.

The ordinance may also list conditional or special use permits (CUP or SUP) or special exceptions (SEP), indicating that a use may be appropriate under certain conditions in a given district on a specific parcel. This designation means that anyone wanting to establish that use will need an approved CUP/SUP/SEP. The planning commission will review the application in a public meeting and recommend to the governing body whether it should be approved or not. The governing body has the sole authority to approve the CUP/SUP/SEP and adopt conditions which must be adhered to that address potential negative consequences and land use incompatibility.

Any uses not listed are implied to be prohibited. Some localities use their Board of Zoning Appeals to hear and decide whether a use may be approved that is not permitted by right.

Intensity. In terms of intensity, the ordinance will set maximum density limits for development. Density and intensity can be controlled by regulations for dwelling units per acre, minimum lot size, maximum building square footage or floor-area ratio.

Bulk. Zoning ordinances typically regulate building "bulk" through setbacks, which set minimum distances for how far back the building must be located from property lines, and maximum height requirements. Setbacks from property lines (front, side, and rear) and a maximum building height create an imaginary building envelope – the buildable volume on the property.

Other applications of zoning

Zoning can apply to many other things. It can regulate signage, controlling the placement, size, and height of the signs you may see along the highways or local roads, and even whether they can be lit. It can limit the heights and placement of telecommunications equipment for cellular phone signal coverage, although local government's ability to regulate telecommunications through zoning has been greatly curtailed by federal and state law in recent decades. Zoning can regulate the location, height, and brightness of lighting, and require minimum square footage of and types of landscaping to be planted.

Subdivision ordinances

These laws are often underappreciated by local officials and go unnoticed by residents. However, subdivision laws predate zoning and are similarly important regulations that shape the appearance and function of communities. While zoning regulates use, intensity, and bulk, subdivision codes control the division of land into separate lots. They determine the width of new subdivision streets, the location of utility easements, requirements on alleyways, location of stormwater facilities, and other elements of new developments.

Subdivision ordinances also ensure that property is divided and sold legally, protecting property rights and ownership. Without subdivision ordinances, people may purchase property that is not correctly recorded in the courthouse or inadvertently buy land that does not have road access. These laws also set standards for subdivision platting, the process and documents that divide land.

A subdivision is officially approved and finalized once it has been recorded in the local land records held by the clerk of the court's office, also known as being "put to record", for anyone to research historic or newer land divisions.

Development review

Zoning and subdivision ordinances are some of the most essential and powerful laws in the United States. No other federal or state dictates what people can and cannot do on their property. As such, local elected officials serve a critical role in their communities because they are the only officials who have the legislative authority to adopt, alter, or repeal the laws, in part or in whole.

The governing body will most often work with these laws in the following situations:

Zoning map amendments. Applicants can request that the locality rezone their properties, in hopes of gaining a different set of regulations that will allow for a desired use or development. These zoning changes, or rezoning cases, first go before the Planning Commission, which recommends actions to the elected body. Note that the locality can initiate a rezoning, as no property owners have a vested right in the current zoning on their land. With the government-led rezoning, the process would be the same as if a citizen or developer applicant applied.

Zoning text amendments. The governing body can modify the text of the zoning ordinance with a zoning text amendment. As previously mentioned, any changes must be reviewed by the Planning Commission and then the governing body, who have approval authority.

Conditional or Special Use permits / Special exceptions. An applicant will apply for these conditional or special uses, which typically go before the Planning Commission, which recommends action to the elected body. As with amendments to the zoning ordinance text or map, the elected officials have the final authority to approve or deny. As previously discussed, some localities can delegate this authority, in whole or in part, to the Board of Zoning Appeals (BZA).

Site plans or plats. Planning staff review site plans and subdivision plats with their ministerial authority. Site plans depict the development site and what improvements will be made, whereas subdivision plats illustrate how a property will be divided and/or where easements will go on the site. So long as these plans and plats comply with local codes, the locality only has ministerial (administrative) authority to approve them.

About the authors:

Will Cockrell is a Principal Planner with the Virginia-based multidisciplinary firm EPR and Direct of Virginia Commonwealth University's (VCU) Land Use Education Program.

Missy Creasy is the Deputy Director for the City of Charlottesville's Department of Neighborhood Development Services.

Nick Rogers is a Principal Planner in Arlington County's Department of Community Planning, Housing and Development.

Deborah Sturm is the Director of Community Development for the Town of Orange.

Reagan Walsh is the Director of Planning & Zoning at the Town of Wise.

Mary Zirkle is the Director of Planning & Community Development at the Town of Bedford.

Appendix A: Resources

Statewide Organizations

American Planning Association – Virginia Chapter (APA-VA) – provides planning professionals with resources and training in addition to providing legislative guidance to the State on land use related matters.

Planning District Commission – assists local member governments, partners and stakeholders with a variety of technical and program services which can include grant application assistance, management services for program implementation, land use planning services and mapping. There are 21 Councils in Virginia who serve in the role of consulting and coordinating of regional services to communities.

Virginia Association of Planning District Commissions (VAPDC) – comprised of the 21 Planning District Commissions/Regional Councils in Virginia, VAPDC works to bring resources together at the regional level in partnership with local, state, and federal entities. The Association promotes coordination and cooperation among the Commonwealth's Planning District Commissions/Regional Councils.

Metropolitan Planning Organization – conducts transportation studies and ongoing planning activities, including the Transportation Improvement Program (TIP), which lists road and transit improvements approved for federal funding, and the 20-year long range plan for the overall transportation network, which is updated every five years. This group is typically housed within the Planning District Commission

Virginia Association of Metropolitan Planning Organizations (VAMPO) – provides coordination for the metropolitan planning organizations (MPOs) in the Commonwealth of Virginia to exchange information and experiences, enhance the practice of metropolitan transportation planning, provide education opportunities and discuss issues relative to local, State and Federal policies and requirements for transportation planning.

Virginia Association of Zoning Officials (VAZO) – organized in 1990 to serve as a professional support community for zoning officials throughout the Commonwealth of Virginia, VAZO provides training, collaboration, mentoring and certification opportunities.

Rural Planning Caucus of Virginia (RPC) –established in 1978 in Blacksburg, Virginia, to provide a much-needed resource to help rural and small-town planners build successful careers, RPC aims to provide an interactive forum for these planning professionals to gather and share ideas and information on planning matters affecting Virginia's rural lands and character.

Land Use Education Program (LUEP) – housed within the Grace E. Harris Leadership Institute (GEHLI) at Virginia Commonwealth University, the LUEP includes the nationally recognized Virginia Certified Planning Commissioners' Program (CPC), the Certified Board of Zoning Appeals (BZA) Program, and other services such as an annual Legal Seminar, seminars/workshops on special topics, and customized training programs.

Appalachian Regional Commission (ARC) – an economic development partnership entity of the federal government and 13 state governments focusing on 423 counties across the Appalachian Region. ARC's mission is to build community capacity and strengthen economic growth in Appalachia to help the region achieve socioeconomic parity with the nation. In Virginia this group works in partnership with DHCH to implement projects.

Tobacco Region Revitalization Commission – established for the purposes of determining the appropriate recipients of the Tobacco Indemnification and Community Revitalization Fund and distribute funds to those who qualify.

State agencies

Virginia Department of Housing and Community Development (DHCD) – partners with state, federal, local and nonprofit housing and community and economic development initiatives. DHCD programs strive to maintain the vibrancy of communities throughout the Commonwealth and include providing universal broadband access, investing in economic development initiatives, promulgating the statewide building and fire regulations, preserving the affordability and efficiency of Virginia's homes and buildings, addressing homelessness, reducing eviction rates across the state and fostering innovative solutions to create affordable housing.

Virginia Department of Historic Resources (DHR) – is the State Historic Preservation Office (SHPO) in Virginia. As the SHPO, DHR administers a number of federal programs. DHR addresses the stewardship and use of Virginia's significant architectural, archaeological, and historic resources as valuable assets for economic, educational, social, and cultural benefit.

Department of Conservation and Recreation (DCR) – is Virginia's lead natural resource conservation agency. DCR protects natural habitat, parks, clean water, dams, open space and access to the outdoors.

Virginia Department of Transportation (VDOT) – is responsible for building, maintaining and operating the state's roads, bridges and tunnels.

Virginia Department of Environmental Quality (DEQ) – is the primary environmental permitting agency in the Commonwealth of Virginia responsible for administering laws and regulations related to air quality, water quality, water supply, renewable energy and land protection.

Appendix B: Advice & FAQs

1. Does the comprehensive plan control zoning?

No. The comprehensive plan is advisory, not regulatory. It provides the vision and policy framework, while the zoning ordinance is the legal tool that regulates land use. Still, courts expect localities to give the plan "reasonable consideration" when making zoning decisions.

2. How often does the comprehensive plan need to be updated?

By law, every locality must review its comprehensive plan at least once every five years. § 15.2-2230 Some communities make small adjustments more frequently, while full rewrites are usually done every 15–20 years.

3. What's the difference between a comprehensive plan and a topical plan?

The comprehensive plan covers the entire community and provides a big-picture vision. Topical plans are more focused, either zooming in on a specific area (like downtown or a corridor) or on a subject (like housing or transportation).

4. Why should elected officials care about these plans?

Plans are a tool to make decisions more consistent, transparent, and defensible. They help leaders connect everyday decisions – like rezonings, investments, or grant applications – to a larger community vision.

5. Can plans really make a difference?

Yes. A strong plan can attract funding, support grant applications, guide private investment, and give residents confidence that the community is working toward shared goals. Communities that keep their plans up to date are better positioned to act on opportunities and manage growth effectively.

6. Where do planners come from?

From just about anywhere! Many planners start their education with majors in one of the social sciences, such as Political Science, History, Economics or Geography. Others have a design background from Architecture or Landscape Architecture, and others come from the Engineering and Environmental Studies fields.

Some, however, will become planners after majoring in a seemingly unrelated subject. For example, one of this chapter's authors majored in Criminal Justice! Some find planning as a second career, after completing military service, or once they re-enter the work force after their children begin school.

Many planners have completed a master's degree or similar graduate program in planning. In Virginia, three universities have planning programs that have been accredited by the Planning Accreditation Board (PAB):

- **University of Virginia (UVA)** – Department of Urban + Environmental Planning at the UVA School of Architecture
- **Virginia Commonwealth University (VCU)** – Urban and Regional Studies/Planning at the L. Douglas Wilder School of Government and Public Affairs
- **Virginia Tech (VT)** – Urban and Environmental Policy and Planning at the School of Public and International Affairs

Planning and planning-adjacent coursework is also provided in other degree programs at many of the other higher education institutions in Virginia.

Chapter 2

Building Inspections & Code Enforcement

By Michelle Coward

Included in this chapter:

- **Introduction: Know Your Codes**
- **Local Administration and Code Enforcement**
- **Code Compliance and Local Officials**
- **Conclusion: Code Compliance Creates Safer Communities**

Introduction: Know Your Codes

This overview of building inspections and code enforcement is intended to familiarize the local government official with the workings of this important local government function. To begin, let's look at the two codes that play the largest role in inspections and enforcement in Virginia: **The Uniform Statewide Building Code (USBC)** and the **Statewide Fire Prevention Code (SFPC)**.

