

2021 Legislative Priorities

1. Enable Civil Penalties Instead of Criminal Punishment for Local Violations

Priority: Pursue legislation to expand the authority to use civil penalties instead of criminal punishment for local violations.

Rationale: This initiative would enable localities to decriminalize numerous activities regulated by local ordinances, rather than have violations prosecuted as crimes. The general law in Virginia regarding the punishment for violating local ordinances is Virginia Code § [15.2-1429](#), which provides that violations of local ordinances “be enforced by proceedings as if such violations were misdemeanors” and provides that the fine or term of confinement may not exceed that for a Class 1 misdemeanor (up to a \$2,500 fine, up to one year imprisonment). As the Board is aware, State law has exceptions to enforcing violations of local ordinances as crimes. For example, Virginia Code § 15.2-2209 enables localities to elect to enforce violations of their zoning regulations as civil penalties by adopting a schedule of penalties, with a maximum of \$200 for the first violation and \$500 for each violation thereafter, with a maximum aggregate of \$5,000. A review of how other states enable their localities to enforce violations of local ordinances has not yet revealed a consistent approach.

2. Enable an Increase in the Schedule of Civil Penalties for Zoning Violations

Priority: Pursue legislation to increase the maximum civil penalties that may be imposed for zoning violations.

Rationale: As explained in Section 1, Virginia Code § [15.2-2209](#) enables localities to elect to enforce violations of their zoning regulations as civil penalties by adopting a schedule of penalties, with a maximum of \$200 for the first violation and \$500 for each violation thereafter, with a maximum aggregate of \$5,000. Once the \$5,000 maximum aggregate is reached, the locality then may pursue criminal enforcement. These limits were last revised in 2006. As an alternative to seeking civil penalties or criminal enforcement, a locality may seek injunctive relief. Staff believes that some violators may see the \$500 civil penalty as a cost of doing business, which can cause violations to continue for a long time. In addition, while the court may order a violator to abate the violation within a specified period of time, the violator has the option to prepay the civil penalty, avoid a trial, and avoid an abatement order.

3. Enable Localities to Carry Over Appropriated Funds for Multi-year Capital Projects and to Carry Over Outstanding Grants from Year to Year

Priority: Pursue legislation to allow appropriated funds for multi-year capital projects, and outstanding grants, to be carried over for from year-to-year without being re-appropriated.

Rationale: This initiative is requested by the Department of Finance and Budget. When the County’s Office of Management and Budget conducted a comprehensive review of general appropriation practices in 2018, it found that Arlington, Chesterfield, and Hanover counties used a best practices approach to multi-year capital budgeting by using a more efficient appropriation and carry over approach. For example, in Hanover County as part of its normal annual budget resolution, its board of supervisors adopts a resolution to carry forward capital project balances within its capital improvement program fund, as well as encumbrances within all funds. Because the board approves this resolution, staff in those localities are able to carry forward the capital project funds without having to go back to the board for a separate approval. This resolution also gives them the latitude to make budgetary adjustments as staff closes out the previous fiscal year to ensure the proper project balances are brought forward into the new fiscal year. The approach applied by Albemarle County, which requires a re-appropriation each year, is inefficient and imposes a significant administrative burden affecting calculations, and requires closing purchase orders, and re-opening purchase orders, among other things.

The Department of Finance has also requested that similar enabling authority be sought for outstanding grants. Under current Virginia Code §§ 15.2-520 and 15.2-2506, in counties operating under the county executive form of government (the counties of Albemarle and Prince William, funds appropriated for outstanding grants may be carried over for one year without being re-appropriated.

4. **Amend State Law to Establish Minimum Standards for Certain “Farm Buildings or Structures” or Redefine the Term**

Priority: Pursue legislation to amend State law to establish minimum standards for farm buildings and structures or redefine “farm buildings or structures” with the focus of this legislation applying to those farm buildings and structures used for large gatherings.

Rationale: Although the stated purpose of the State laws requiring minimum construction standards is to protect the public health, safety, and welfare of the residents of the Commonwealth, farm buildings and structures are, for the most part, exempt from the Virginia Uniform Statewide Building Code (“Building Code”) (Virginia Code § 36-99). An exception to the exemption applies to those buildings or portions of buildings located on a farm that are operated as a restaurant as defined by State law and licensed as a restaurant by the State Board of Health. This means that large gatherings of people may occur in buildings and structures that are not constructed to the minimum standards of the Building Code. One solution would be to amend the definition of “farm buildings or structures” in Virginia Code § 36-97.

Note: Staff anticipates that there would be opposition to any change to the current law from various agriculture industries. After the 2018 General Assembly session, the Virginia House and Senate General Laws Committees requested a review of agritourism enterprises and the application of the Building Code “in order to better understand the issue and its potential negative impact on rural economic development.” The review team was composed of representatives from localities, including building officials, the farm winery and agricultural tourism industries, and related associations. One of the questions the review team was asked to consider was whether there is a “legitimate need to undertake the development of this type of specialized building code?” The team concluded in its report that “Virginia agritourism operations are diverse and complex. At this time, it appears to be premature to legislate the application of existing building codes or to develop legislation for any specialized building codes.” Another question the review team was asked to consider was “what items should be considered in such a building code?” The team concluded in its report that “[n]o new items should be considered as part of the Virginia USBC [Uniform Statewide Building Code]. However, the group requested that discussions between agritourism stakeholders continue to be held