The Uniform Statewide Building Code (USBC)

The USBC incorporates nationally recognized standards in its administrative enforcement procedures. It is comprised of three parts:

1. **Virginia Construction Code (VCC)** – new construction
2. **Virginia Existing Building Code (VEBC)** – additions, alterations, repair, and changes of occupancy for existing structures
3. **Virginia Property Maintenance Code (VPMC)** – maintenance of existing structures
   - Note – this is discretionary and has to be specifically adopted by the locality.

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/MOU 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. A memorandum of understanding is recommended should you choose to go this route. Effective July 1, 2026, localities may institute an action on behalf of a tenant for certain violations against the landlord. § 55.1-1259

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 Property Maintenance Code, or VPMC). 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 VPMC 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 and Code Enforcement

The responsibility for administering and enforcing 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 that pertain to debris, inoperable vehicles, and tall grass and weeds. Effective July 1, 2026, Service Districts will have the authority to control invasive species. § 15.2-2403

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*

**Please review the current Code of Virginia § 36-105.1:1 as this authority may have changed*

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 Property Maintenance Code (VPMC) 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 Property Maintenance Code provisions.
- Whether to enforce the Statewide Fire Prevention Code on a local basis.

Conclusion: Code Compliance Creates Safer Communities

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 Property 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.

About the author: Michelle Coward is Deputy Director for the City of Richmond and the 2024-2025 president of the Virginia Building and Code Officials Associations.

Chapter 3

Public Works & Utilities

By Chad Rambo and Trafford McRae

Included in this chapter:

- **Introduction**
- **Public Works & Utility Functions**
    - **Water treatment and distribution**
    - **Wastewater collection and treatment**
    - **Stormwater management and erosion and sediment control**
    - **Natural gas, electricity, and telecommunications**
    - **Utility billing**
    - **Engineering**
    - **Street maintenance**
    - **Solid waste management**
- **Conclusion**

Introduction

The organization of public works and utilities departments in Virginia's localities varies widely. Some localities may have all public works and utility functions under a single department, while others will have separate departments for each. Additionally, some localities may choose to place programs with regulatory authority under another department (e.g., Erosion and Sediment Control within Community Development), or they may partner with a regional service authority for this function. But no matter how a locality chooses to organize its public works and utilities departments, one thing they all have in common is the importance they play in public health and safety.

Since public works and utility functions are often tied directly to health and safety, there are several federal and state organizations which oversee their operations. This requires staff to be knowledgeable of the appropriate regulations and to ensure the locality has the proper permits in place to conduct operations (e.g., produce drinking water). Local public works and utility departments generally undergo several inspections each year by different state agencies and may have periodic federal level inspections as well.

Funding sources

Understanding what types of funds exist in your locality is essential for planning normal operations as well as capital improvements. Most local government departments rely on the General Fund (generated from taxes) to fund their operations and to make capital improvements. Public works and utility departments may use General Funds (depending on how they are organized), but they are also likely to have Enterprise Funds which are generated by people paying for services (e.g., water, sewer, refuse, stormwater, etc.). When someone pays their water bill, they pay for a service (e.g., clean water), and those fees go into an Enterprise Fund (e.g., Water Fund). Payments into the Water Fund are then used to pay the salaries of water personnel, purchase new water lines, etc.

Enterprise Funds and rate studies

An enterprise fund is a government accounting mechanism used to track services primarily funded (over 50%) by user fees rather than tax revenue, operating similarly to a private business. One method a locality can use to help decide on the right fee level for Enterprise Funds is to conduct a rate study every two to three years to compare expected revenue against upcoming expenses. A rate study also usually compares the rates in your locality to other similar sized/situated localities to see if your rates are comparable.

Public Works & Utility Functions

In this section we will discuss the common public works and utility department functions listed below:

- **Water treatment and distribution**
- **Wastewater collection and treatment**
- **Stormwater management and erosion and sediment control**
- **Natural gas, electricity, and telecommunications**
- **Utility billing**
- **Engineering**
- **Street maintenance**
- **Solid waste management**

Some of underground piping a locality may be responsible for.

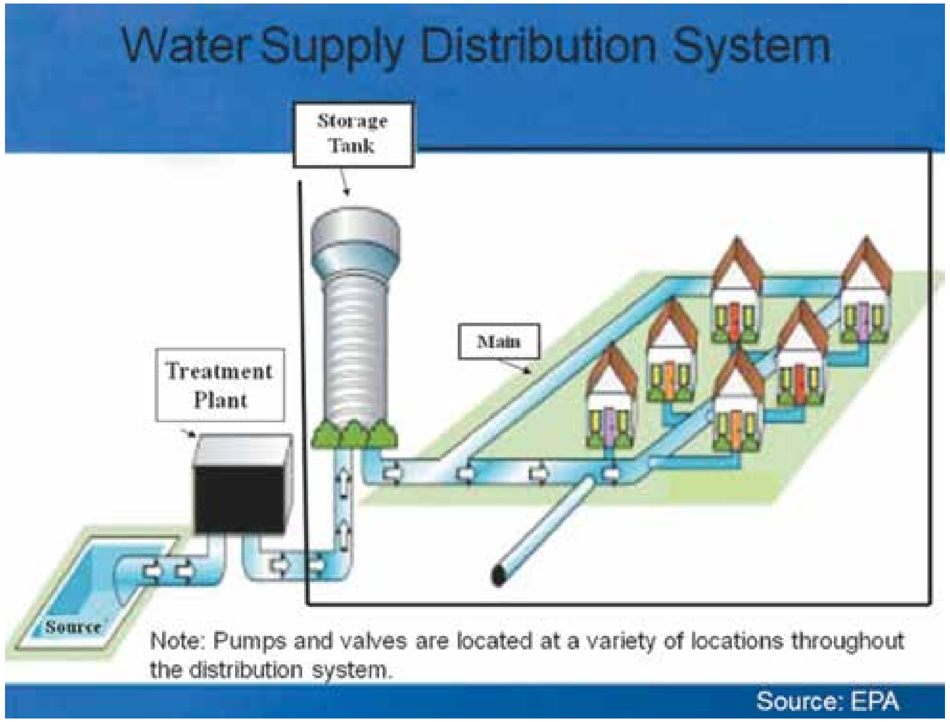
Water treatment and distribution

Providing clean and reliable drinking water is a core function of local government and enables not only public health but also economic growth.

From "raw" water to "finished" water. The process for producing drinking water begins at the source. Water is either pumped from a groundwater source (e.g., well or spring) or a surface water source (e.g., reservoir or river) through a series of pipes to the water treatment plant. This water is known as "raw" water as it has yet to be treated. Once the raw water reaches the treatment plant it undergoes several steps to remove sediment and remove/destroy harmful organisms. This treatment process differs from plant to plant but often involves running the raw water through filters and treating with sodium hypochlorite (bleach). After the water has completed the treatment process it is known as "finished" water which is ready for distribution and consumption.

Measuring consumption. Water consumption is typically measured by a meter in thousands of gallons or hundreds of cubic feet at the point where a public system transitions to a private system. The size of the meter needed for a property and the amount of water measured by the meter serve as the basis for water bills.

Pressure is important. Drinking water is constantly under pressure. This is important because when water lines break (often in colder months) this pressure keeps soil and other pollutants from entering the pipe. Additionally, good water pressure supports firefighting operations. Many localities have storage tanks to make drinking water constantly available and to help keep the system under pressure.



Challenges. There are many challenges in maintaining a drinking water system beginning with reliable access to supply. Many activities can put pressure on the water supply, and in times of drought this becomes even more apparent. There is also the cost of maintaining the treatment and distribution system, which is likely one of a locality's costliest assets. Changing regulations and new factors (e.g., PFAS) also complicate the situation. For all these reasons, it is important to have a firm understanding of your local system's capability and factors that influence your water supply.

The role of the Virginia Department of Health (VDH). The state department responsible for overseeing drinking water program is the Virginia Department of Health (VDH) which issues permits to withdraw source water to provide for public consumption. Most major changes to the water system (e.g., a new pump station) require VDH review and approval before they can become operational. The VDH recommends the addition of fluoride to drinking water, but it is not mandatory.

Use the QR code or link to visit the VDH Office of [Drinking Water's webpage.]

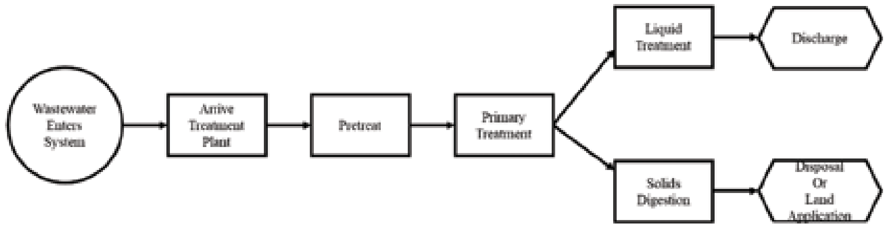
Wastewater collection and treatment

There is technically a difference between *wastewater* and *sewer*, but in this document, they will be used interchangeably.

To ensure public health, wastewater needs to be collected and then treated to remove harmful organisms and pollutants/contaminants.

Gravity flow. Wastewater typically enters the system after it goes down a drain at a residence or business (which may require an industrial pretreatment permit). From this point it usually flows through a series of pipes until it reaches the treatment facility. Unlike the water system, which is under constant pressure, the wastewater pipe network typically uses gravity to move wastewater to the treatment plant; though pumps are needed in some instances to push the wastewater over a high spot until it can resume gravity flow.

Liquid vs. Solid streams. When the wastewater reaches the treatment plant it generally goes through pre-treatment to remove large debris (e.g., gravel) that has entered the system. After pre-treatment the wastewater typically undergoes a primary treatment to reduce nutrients including nitrogen and phosphorus which can lead to algae blooms and other conditions that starve aquatic life of dissolved oxygen. After nutrient reduction, the wastewater is separated into two different treatment streams, liquid and solid. The liquid portion undergoes several additional steps to remove pollutants and harmful organisms before it is finally discharged into a nearby waterway. The solids portion of the waste stream is typically treated in aerobic or anerobic digesters to remove containments and then either taken to the local landfill for disposal or applied to land as fertilizer if it meets the appropriate biosolid treatment requirements.



Billing for wastewater. Sewer bills are often combined with water bills for customers. In many cases, the water used by a home or business closely matches the sewer water discharged to the collection system. The data provided by the water meter is therefore critical to a sewer enterprise as well. In limited industrial or commercial applications, a business may consume significantly more water than is discharged to the sewer, and utility providers will work with that customer to find a way to measure the difference.

Stormwater management and erosion and sediment control (ESC)

Effective stormwater management decreases the risk of flooding, which can lead to personal injury/death and property damage; it also reduces the amount of pollutants that flow into local streams and rivers after a rain event.

Municipal Separate Storm Sewer Systems. Most localities in Virginia operate a Municipal Separate Storm Sewer System (MS-4) which requires a stormwater pipe network that is separate from the wastewater pipe network. MS-4 Communities are designated by the EPA based on population data obtained from the Census. Communities with a population greater than 100,000 are Phase 1 permittees and have an Individual Permit with the DEQ. Localities with a population between 10,000 and 100,000 follow a General Permit administered by the DEQ. Some localities may also operate a Combined Sewer System (CSS) which carries both stormwater and wastewater to the treatment plant.

Inflow vs. Infiltration

Though most wastewater enters the system through drains, a significant amount of rainwater (aka stormwater) can enter the system when there are direct connections of stormwater drains to the wastewater system (inflow) and through broken/cracked sewer pipes (infiltration). This inflow and infiltration must be treated the same as true wastewater which leads to increased chemical and electric costs for the locality as well as wear and tear on the system. Inflow can be addressed through the locality's code to prevent unauthorized stormwater connection to the sewer system. Infiltration is addressed by locating and replacing deteriorating piping and lining to prevent rainwater from entering the system.

Permitting

Wastewater treatment plants are required to maintain a permit issued by the Virginia Department of Environmental Quality (DEQ). The wastewater treatment plant is also required to notify DEQ of any instances in which wastewater (liquid or solid) is inadvertently spilled or released into a waterway.

Use the QR code or link to visit the [DEQ's webpage.]()

Stormwater Utility Fees. While maintaining a separate stormwater pipe network does incur extra costs up front, it can lead to decreased costs at the wastewater treatment plant since stormwater does not have to be treated as thoroughly as wastewater before entering a waterway. Many localities in Virginia have decided to implement Stormwater Utility Fees to offset the costs of maintaining the drainage system and administering MS-4 programs. These fees can be structured differently according to local preferences and types of land use, but the basic premise is that properties with more impervious surfaces (e.g. parking lots and streets) pay higher fees since their volume of runoff adds more pollution within the stormwater system.

Stormwater and flood safety. Stormwater management contributes to flood safety in two important ways. First, the stormwater network collects rainwater that falls on impervious surfaces and funnels it into drains which connect to stormwater piping. This keeps high volumes of water from flowing down streets or pooling in significant amounts. Second, the stormwater network typically includes stormwater basins or detention ponds which hold excess water during rain events and then release it at a controlled rate, so flooding doesn't occur downstream.

Environmental considerations. Stormwater management also helps protect the environment. The grass ditches and detention ponds collect sediment and absorb nutrients (primarily nitrogen and phosphorus) as the water travels through them. This means cleaner water flows into the Commonwealth's streams and rivers. Depending on your location in Virginia, your locality may be mandated to contribute to reducing the Total Maximum Daily Loads (TMDL) of sediment, nitrogen, and phosphorus that flow into local waters and the Chesapeake Bay. Constructing a wetland is one way a locality can contribute to reducing the TMDL.

Erosion and sediment control (ESC) ensures new development doesn't pollute local waterways by having developers maintain safeguards at the site to prevent mud from running into local streams. Examples of ESC measures are installing silt fences around construction sites and seeding grass on bare areas.

What is a "pollution diet"?

Monitoring has led to determinations of the amount of pollution a given body of water can absorb and still be safe for recreation. For this reason, the TMDL is sometimes referred to as the "pollution diet" for a body of water.

Use the QR code or link to learn more about stormwater on the [DEQ's dedicated webpage.]()

Natural gas, electricity, and telecommunications

While not as common, natural gas, electricity, and telecommunications are also services local governments may provide under Virginia Law. Control of utilities (including natural gas) by localities is discussed in Code of Virginia § 15.2-2109, Article 2, which states:

Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities within or outside the limits of the locality and may acquire within or outside its limits in accordance with § 15.2-1800 whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities, and the rights-of-way, rails, pipes, poles, conduits or wires connected therewith, or any of the fixtures or appurtenances thereof. As required by subsection C of § 15.2-1800, this section expressly authorizes a county to acquire real property for a public use outside its boundaries.

Electric distribution is further covered in Code of Virginia § 56-580.

According to Code of Virginia § 15.2-2160 localities that operate an electric distribution system may also provide telecommunications services; including internet and broadband.

The Municipal Electric Power Association of Virginia (MEPAV) was founded in 1954 and supports the 16 localities in Virginia that operate electric utilities.

Utility billing

While sometimes handled by a locality's Finance Department, billing is a critical function for public works and utility departments. Without timely and accurate billing customers become frustrated and the locality may be unable to properly collect the fees it needs to fund ongoing operations or make capital improvements. Utility providers also must follow state regulations to provide customers with adequate time to pay bills, file for adjustments for leaks or medical hardships, learn about payment assistance programs, and have sufficient notice prior to service disconnections.

Engineering

An engineering division can have a varied scope depending on the locality. In some localities, the engineering staff is responsible for inspecting the development of new assets (e.g., streets) to ensure they meet standards. This is important because generally when a new housing development is built, the roads, hydrants, sidewalks, etc. get turned over to the locality and become public assets. So, when the engineering staff accept these assets on behalf of the locality, they are also accepting responsibility for the future maintenance and repair of those assets (though in some instances there are limited warranty periods). For example, if the locality was to accept assets (e.g., sidewalks in a new neighborhood) from a developer and it was later found they were not ADA (Americans with Disabilities Act) compliant, it would be the locality's responsibility and expense to bring them into compliance.

In some localities the engineering staff may also be responsible for designing projects as opposed to contracting with an engineering firm for those services. In these instances, there is increased pressure on the locality to have qualified personnel on staff to perform these duties.

Flood control dams

Some localities are responsible for inspecting and maintaining flood control dams. The locality must ensure its flood control dams are adequately maintained and monitored for the safety of all downstream. This vital function typically resides with the engineering staff, as opposed to stormwater management staff.

For more information on dam safety, use the QR code or link to visit the Virginia Department of Conservation and Recreation (DCR) webpage.

Street/Road maintenance

Street/Road maintenance are discussed in Section 4, Chapter 4.

S4

Solid waste management

Solid waste management is important to the locality because trash is not only unsightly, but it can also become a health issue if not taken to a solid waste facility in a timely manner. Solid waste is managed in various ways. In some areas, the weekly trash pickup may be completely privatized, while in other areas it is managed by the local public works or utility department. Localities often focus on residential trash collection at individual dwellings and are not equipped to collect large volumes of trash from dumpsters located at commercial or industrial facilities. If the locality has a combination of private and public refuse collection, the local government must ensure it is providing quality service at an affordable rate, so it does not lose customers to private companies.

Bulk refuse and debris. Large, bulky items and yard debris can also present challenges for localities. Couches, mattresses, or large brush piles that are left near streets and alleys present all the public health challenges as standard refuse but in larger and less manageable ways. Cities and towns have developed different strategies to deal with this problem including annual cleanups, issuing yard debris containers to individual residents, and offering fee-based bulk pickup services.

Landfill considerations. Some local governments are responsible for operating landfills which bring an additional layer of federal and state oversight. One factor in landfill management that is not often considered is the length and cost of closing an active landfill. Once a landfill (or cell within a landfill) has reached the end of its useful life there are several steps a local government must take before it can be truly closed. As solid waste decomposes it releases methane gas and harmful material that can leach into groundwater. So, there is typically a 30-year post-closure period during which gas levels and groundwater on and around the closed landfill must be monitored to ensure containments are contained within the boundaries of the closed landfill.

As part of operating a landfill, localities are issued a solid waste permit by the DEQ. This permit will specify a target rate or percentage of the waste stream that is to be diverted prior to the landfill. One of the most common ways to meet this permit requirement is through recycling programs that collect materials such as aluminum, cardboard, and plastic at individual residences or dedicated recycling centers.

Use the QR code or link for more information about solid hazardous waste from the DEQ website.

Conclusion

Public works and utility departments provide the foundation for many other government functions. These departments are often funded through a combination of general and enterprise funds. Many functions performed by public works and utilities departments are overseen by state and federal agencies and may require special permitting. Due to the diversity of Virginia localities, there is also great variety in how the functions of these departments are organized. Even with the diversity of organization, however, all public works and utility departments play a critical role in providing for the health and safety of the community.

About the authors: Trafford R. McRae is the Director of Public Works for the City of Waynesboro, Virginia and Chad Rambo is the Deputy Director of Public Works for the City of Waynesboro, Virginia.

Chapter 4

Street Maintenance & Construction

By Terry R. Short, Jr.

Included in this chapter:

- **Introduction**
- **Street Maintenance**
- **Construction**
- **Funding Options**
- **Conclusion**
- **Appendix A: Resources**

Introduction

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 can take the lead role on projects that are funded with local revenues, and potentially 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 the Virginia Department of Transportation (VDOT). Most of the communication between the locality and VDOT is handled through the local VDOT District Office, in consultation with VDOT's Local Assistance Division.

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 pothole repairs, pavement resurfacing, maintenance and timing of traffic control devices, curb and gutter maintenance, street sweeping, bridge maintenance, and 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 urban 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 Manual, maintained by the Department's Local Assistance Division and in the web-based Maintenance Eligibility Tool (see QR Codes).

Use the QR code or link to access VDOT's Maintenance Eligibility Tool.

Use the QR code or link to access VDOT's Urban Manual.

Use the QR code or link to learn more about VDOT's Local Assistance Division.

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 and for the counties of Arlington and Henrico made pursuant to Code of Virginia § 33.2-366. 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.

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.

Payments: Calculation & Distribution

Annually, VDOT establishes a budget for street maintenance payments. (**Example:** In 2025 the budget was nearly $638 million for over 31,000 lane miles maintained by localities).

The process to establish the budget follows the steps outlined below:

1. 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.
2. 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). (**Example:** In 2025, those rates were $30,023.00 and $17,627.53 per lane mile for arterial and collector/local routes, respectively).
   - **Note:** County rates are based on certified lane miles and available budget and do not include functional classification in the rate calculation.
3. 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.
4. A resolution approving the annual statewide allocation is approved by the CTB typically at their June meeting.
5. 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 are designed to supplement a dedicated local funding source 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 and all required documentation must be made by February 1 to be considered for inclusion in the upcoming payment year (beginning July 1). Likewise, localities must also notify VDOT of any deletions of lane miles. 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 & 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 must be made in the company of an authorized local employee. When deficiencies are identified, the locality must develop a plan for correcting the deficiencies within six months or 30 days if the defect is identified as a safety related issue. If the deficiencies are not corrected, VDOT may delete payments associated with the defect and/or deficient route.

Bridges located on arterial routes are also included as part of these annual inspections. As poorly maintained bridges can pose significant safety issues, they are also subject to additional federally required National Bridge Inspection Standard (NBIS) requirements (see QR Code).

> Use the QR code or link to access the National Bridge 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. 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 accordingly.

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 Code of Virginia § 33.2-352(B).

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 as well as 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 more complicated and take 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) (see QR Code) and/or the locality's Capital Improvement Program (CIP).

> Use the QR code or link to view all the projects funded by the State's Six-Year Improvement Program (SYIP).

Projects funded in total and administered by the locality are included only in the locality's CIP and are guided by the Locally Administered Projects Manual (see QR Code).

> Use the QR code or link to access 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.

The SYIPC process generally follows these steps:

1. 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 public.
2. The working draft of the SYIP is released in the early spring.

> ### *What's in the SYIP?*
> 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.

3. 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 after the working draft is released.
4. The CTB adopts the final SYIP for the next fiscal year that begins July 1.

Building or improving roads and streets

Design phase. 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. There may also be other milestones throughout the process that include defined project meetings, certifications, and federal approvals (if federal highway funds are used). The project development phase takes 18-36 months on average to complete, depending on the size and complexity of the project.

Identify issues. Besides the actual project design and cost, there are 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. In most situations, localities must go through VDOT when federal funds are involved.

Right of Way phase. 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 project are collectively known as the Right of Way (ROW) phase. 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.

Public meetings. Normally one or two public hearings are held as part of the project development process. Projects built in 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.

Construction. 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.

The VDOT Dashboard

It is important to note that projects with state and federal funding (that typically have state assigned Universal Project Code (UPC) numbers) are subject to the VDOT Dashboard (see QR Code) 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.

Use the QR code or link to view the VDOT Dashboard.

Funding Options

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 a competitive application process. 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 steps for documenting matching requirements can vary greatly. 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. Smart Scale is a process that helps Virginia meet its most critical transportation needs using limited tax dollars. It evaluates potential transportation projects based on key factors like how they improve safety, reduce congestion, increase accessibility, contribute to economic development, promote efficient land use, and affect the environment. The anticipated benefits are calculated, and the projects are scored and ranked. This information is used by the Commonwealth Transportation Board to help guide and inform their project selection decisions.

There is no local match required for the program, however, local funds that are used to leverage state funding can improve a project's 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 in odd numbered years.

Use the QR code or link for more information on the Smart Scale Statewide Prioritization Process on the VDOT website.

State of Good Repair. The State of Good Repair (SGR) program provides 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 (CCI) 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.

Use the QR code or link to learn more about the State of Good Repair (SGR) program.

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 percent 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 Capital Improvement Plan (CIP). Third priority is given to maintenance projects for deficient locality roads and bridges. All other types of projects are considered as the fourth priority.

Use the QR code or link to learn more about the Revenue Sharing program.

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 safe routes for non-drivers. This program also provides funding for developing safe non-motorized routes to schools for students in K-12 schools. TAP requires a 20 percent local 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.

Use the QR code or link to learn more about the Transportation Alternatives Program (TAP).

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. 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.

Use the QR code or link to learn more about the Highway Safety Improvement Program (HSIP).

Other programs. 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)** (www.p3.virginia.gov) 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 webpage, and each VDOT District.

Conclusion

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, can go a long way toward improving the satisfaction of local citizens and attracting visitors and new businesses to localities.

About the author: Terry Short is the Division Director of VDOT's Local Assistance Division

Appendix A: Resources

Statewide and National Resources

Virginia Department of Transportation
www.vdot.virginia.gov

Commonwealth Transportation Board
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)
https://www.vdot.virginia.gov/doing-business/for-localities/

VDOT's Urban Manual
https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/technical-guidance-documents/urban-construction-and-maintenance-program-guidance-urban-manual/

Locally Administered Projects Manual
https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/technical-guidance-documents/locally-administered-projects-manual/

Board of Supervisors Manual (counties)
https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/technical-guidance-documents/board-of-supervisors-manual/

VDOT's Dashboard Project System
https://dashboard.virginiadot.org/

Smart Scale
https://smartscale.virginia.gov/

Smart Scale Dashboard
https://dashboard.virginiadot.org/pages/projects/smartscaleprojects.aspx

Urban Maintenance Program
https://www.vdot.virginia.gov/doing-business/for-localities/urban-program/

State of Good Repair
https://www.vdot.virginia.gov/doing-business/for-localities/local-assistance/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
https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/technical-guidance-documents/road-design-manual/

Public Private Partnerships (P3)
http://www.p3.virginia.gov/

SECTION 5
SERVICES

- **Public Safety** - by L. S. Bailey and Rick Opett
- **Education** - by Josette Bulova
- **Human Services** - by Janet Areson
- **Parks & Recreation** - by Christopher J. Tuttle
- **Animal Control** - by K. Michelle Welch and Jessica D. Cooper
- **Public Transportation & Passenger Rail** - by Danny Plaugher and Andy Wright
- **Airports** - by Mark K. Flynn and Scott Denny
- **Advance Air Mobility & Unmanned Aerial Systems** - by Mark K. Flynn and Scott Denny

Chapter 1

Public Safety

By L. S. Bailey and Rick Opett

Included in this chapter:

Introduction: The Director of Emergency Management

Local governments must prepare for natural emergencies as well as human-caused emergencies such as acts of terrorism, 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.

Code of Virginia § 44-146.19 sets out the powers and duties of political subdivisions regarding military and emergency laws. These include maintaining an emergency management plan and designating a director of emergency management depending on the type of locality.

- **Cities** – The mayor or city manager appoints a coordinator of emergency management.
- **Counties** – A member of the board of supervisors selected by the board or chief administrative officer appoints a coordinator with consent of the body (Note: Smyth County and York County are different)
- **Towns** – The council appoints a coordinator of emergency management (except for West Point, Chincoteague and towns with populations more than 5,000 that have a separate emergency management organization from the county. In those cases, the mayor or town manager makes the appointment with the consent of the council).

Responsibilities of the Local Governing Body

Among the most important responsibilities of local governing body members is to establish public safety policies. Through the budgetary process, members determine the level of public safety services in the community by allocating resources to the appropriate agencies. Then, through the oversight process, members ensure the quality of those services.

Elected officials must work with the local manager, who provides executive oversight, and the police, sheriff, fire, and emergency medical services leadership teams. If the jail or detention facility is not operated by the locality, this would also include working with jail and detention superintendents or boards.

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. The city manager and the members of the council must provide each department chief or sheriff with adequate resources as well as the necessary direction regarding policies. Local governing bodies also play a key role in determining how public safety agencies will work to coordinate services on jurisdictional and regional levels.

Role of citizens

Citizens also play an important role in public safety for their communities. Citizen volunteers can assist by providing routine support services, thereby deterring criminal activity. Neighborhood watch programs and citizen associations can help improve anti-crime efforts. Citizen academies can train citizens in law enforcement procedures and crime prevention techniques. In addition, citizen academy graduates can become volunteers who assist law enforcement during community events. These and similar programs can lead to more positive interactions between law enforcement and community members and increase awareness of law enforcement procedures.

Law Enforcement Services

The governing body will need to make decisions about what financial and human resources the locality will provide to promote public safety and reduce crime. The governing body should work with the local manager and local law enforcement to establish the law enforcement department's mission, vision, values, and goals. As such, it is important for officials to be familiar with the types of law enforcement services in their locality.

Local law enforcement

Police officers and sheriff's deputies serve as the most visible element of a community's law enforcement effort and can create either a positive or negative image for the locality through their interactions with citizens. For these reasons, officers and deputies must be trained in public relations and public information dissemination.

Local police department

Local police departments in counties, cities, and towns are authorized by the Code of Virginia to enforce the laws 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. For example, all police departments must comply with various Code of Virginia mandates and with the Department of Criminal Justice Services fundamental regulations that include officer training, operational policies, and records management.

Divisions. Most police departments have several divisions including patrol, investigations, administration, and possibly animal control. Due to staffing, some police departments may find it necessary to combine some of these divisions.

Funding. State funding for police activities is provided through the "599 program," established by the Virginia General Assembly during the 1980 – 1982 biennium. Federal funding, primarily through the Department of Criminal Justice Services, may also be available for equipment and personnel.

Police chief

The chief of police is the community's principal law enforcement officer. Depending on the locality's charter, the chief could report to the local governing body or the manager. The manager and the chief recommend programs to the council and ensure that the council's priorities are achieved. The local manager and the chief are responsible for recruiting, selecting, training, and equipping law enforcement personnel. They also determine how the department will be structured and how personnel are deployed.

As the department's principal public relations officer, the chief of police may employ or identify a **public information officer (PIO)** within the agency who works closely with the local government to ensure that timely and appropriate information is provided to the community. It is also the chief's responsibility to establish working relationships with other law enforcement and emergency service agencies in the region and the Commonwealth of Virginia.

Sheriffs

Cities. In cities, the sheriff is an elected constitutional officer responsible for court services and civil processes. Homeland security concerns for courtroom and courthouse security have placed additional responsibilities on sheriffs to ensure public safety. The sheriff's staff serve as bailiffs for the court. The sheriff also serves as custodian of the jail if the locality operates a jail and if they participate in a regional jail. The sheriff or their representative serves as a member of the jail board.

Certified deputies may also be utilized to assist local police departments with law enforcement activities. This is done in collaboration with the police chief, who is the chief law enforcement officer.

Counties. The sheriff of a county carries the same responsibilities as the sheriff in a city but may also include the additional responsibilities that would be carried out by a police chief in a town or city. The sheriff in a county is considered the chief law enforcement officer and is an elected constitutional officer. It is also the sheriff's responsibility to establish working relationships with other law enforcement and emergency medical service agencies in the region and the Commonwealth of Virginia to ensure coordinated response procedures are implemented.

Funding for sheriffs

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.

Fire & Rescue Services

Virginia's localities use a variety of different mechanisms to provide 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.

Career & Volunteer. Services may be provided by a career staff, an all-volunteer staff, or a combination of career and volunteer resources. In recent years, there has been a shift toward an increased number of career personnel as citizens are unable to volunteer the amount of time needed to provide full-time fire and EMS coverage.

Funding. 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.

Leadership. 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. In either case, the chief will also need to clarify the lines of supervision and accountability for personnel.

The chief also directs recruitment, selection, promotion, and supervision of all career personnel, in consultation with the local human resources department. The chief should coordinate the same responsibilities with volunteer organizations to ensure qualified personnel are available on either a career or volunteer basis. Finally, the chief is responsible for the condition of vehicles and equipment and ensures that these items are maintained in proper working order.

Mutual aid agreements. While most local agencies develop resources to handle their 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 establishing and maintaining these critical relationships.

Fire operations division. 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. When this means combining, closing, or developing new fire stations, this work should be done in consultation with the local governing body.

Fire prevention and education. 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.

Fire investigations. 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 suspicious 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.

Emergency Management

Preparing for and managing emergencies are arguably among the most important functions of local government which are directly responsible for emergency management, before, during, and after the incident. Local governments work closely with regional offices of the Virginia Department of Emergency Management (VDEM) whose offices are spread throughout every corner of the Commonwealth to assist with expertise, personnel, resources, and equipment as needed. Should the incident rise to the level of a federal declaration, VDEM will coordinate with the federal government and the local government accordingly.

The complexity of emergency management, paired with the often-devastating impacts on local communities, means that local government leaders should make it a priority to understand this environment before an incident occurs. Each leader within a locality should understand their individual role, their department's role, and the locality's role to ensure that the levers of government are being coordinated effectively to improve safety, reduce unnecessary burdens, and recover more quickly. Those localities that make understanding emergency management a priority, often see local economic activity resume faster, leading to fewer interruptions in services and smoother financial operations.

The importance of the emergency operations plan

Virginia's 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, cyber-attacks, 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, shelters, 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 VDEM to develop emergency plans, respond to an incident, and assist with the recovery process which can often take several years. The local government needs to be prepared to take the lead on things like providing mass shelter, feeding, clothing, evacuations, security, debris removal, public information, and coordination with other agencies.

Declaring a local emergency

In some situations, the local director of emergency management will need to declare a local emergency. This declaration allows the locality to temporarily waive certain regulatory processes and take actions necessary to obtain materials needed to mitigate the disaster without using standard procurement procedures. A local emergency declaration by the director, or their designee, must be ratified by the local council as prescribed within the emergency operations plan and the Virginia Code. 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/or request federal disaster assistance as mentioned above. 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, E-911 is the often first point of contact for citizens in need and may be the only contact a citizen has with local services.

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 but also participate in a regional authority. If they participate, 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.

Issues

Critical issues for regional jail facilities include funding, accreditation, and overcrowding.

Funding. The State Compensation board partially funds personnel costs for regional jails personnel costs on the same basis 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.

The state has historically participated in funding a share of the construction cost of new jails and juvenile detention centers or the expansion of existing ones, after a multi-step approval process. However, the overall system capacity has made such funding harder to obtain, and the state's share of costs has decreased as well. The method of allocating these costs and jail space usage varies among regional jails.

Funding and operational issues for correctional facilities can be complex and confusing. Council members 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.

Accreditation. Jails can voluntarily seek accreditation from national organizations. These accreditations are important because they mean the jail's facilities and procedures have been reviewed and found to meet national standards.

Overcrowding. 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 state-mandated requirements for education staffing and cover other fixed costs, but they adjust other staffing levels to take into account the number of youth housed in the facility. The state's 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 use of local and regional facilities.

Conclusion

Public safety incidents can vary in size and significance. The same local agencies that respond to traffic accidents must be prepared for emergencies like major chemical spill on the interstate, mass shooting incidents, hurricanes, ice storms, and international terrorist attacks.

Unfortunately, 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.

Nevertheless, local officials have significant public safety responsibilities because the first responders to an incident will most often be from a local agency. Officials should ensure that the various local agencies are well coordinated and have good working relationships with localities and state agencies. Training exercises are essential to ensure that responders from different agencies can communicate directly in the field and have a solid working knowledge of the roles, responsibilities, and capabilities of the different agencies.

About the authors: L. S. Bailey is the Sheriff of New Kent County; Rick Opett is the Fire Chief, Emergency Manager, and Chief Fire Marshal for New Kent County.

Appendix A: Resources

Law Enforcement: State

Department of Corrections

- https://vadoc.virginia.gov/
- 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

- https://www.dmv.virginia.gov/
- Provides traffic crash data and enforcement data.

State Police

- www.vsp.virginia.gov

State Compensation Board

- www.scb.virginia.gov

Law Enforcement: 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

- https://vasheriff.org/

Fire & Rescue: State

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

- https://www.dhcd.virginia.gov/
- Administers the housing, building, mechanical, and fire prevention codes on the state level.

Fire & Rescue: 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: State

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

- https://www.vdh.virginia.gov/emergency-medical-services/
- 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

- https://psc.vdem.virginia.gov/pages/9-1-1-services-board
- Responsible for collecting wireless tariff, distributing to eligible parties, and coordinating compliance with federal regulations.

Emergency Management: 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 & Infrastructure Security Agency

- www.cisa.gov

Chapter 2

Education

By Josette Bulova

Included in this chapter:

- **Introduction**
- **Responsibilities for K-12 Education**
- **Local School Divisions**
- **Local School Boards**
- **Educational Standards**
- **Categorical & Incentive Programs**
- **Composite Index of Local Ability to Pay**
- **School Division Budgets**
- **Conclusion: Evaluating Students & Schools**

Introduction

Education is likely the most visible and expensive service item in a locality's operating budget. The local school board, which solely governs education, operates somewhat independently from the local governing body but education is funded exclusively by the local governing body. This governance structure can create tension between the bodies, as the governing body is asked for funding without direct input on how the money is used. So, while the relationship between the local governing body and the local school division is not always easy, it is important. The quality and reputation of a locality's schools not only affect children and parents but also affects critical factors for the entire locality such as property values, sense of community, and the ability of businesses to recruit and retain employees.

Although members of the local governing body have a limited role in education, they can still have an important impact. Local officials can work with the school board to ensure a quality education system, develop a sense of community goals surrounding education, generate public support for K-12 education, and enlist support from businesses through partnerships with public schools.

Responsibilities for K-12 Education

The Constitution of Virginia, Article VIII, outlines the basic requirements for K-12 public education by assigning the ultimate responsibility to the General Assembly. Article VIII assigns designated authority to the State Board of Education (BOE), local boards of education, and local governments.

The General Assembly is required to:

- Provide for a system of free public elementary and secondary schools.
- 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 SOQ.
- Appropriate the costs of K-12 education between the state and local governments.

The BOE is required to:

- Set the SOQ, subject to change only by the action of the General Assembly.
- Certify division superintendents.
- Carry out educational policy.
- Set the standards and curriculum.

Local governments are required to pay their portion of the costs associated with the SOQ.

Local School Divisions

Most local school divisions parallel their local government jurisdiction, meaning that counties and cities operate their own systems. Virginia is unique in this arrangement due to having independently run cities. However, in Virginia, several joint systems are in place that operate through renewable agreements to save money. Some examples of these are Emporia/Greensville, Williamsburg/James City, and Covington/Alleghany. Additionally, only two towns (Colonial Beach and West Point) operate independent school systems. In total, the Virginia Department of Education (DOE) recognizes 133 school divisions organized into eight regions.

Many school divisions share services, especially with regional programs for special education, career-technical education, and Governor's Schools. Governing bodies across the Commonwealth have also entered into several collaborative agreements to save money while offering enhanced services. Examples of this include:

- Parks and recreation programs
- Shared vehicle and grounds maintenance services
- Technology and equipment-sharing programs
- Joint purchasing and shared human resource services

Local School Boards

All local school boards were appointed until 1922 when the General Assembly enacted legislation establishing a formal process for local referendums to determine if the local school board should remain appointed or transition to being elected. Currently, voters elect their school boards in most localities but there are still about a dozen boards that are appointed.

The referendum process for changing from an appointed to an elected school board or for reverting to an appointed board is triggered by a petition signed by at least 10 percent of the registered voters in the jurisdiction seeking the change. The election schedule and makeup of an elected school board generally follow that of the governing board, in which 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 the two.

In cities with appointed school boards, general law requires the governing board to hold a public hearing of the appointees before the appointment. The governing board cannot have a hearing and then appoint someone who had not been considered at the hearing – appointees must have been considered at a public hearing first.

Neither elected nor appointed school boards have taxing authority; the governing body retains the responsibility for appropriating all local funds for education.

Compensation

Whether appointed or elected, local school board members may, according to the Code of Virginia § 22.1-32, receive compensation:

- Any elected or appointed school board may pay each member an annual salary consistent with the salary procedures and no more than the salary limits provided for local governments in accordance with Article 1.1 §15.2-1414.1 *et seq.* of Chapter 14 of Title 15.
- Any school board may pay the chairman of the school board an additional salary not exceeding $2,000 per year upon passage of an appropriate resolution. The resolution must be passed by the school board whose membership is elected in whole or in part, or the governing body of the appropriate county, city, or town whose school board is comprised solely of appointed members.
- No school board shall be awarded a salary increase unless, upon an affirmative vote by the school board, a specific salary increase is approved following specific procedures.

Authority

The state constitution and code grant the local school board the authority and responsibility to supervise the schools within its jurisdiction. The general powers and duties of a school board are outlined by the Code of Virginia as follows:

School Board Constitutes Body Corporate; Corporate Powers § 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 § 22.1-79

Each 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 noninstructional 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, 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 § 22.1-293 *et seq.* and Article 3 § 22.1-306 *et seq.* of Chapter 15, 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's procedures for adjusting grievances. Except in the case of dismissal, suspension, or other disciplinary action, the grievance procedure prescribed by the Board 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 or as imposed by law;
8. Obtain public comment through a public hearing not less than seven 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 that is to be implemented after the effective date of this provision, an additional public hearing shall not be required;

(continues on next page)

9. (Expires July 1, 2028) At least annually, survey the school division to identify critical shortages of (i) teachers and administrative personnel by subject matter, (ii) specialized student support positions as that term is described in subsection O of Code of Virginia § 22.1-253.13:2, and (iii) school bus drivers and report such critical shortages to the Superintendent 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 § 9.1-900 *et seq.* of Title 9.1 within that school division pursuant to Code of Virginia § 9.1-914;
11. Ensure that at any back to school night event in the local school division to which the parents of enrolled students are invited, any such parent in attendance receives prominent notification of and access, in paper or electronic form, or both, to information about application and eligibility for free or reduced price meals for students and a fillable free or reduced price meals application that may be completed and submitted on site;
12. Ensure that the information sheet on the SNAP benefits program developed and provided by the Department of Social Services pursuant to subsection E of Code of Virginia § 63.2-801 is sent home with each student enrolled in a public elementary or secondary school in the local school division at the beginning of each school year or, in the case of any student who enrolls after the beginning of the school year, as soon as practicable after enrollment;
13. Ensure that a fillable free or reduced price meals application is sent home with each student enrolled in a public elementary or secondary school in the local school division at the beginning of each school year or, in the case of any student who enrolls after the beginning of the school year, as soon as practicable after enrollment;
14. Permit any student enrolled in a public elementary or secondary school in the local school division who provides acceptable proof of identification as set forth in subdivision 15, if requested, and signs up in accordance with sign-up procedures for the respective school board meeting, to submit oral comments during any public comment or citizen participation portion of such meeting subject to the same reasonable time, place, and manner restrictions imposed by such school board on the expression of any other citizen participant in such meetings; and
15. Accept as proof of student identification for the purpose of providing oral public comment as permitted pursuant to subdivision 14 any current student identification card or other school document such as a report card or a personal school email address.

Other sections of law require the school board to:

- Appoint a division superintendent from a list certified by the state.
- Manage funds made available for the schools by the governing body.
- Develop a policy on private-sector partnerships within the schools.
- Approve and distribute a Student Code of Conduct, which must include an Acceptable Use Agreement for technology and AI access.
- Report on a minimum of an annual basis to the governing body all expenses.
- Not spend funds in excess of those approved and appropriated without the consent of the governing body.

Local governing bodies & school boards

Building a positive relationship between the local government and local school boards is important but challenging. Differences in educational philosophy, competition for limited revenue, and issues of authority can create tension and adversely affect the cooperative work between the two bodies.

Work and commitment are crucial for fostering a positive relationship. The goal of both bodies is to provide an excellent school system to ensure students thrive. Keeping this in mind will help conversations become easier over time. Several governing bodies and school boards, such as the City of Roanoke, have adopted memorandums of understanding (MOU) outlining revenue sharing and the terms of the relationship. The MOU reduces the annual competition for funds and provides certainty when budgeting each year.

Ideas to build and nurture the Local Government/School Board relationship:

- Hold joint meetings on a planned, regular 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 mandatory learning outcomes by grade and subject area for all students and schools.

Use the QR code or link to access the 2023 JLARC report.

Use the QR code or link to access the 2024 JLARC report update.

Setting the SOQ

The SOQs are set by the State Board of Education but can be revised by the General Assembly. The SOQ includes details like student achievement and graduation requirements. Standards are codified in Code of Virginia § 22.1-253.13:1 through § 22.1-253.13:9. The current set of standards are in effect until July 2026, when they are up for review.

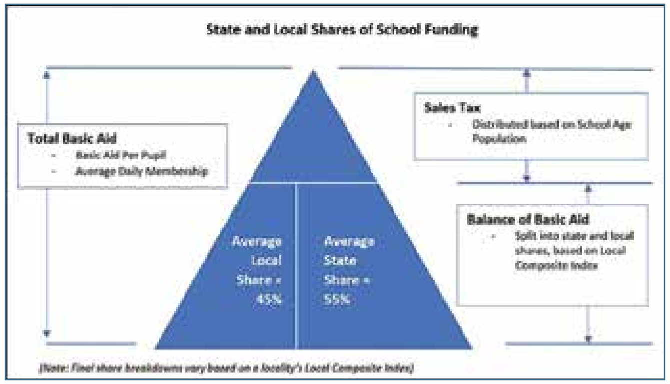
The SOQ is of great significance to local governments because, along with the annual appropriations act, they determine the required amount of local funding necessary to receive direct aid from the state. This shared state/local funding relationship has been a source of disagreement and dispute for many 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.

Driven by this funding dispute, the Joint Legislative Audit and Review Commission (JLARC), which is the legislative research and reporting division of the state legislature, has completed several studies regarding the true cost of education. The most recent study occurred in the Summer of 2023 in which a report and several recommendations were provided to the General Assembly for how to update the SOQ to adequately fund education and the state's share.

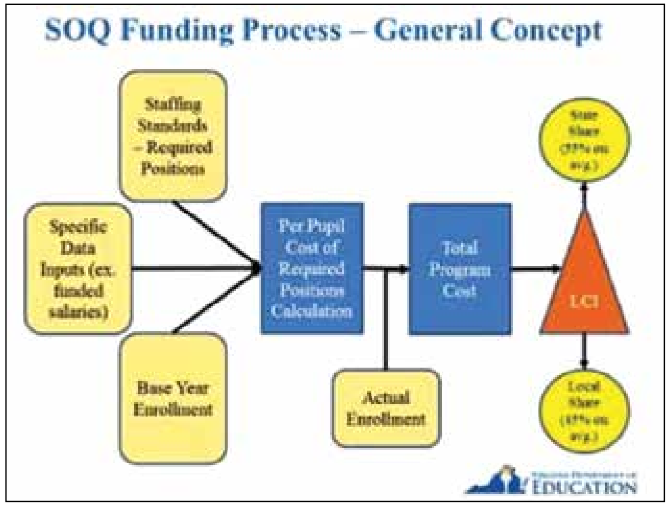
Funding the SOQ

The basic steps in funding the Standards of Quality are:

1. The state determines a basic aid cost per pupil for meeting the SOQ.
2. 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.
3. 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.
4. 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).



Source: VDOE



The state is supposed to pay 55 percent of what it calculates to be the cost of meeting the SOQ while localities are supposed to pay 45 percent of the cost. 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 the SOQ. Categorical programs target the needs of specific students. Some examples include but are not limited to:

- Adult Education
- Adult Literacy
- School Lunch Program
- Special Education – Homebound
- Special Education – Jails

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. Some examples include but are not limited to:

- Compensation Supplement
- Governors School
- Virginia Workplace Readiness Skills
- Math/Reading Instructional Specialists

Proceeds from the state lottery are the largest source of funding for incentive programs. In FY25, for example, 16 programs were funded by the Lottery Proceeds Fund, including two SOQ programs. Several programs have a local match requirement, like the K-3 Class Size Reduction.

Composite Index of Local Ability to Pay

The local composite index (LCI) 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 average. 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).

Virginia Department of Education's Budget Office LCI Calculator (2024-2026)

COMPOSITE INDEX OF LOCAL ABILITY-TO-PAY FORMULA

Average Daily Membership (ADM) Component =

$$.5\left[\frac{\frac{\text{Local True Values}}{\text{Division ADM}}}{\frac{\text{State True Values}}{\text{State ADM}}}\right] + .4\left[\frac{\frac{\text{Local Adjusted Gross Income}}{\text{Division ADM}}}{\frac{\text{State Adjusted Gross Income}}{\text{State ADM}}}\right] + .1\left[\frac{\frac{\text{Local Taxable Retail Sales}}{\text{Division ADM}}}{\frac{\text{State Taxable Retail Sales}}{\text{State ADM}}}\right]$$

Population Component =

$$.5\left[\frac{\frac{\text{Local True Values}}{\text{Local Population}}}{\frac{\text{State True Values}}{\text{State Population}}}\right] + .4\left[\frac{\frac{\text{Local Adjusted Gross Income}}{\text{Local Population}}}{\frac{\text{State Adjusted Gross Income}}{\text{State Population}}}\right] + .1\left[\frac{\frac{\text{Local Taxable Retail Sales}}{\text{Local Population}}}{\frac{\text{State Taxable Retail Sales}}{\text{State Population}}}\right]$$

Final Composite Index =

((.6667 x ADM Component) + (.3333 x Population Component)) x 0.45

Source: Budget Office, Virginia Department of Education

Rebenchmarking

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 during a process called "rebenchmarking" when the LCI data for every locality is re-calculated and state funding is adjusted by the new LCI figures.

School Division Budgets

As part of its duty to manage and control public education funds, the school board is required to report its expenditure to the governing board at least once a year. The board is prohibited, without the consent of the governing body, from spending or entering into contracts to spend any money more than 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 with 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. To accomplish this, the governing board may either appropriate a lump sum to the school board or appropriate through several major classifications.

- Instruction
- Administration (attendance and health)
- Pupil Transportation
- Operation and Maintenance
- School Food Services and Other Non-Instructional Operations
- Facilities
- Debt and Fund Transfers
- 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 unless a memorandum of understanding is created. 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 include:

- Issue general obligation bonds to pay for school construction. In terms of bond issues, localities can now participate in the VML/VACo Finance bond pool program sponsored by the Virginia Municipal League and the Virginia Association of Counties.
- Borrow funds from the state Literary Fund
- Apply for grants from the School Construction Assistance Program
- Accrue enough funds to pay cash
- 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.

Conclusion: Evaluating Students & Schools

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 who must take the SOL to graduate unless they have met the graduation standards in a different capacity.

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 Standards of Accreditation are used to:

- 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.

These standards are continuously updated, including the last update in 2025.

For the guidance document of the current standards and the full list of accreditation standards click here:

Use the QR code or link to access the guidance document of the current standards and the full list of accreditation standards.

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.

Use the QR code or link to access more information and "At a Glance" summaries for every school in Virginia.

School Accreditation Ratings

Schools earn one of the following three accreditation ratings based on performance on school quality indicators:

- Fully Accredited: if the school is not among the lowest performing 5.0% on the school quality indicators in the current year, the school shall be designated "Fully Accredited." Further, the board may grant an exception and designate schools identified for comprehensive support as "Fully Accredited" if they are improving at a rate using data from previous years that would allow schools to meet the exit criteria established within the required timeline by the board.
- Conditionally Accredited: if the corrective action plan for continuous improvement submitted by a school identified for comprehensive support does not demonstrate such school has improved from the lowest performing 5.0% on the school quality indicators in the current year or is improving at a rate using data from previous years that would lead to the school meeting the exit criteria established by the board in within the required timeline, the school shall be designated "Conditionally Accredited."
- Accreditation Denied: If a school is designated "Conditionally Accredited" and the school or school division fails to submit additional documentation consistent with subsection A of Administrative Code 8VAC20-132-300, it may be designated by the board as "Accreditation Denied."

Federal programs

Due to the current political climate on the federal level, with the consolidation of the federal workforce, programs, agencies, the current programs are inapplicable to this section.

About the Author: Josette Bulova is the Education Policy Lobbyist and Policy Communications Coordinator and for the Virginia Municipal League.

Chapter 3

Human Services

By Janet Areson

Included in this chapter:

- **Social Services**
- **Children's Services Act**
- **Behavioral Health and Developmental Services**
- **Public Health**

Virginia's state and local human services umbrella cover a broad array of needs and services for Virginians of all ages, including 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 primarily resides in four 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. Although federal and state laws and regulations dictate program rules 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, adoption services and child protective services) and perform eligibility determinations for the Medicaid program in accordance with state and federal rules and regulations.

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 § 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. § 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. § 63.2-300 For a local department serving a single city, the city council must appoint either one local government official or five individuals to serve as the board. § 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. § 63.2-305 For a district board that represents two or more localities, the board must consist of at least three and no more than nine members unless otherwise stated in the Code of Virginia § 63.2-306 and § 63.2-307.

Members of local boards must be paid reasonable and necessary expenses for attending meetings. 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. § 63.2-310

Each year the local social services board must submit to the governing body a budget that contains an estimate and supporting data for the funding needed to carry out mandated services. The governing body reviews and approves the local department's budget and then appropriates funds to sufficiently cover the required costs of administration and service costs, 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 monthly for the federal share of any public assistance and social services programs. State funding for any remaining balance of service costs is made based on 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. § 63.2-401 In addition, the Code of Virginia requires the state, to the extent that funds are available for such purposes, to reimburse localities for office space rental costs and for the cost of repairs and alteration in either a privately or publicly owned building. The Commissioner determines the extent of reasonable costs. § 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, program name was changed to the Children's Services Act. CSA consolidated eight major funding streams for youth with, or at risk of, serious emotional and behavioral issues into a single state pool of funding. CSA's 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 and use of funds at the local level, CSA also gave communities flexibility and financial incentives to design treatment plans emphasizing greater use of community-based services 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 (OCS), are responsible for oversight of the CSA program and develop and enforce program policies. § 2.2-2648 Local governments are represented on the SEC. OCS audits local programs for compliance with state laws and policies and offers a variety of training opportunities and technical assistance for those involved in the program at the local level.

Population served & funding

CSA primarily serves children for whom foster care services are provided; children whose special education needs extend beyond a regular classroom (i.e., require placement in private special education programs); and children whose emotional/behavioral needs are present in several community settings and exceed the scope of a single agency. Services required for these children 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 teams (FAPT) or another approved multi-disciplinary team that includes 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. Except for Individualized Education Plans (IEPs) 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 CSA program, including planning and policy development, fiscal and program 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, not state facilities, serve 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 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 as an entity with local government employees; the majority operate independently of local government with staff employed by the CSB and not the local government. § 37.2-500 *et. seq*.

A CSB/BHA consists of 1) a broadly representative citizen board appointed by the governing body/bodies for communities served by the agency; 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 entities, the decision to change must be agreed to by the communities involved in that Board.

A CSB/BHA is accountable for programmatic, fiscal, and administrative activities and reports to both the state and the localities served. A CSB/BHA is required to have 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.

CSB/BHA 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, when the COVID-19 pandemic took hold, most Virginians took little notice of the Virginia Department of Health (VDH) and the public health system in Virginia. 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 and tracking, family health (including the Women, Infants, and Children's (WIC) nutrition program), environmental health, public health education, vital records and health statistics, medical examiner services, facility licensing, and emergency medical services.

The State Board of Health develops and oversees policy for the public health system. The 15-member Board is appointed by the governor and includes one representative of local government.

Except for emergency medical services and the office of the medical examiner, public health services are delivered through 35 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. § 32.1-30 *et. seq*. Each department is headed by a local health director, who must be either a physician licensed to practice in Virginia; an individual with a master's or doctorate degree in public health and at least three years of full-time experience; or someone otherwise deemed qualified by the Commissioner.

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, and water supply 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. A department that is 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 stipulates 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 director, and the director and staff are classified as 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. § 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. § 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. § 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.

About the author: Janet Areson is the Director of Policy Development and human services lobbyist for the Virginia Municipal League.

Chapter 4

Parks & Recreation

By Christopher J. Tuttle

Included in this chapter:

- **Introduction: What do Parks & Recreation Departments Provide?**
- **Issues & Challenges**
- **Professional Resources**
- **Grant Funding**
- **Conclusion**

Introduction: What do Parks & Recreation Departments Provide?

Parks & Recreation departments play a vital role in the health, well-being and sustainability of communities across our Virginia. As localities continue to invest in and promote local green spaces and programs, it's important to understand the broad benefits they provide.

Health and wellness. Local parks encourage physical activity, reduce stress, and promote overall mental well-being. Activities such as jogging, biking, playing sports or simply enjoying nature, all reduce potential health care costs and encourage a healthier lifestyle for residents.

Programs and services. While programming and services will vary depending on the locality and area of the state, generally most departments offer core programming for youth, teens, adults in areas such as:

- Aquatics
- Youth athletics
- Wellness programming
- Afterschool childcare
- Summer camps
- Special events
- Cultural arts
- Adult athletics
- Senior activities

Additionally, many departments work closely with various civic organizations to promote community events and programming. Parks and Recreation departments may have either policy making boards or advisory boards to assist in planning and policy development procedures.

Community connection. Parks and Recreation programs strengthen neighborhoods by bringing people together through community events, youth activities and inclusive programming. These spaces help foster pride, reduce crime and build lasting social bonds.

Environmental stewardship. Public parks help protect natural resources, improve air and water quality, and provide habitats for local wildlife. They are essential in promoting environmental sustainability and education.

Economic impact. Investing in parks contributes to local economic growth by increasing property values, creating jobs, and attracting tourism. Recreation programs also support working families by offering affordable childcare and youth engagement opportunities.

Educational value. From nature-based learning to arts and enrichment classes, parks and recreation provide opportunities for personal growth and lifelong learning across all age groups

Issues & Challenges

As communities continue to benefit from local parks and recreation programs, it is also important to recognize the challenges we face in maintaining and improving these vital resources. Some of the most common concerns are outlined below.

Funding and budget constraints:

- Limited resources for operations, staffing, and program development.
- Rising costs of maintaining facilities and implementing safety measures.

Maintenance and infrastructure:

- Aging facilities and equipment in need of repair or replacement.
- Accessibility to older facilities for people with disabilities.

Staffing and workforce shortages:

- Difficulty recruiting and retaining seasonal and qualified staff.
- Need for ongoing training in safety, inclusion, and customer service.

Safety and security:

- Concerns about crime, vandalism, and substance use in parks.
- Managing risks of accidents and injuries during recreational activities.

Equity and access:

- Unequal distribution of parks, particularly in underserved communities.
- Barriers such as program costs, transportation, and limited inclusive offerings.

Environmental pressures:

- Overuse of natural areas leading to erosion and habitat damage.
- Climate change affecting landscapes, water resources, and wildlife.

Community engagement:

- Difficulty reaching diverse populations with programs and services.
- Conflicts among user groups and lack of awareness about available opportunities.

Professional Resources

NRPA. 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."

Visit www.nrpa.org to learn more.

Use the QR code of the link to view NRPA's National Legislative Platform. There are currently 14 accredited agencies in Virginia and 186 across the United States.

VRPS. 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.

Visit www.vrps.com to learn more.

Virginia Outdoors Plan. 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.

Visit www.dcr.virginia.gov/recreational-planning/vop to learn more.

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 alike.

About the Author: Christopher J. Tuttle has been the Director of Parks and Recreation for the City of Staunton since 1994. He has served on numerous committees of the Virginia Recreation and Parks Society as well as serving as the chairman of the Upper Valley Regional Park Authority.

Chapter 5

Animal Control

By K. Michelle Welch and Jessica D. Cooper

Included in this chapter:

- **Animal Licenses & Vaccinations**
- **Public Animal Shelters**
- **Animal Welfare & Animal Cruelty**
- **Additional Local Powers**
- **Commercial Dog Breeding Operations**
- **Hunting**

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 only to cities and counties.

Animal Licenses & Vaccinations

Licensing and rabies vaccinations are the two primary animal control issues for which localities bear responsibility. Some key points to keep in mind:

- All dogs older than 4 months of age must be licensed.
- State Law gives counties, cities and towns the authority to adopt an ordinance imposing a license requirement on anyone who owns a cat older than 4 months. § 3.2-6524
- A license tag cannot be issued for a dog or cat unless the animal has received a rabies vaccination. § 3.2-6526
- A locality can only license dogs and cats of an owner or custodian who is a resident of the locality. § 3.2-6527

Cost of licenses

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 Code of Virginia § 3.2-6528. 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 and may create an ordinance to exempt any dog that served as a police or law-enforcement dog or military working dog. § 3.2-6528

Lifetime licenses. 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. § 3.2-6530

Use of licensing funds. 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. § 3.2-6534

Vaccinations and preventing rabies

Under Virginia 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 within a reasonable period of time. § 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. § 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. § 3.2-6562.1

Rabies ordinances

All localities have the authority to pass ordinances restricting the running at large of dogs and cats that have not been vaccinated against rabies. § 3.2-6522 In addition, Virginia 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. § 3.2-6525

In a situation where there is sufficient 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 to 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. § 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. § 3.2-6525 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. § 3.2-6546

Hours of operation. The animal shelter must be available to the public at reasonable hours.

Lost animal inquiries. 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.

Owner notification. If the rightful owner of a confined animal can be readily identified, the shelter must make a reasonable effort to notify the owner.

"Stray hold period." 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. § 3.2-6546

Record keeping. State law also provides for certain record-keeping and retention requirements for the animal shelter.

Staff statement requirement. 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, and update such statements when changes occur. § 3.2-6546

Bite history. 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. § 3.2-6509.1

Euthanizations. 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. § 3.2-6546 However, state law prohibits the euthanasia of animals through high altitude decompression chambers or gas chambers. § 3.2-6505

Sterilization requirement. 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 30 days after reaching the age of six months, whichever is sooner. § 3.2-6574 A locality may choose to collect a fee or deposit prior to adoption to ensure the animal's sterilization. § 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 Virginia law § 3.2-6503, the owner of a companion animal must provide each animal with adequate* amounts of:

- Feed and water
- Shelter that is properly cleaned
- Space in the animal's primary enclosure for that type of animal, depending on the animal's age, size, species, and weight
- Exercise
- Care, treatment, and transportation

Who is the "owner" of an animal?

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. § 3.2-6500

**Code of Virginia § 3.2-6500 lays out specific definitions of what constitutes "adequate" for each requirement, as well as specific rules for tethering of animals.*

Additionally, owners must provide veterinary care when needed to prevent suffering or the transmission of disease. These requirements also apply to public or private animal shelters, foster care providers, dealers, pet shops, exhibitors, kennels, groomers, and boarding establishments. § 3.2-6503

Under Code of Virginia § 3.2-6503.1, the owner of agricultural animals – defined as "all livestock and poultry" § 3.2-6500 – must provide each animal with:

- Feed to prevent malnourishment.
- 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).

Animal cruelty

Code of Virginia § 3.2-6570 lays out which specific actions towards animals constitute animal cruelty. Intentional acts, such as torturing and killing, or deprivation, such as 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 under this code section and prosecuted as a Class 1 misdemeanor.

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. § 3.2-6569

A subsequent hearing before the General District Court of the city or county will be held within 10 days to determine whether the animal has been abandoned, cruelly treated, or deprived of adequate care. This civil animal seizure hearing will determine whether the animal should be returned to its owner or remanded into the custody of the Commonwealth or another party. § 3.2-6569(F) The court may also prohibit the future possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. 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. The court may impose such a bond whether or not there is an ordinance. § 3.2-6569

Animal cruelty registries. Localities may establish, organize, and maintain a computerized animal cruelty registry as a database of information regarding persons convicted of a felony violation of cruelty to animals, animal fighting, maiming, killing, or poisoning an animal, or killing or injuring a police animal. Information on such registry may include the name and address of the offender at the time of conviction as well as the offense for which the offender was convicted and the date and place of conviction. Access to such registry may be made available to the public on the website of the locality or local police department. Localities are responsible for the creation of a form on which a person may request removal of his name and information from the registry, not less than 15 years after the violation that warranted inclusion in the registry, provided he has no additional felony convictions of that the type that warranted placement on the registry. A locality may adopt ordinances and develop forms to implement the provisions of the registry. All costs to establish, organize, and maintain a locality's animal cruelty registry pursuant to this section are borne by the locality. § 3.2-6573.1

Additional Local Powers

Under Virginia law, localities have the authority to adopt a wide variety of ordinances relating to animals as the local governing body sees fit. For example:

- Localities can limit how many animals of dogs and cats that property owners may keep. § 3.2-6524
- Localities may pass laws prohibiting dogs running at large. § 3.2-6538
- Local governing bodies are authorized to hold an advisory referendum on the question of whether a leash law should be enacted. § 3.2-6539
- Localities may regulate dangerous dogs and vicious dogs. § 3.2-6540.1

Pet shop permits. 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. § 3.2-6537 A locality can also require that any pet shop selling dogs obtained from outside the Commonwealth furnish a bond, depending in part on the amount of animals they maintain for sale each year. § 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 in addition to pursuing other criminal penalties and civil remedies listed in Code of Virginia § 3.2-6511.

Regulation of animals other than dogs and cats. 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 of 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.

Hybrid canines. Localities can regulate "hybrid canines" which are animals that are hybrids between a domestic dog and any other species of the Canidae family. § 3.2-6581 Localities can establish a permit system to ensure the adequate confinement and responsible ownership of such animals or prohibit their keeping. The ordinance shall not require that hybrid canines be disposed of by the owner unless certain other conditions under Code of Virginia § 3.2-6582(A) are met. Violation of such hybrid-canine ordinance is a Class 3 misdemeanor for the first violation and a Class 1 misdemeanor for any subsequent violation and may require surrender of the hybrid-canine for euthanasia. § 3.2-6582

Compensation for agricultural animals killed by dogs. Localities can compensate livestock or poultry owners for animals killed by dogs and can set the requirements for receiving such compensation by ordinance. § 3.2-6553

Disposal of deceased pets. Localities can govern the disposal of dead companion animals. § 3.2-6554

Resale of shelter animals. 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, and violation of that ordinance may be punishable as a Class 1 misdemeanor. § 3.2-6545

Animal control officers. 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. § 3.2-6555

Localities may also appoint deputy animal control officers to assist the animal control officer in the performance of duties. Localities must submit a form to the State Veterinarian containing information on the local animal control officers' employment and training status, and the State Veterinarian may require that the locality notify of any change in such information. Localities may additionally contract with one or more additional localities for animal protection and control services. The locality is responsible for determining how the officers shall be paid. § 3.2-6555 Virginia law sets specific requirements for the training of animal control officers § 3.2-6556, as well as records-keeping, retention, and filing requirements. § 3.2-6557 Virginia law also sets out the duties of such officers with respect to capture, confinement, and disposition of companion animals found running at large. § 3.2-6562

Feeding of certain animals. Localities can prohibit the feeding of certain animals within their jurisdictions. 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. § 29.1-527.1 – § 29.1-527.2 A locality shall not enact such an ordinance on lands within a national or state park or forest, or wildlife management area. § 29.1-527.1

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. § 3.2-6507.1 Virginia law sets specific requirements for such breeders, such as how the dogs may be disposed of, and which records must be maintained by the operation. § 3.2-6507.2

Generally, Virginia law does not permit commercial dog breeders to maintain more than 50 dogs (over one year old) at a time for breeding purposes, but 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. § 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. § 3.2-6507.3

Commercial dog breeding operations will also be subject to regular inspection at least twice annually. § 3.2-6555 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.** Violation of such ordinance shall be a Class 3 misdemeanor. The governing body of the city or county must notify the Director of the Department of Wildlife Resources by registered mail prior to May 1 of the effectual year for the ordinance to be enforceable. § 29.1-526

- **Trapping animals within 50 feet of the shoulder highway, except where the landowner has given written permission.** Violation of such ordinance shall be a Class 3 misdemeanor. The governing body of the city or county must notify the Director of the Department of Wildlife Resources by registered mail prior to May 1 of the effectual year for the ordinance to be enforceable. § 29.1-526
- **Hunting with certain firearms.** The Board of Wildlife Resources has established model ordinances that may be adopted by counties or cities. The governing body of the county or city must notify the Director of the Department of Wildlife Resources by registered mail prior to May 1 of the effectual year for the ordinance to be enforceable. § 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. Violation of such ordinance may be a Class 3 misdemeanor. The governing body of the city or county must notify the Director of the Department of Wildlife Resources by registered mail prior to May 1 of the effectual year for the ordinance to be enforceable. § 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. § 29.1-527

About the authors: K. Michelle Welch is a Senior Assistant Attorney General and Director of the Animal Law Unit . Jessica D. Cooper is an Assistant Attorney General and an attorney in the Animal Law Unit.

Chapter 6

Public Transportation & Passenger Rail

By Danny Plaugher and Andy Wright

Included in this chapter:

- **Public Transit**
- **Intercity Passenger Rail**
- **Agencies**
- **Other Resources**

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

Types of transit. Virginia's public transit network consists of 40 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/paratransit (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 2025, Virginia's public transit systems handled over 144.6 million passenger trips including 68.9 million subway trips, 68.5 million bus trips, 1.9 million commuter rail trips, 2.2 million demand/para-transit trips, 0.8 million light rail trips, 0.2 million ferry trips, 2 million BRT trips, and 67,000 Virginia Breeze trips.

Funding. The combined total of all the budgets for Virginia's 40+ transit agencies is $1.9 billion. On average, roughly 70 percent of the expenditures go to operations and 30 percent go to capital improvements and expansion.

Of the 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

Diversity in Rail Service. Virginia's intercity passenger rail network is made up of 30 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 eight 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 2024, Virginia's intercity passenger rail trains handled 2.3 million trips with another 200,000+ pass-through trips**. From this ridership, 1.36 million trips were taken using Virginia's state-sponsored regional trains and 0.98 million 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

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/our-grant-programs/trip
- **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:** novatransit.org
- **Northern Virginia Transportation Authority:** thenovaauthority.org
- **Potomac and Rappahannock Transportation Commission (PRTC):** omniride.com
- **Central Virginia Transportation Authority:** cvtava.org
- **Hampton Roads Regional Transit Program:** hrpdcva.gov/1228/Hampton-Roads-Regional-Transit-Fund-HRRT

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.

About the authors: Danny Plaugher is the Executive Director of Virginians for High Speed Rail and the Virginia Transit Association. Andy Wright is the Chief of External Affairs and Strategic Initiatives for the Virginia Department of Rail and Public Transportation.

Chapter 7

Airports

By Mark K. Flynn and Scott Denny

Included in this chapter:

- **The Airport System**
- **Funding**
- **Airport Capital Development**
- **Aviation Management Issues**

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 regulations and state and federal laws govern the construction, operation, and maintenance of these airports.

The Airport System

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 scheduled airline service, primary airports provide service to general aviation activities, principally 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 does not own any 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 § 5.1-152-5.1- 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 DOAV 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.

Use the QR code or link to access the *Virginia Air Transportation System Plan* (VATSP).

Funding

The federal Airport Improvement Program (AIP) and federally authorized Passenger Facility Charge Program provide 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

The Airport Improvement Program 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 airports 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* (see Order 5100.38D, Chapter 4).

Use the QR code or link to access the *Airport Improvement Program Handbook*.

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

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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 – www.faa.gov/airports/aip/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. For general aviation airports, it is likely that keeping fuel sales will make financial sense, as the fuel sales are one of two revenue-generating operations, the other being hangar rent.
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 people 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 proceedings. 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. 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 visit www.faa.gov/airports/pfc.

Virginia 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. § 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. § 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.

New Airline Service Incentive Fund. Created by legislation in 2020, set out in Code of Virginia §2.2-2320.1, this state general fund program allows the Department of Aviation to award grants to new airlines that begin commercial service in Virginia, and existing airlines that create new routes serving Virginia. The current reimbursable grant amount is $25,000, which would reimburse marketing and other costs associated with creating a new route.

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 these 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. § 5.1-30.1 *et. seq.*

Required financial reporting

Every commercial service airport must submit an annual report of its planned use of entitlement funds. § 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.

Airport Capital Development

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. The rules for the process are in the Department of Aviation's Airport Program Manual.

Use the QR code or link to access the Department of Aviation's *Airport Program Manual*.

The required 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, Line-item costs, Construction schedule, Inspections, Change orders, Liquidated damages, and Contractor payments.

Aviation Management Issues

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.

Use the QR code or link to review the Virginia Department of Aviation's model airport zoning ordinance.

Noise

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 avigation 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

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 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 for 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 at 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

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.

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 people 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 areas covered below to be the 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 search 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 and airport tenants. Transportation security regulations require fingerprint-based records checks of any criminal history for the prior 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. Commercial service airports are required to install equipment capable of screening all checked luggage for explosives and weapons. While federal funding may be available to reimburse airports for costs associated with the redesign and installation of new systems, the redesign of an airport's baggage handling system can be a major undertaking with passenger-service implications.

300-Foot Rule. On the heels of 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 revenue 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 alerts. As a best management practice, any new parking facilities planned by an airport subject to TSA regulation should be placed in a location outside the 300-foot range.

About the authors: Mark Flynn is a former VML staffer, former Director of the Virginia Department of Aviation, a pilot, and an airport attorney. Scott Denny is the Senior Program Manager - Advanced Air Mobility at the Virginia Department of Aviation, and a former planner for the City of Newport News.

Chapter 8

Advance Air Mobility & Unmanned Aerial Systems

By Mark K. Flynn and Scott Denny

Included in this chapter:

- **What is Advanced Air Mobility?**
- **Types of Advanced Air Mobility**
- **Next-Generation Unmanned Aerial Systems**
- **Preparing for AAM and UAS**
- **Appendix A: Resources**

What is Advanced Air Mobility?

The FAA defines Advanced Air Mobility (AAM) in the AAM Coordination and Leadership Act as a "transportation system that moves people and property by air between two points in the United States using aircraft with advanced technologies, including electric vertical take-off and landing aircraft, in both controlled and uncontrolled airspace."

The concept of moving people and things by air has not changed in the last 122 years. What is changing is the power systems and aircraft control systems to move people and things safely. While traditional aviation will continue, new technologies will be integrated into the existing air transportation system opening new opportunities for urban and regional mobility as well as package delivery.

This presents local governments opportunities to be on the leading edge of this technology that our citizens will soon demand.

Types of Advanced Air Mobility

Electric vertical take-off and landing aircraft (e/VTOLs), ultrashort take-off and landing aircraft (USTOLs), hybrid aircraft or traditional aircraft using alternative fuels such as hydrogen are examples of AAM that are now in final testing, awaiting regulatory approvals and, in some cases, already in commercial operation. These are the types of aircraft that one day will ferry passengers from town center to the nearest commercial airport and from one city/town to another.

While these aircraft may eventually operate out of private terminals, the local general aviation airport already has much of the infrastructure necessary to support these aircraft and come with the added benefit that citizens are already comfortable with aircraft operating in the vicinity of the airfield. Almost every local airport has a terminal building, vehicle parking, and restrooms that can be used for the passengers. In most instances, essential features for the crew –weather reporting, aircraft parking, hangars, etc. – are already available.

Next-Generation Unmanned Aerial Systems

Small unmanned aerial systems (UASs), commonly referred to as drones, are currently in use across the Commonwealth. Still, there are several outstanding issues for local governments to consider. The FAA is currently working on Part 108, the federal regulations for UAS operations that travel beyond visual line of sight. Presently UAS operations can occur in most areas provided the operator maintains visual contact with the aircraft under existing Part 107. Once Part 108 is adopted by the FAA, UASs undertaking tasks such as package delivery will become more prevalent.

The time for localities to plan for this is now. While the FAA controls the airspace where they will operate, the sites where these unmanned aircraft will take off and land is a local matter. It is up to localities to determine from which zoning districts these unmanned aircraft operations will be deemed compatible with other permitted or specially permitted uses. This decision will require coordination between the planning and zoning staff and governing body and should include input from citizens and local businesses.

Preparing for AAM and UAS

As mentioned above, the local governing body should start by addressing these new technologies in zoning ordinances and local codes. Lack of action will leave the locality unprepared to respond to citizens' questions and complaints. While many of these new technologies use electric motors that are much quieter than traditional aircraft, dealing with complaints or concerns from citizens about these new aircraft launching to and from neighborhoods can be avoided with some planning. For example, just because these aircraft can operate from driveways does not mean they should. Local regulation will be key in establishing how these aircraft can operate.

Got AAM power? Battery charging facilities with 3 phase power are needed to charge many of these new aircraft. Does your airport have access to 3 phase power? Now is the time to work with airport management to get ready.

Encourage your planning and zoning staff to begin amending the local codes now. To aid in this effort, the Virginia Department of Aviation has a model zoning ordinance to assist staff in addressing some of the considerations that come with these new technologies. Additionally, law enforcement and other first responders should be familiar with local, state and federal laws addressing these new technologies.

Use the QR code or link to review the Virginia Department of Aviation's model airport zoning ordinance.

Existing stipulations on where AAM and UAS aircraft can operate? The FAA oversees all airspace; federal law will ultimately dictate operational rules and regulations for both smaller Unmanned Aerial Systems (UAS) and the larger people mover AAM aircraft. The Virginia Administrative Code has addressed the operation of some of these aircraft in parks and other locality-owned lands. The Code also authorizes localities to regulate operation of drones on their lands (24 VAC5-20-420).

About the authors: Mark Flynn is a former VML staffer, former Director of the Virginia Department of Aviation, a pilot, and an airport attorney. Scott Denny is the Senior Program Manager - Advanced Air Mobility at the Virginia Department of Aviation, and a former planner for the City of Newport News.

Appendix A: Resources

Additional Code of Virginia sections relevant to aviation and local governments

§ 15.2-926.3 Local Regulation of Certain Aircraft
§ 18.2-121.3 Trespass with an Unmanned Aircraft System, Penalty
§ 18.2-324.2 Use of Unmanned Aircraft System for Certain Purposes, Penalty
§ 19.2-60.1 Use of Unmanned Aircraft Systems by Public Bodies; Search Warrant Required

Additional online resources

The Virginia Department of Aviation - www.doav.virginia.gov

Federal Aviation Administration AAM Guide - www.faa.gov/sites/faa.gov/files/AAM-I28-Implementation-Plan.pdf

American Planning Association's "Planning for Advanced Air Mobility" - www.planning.org/publications/report/9286262

Community Air Mobility Initiatives' library of AAM materials - www.communityairmobility.org/resources

National Aeronautics and Space Administration (NASA) on AAM - www.nasa.gov/mission/aam/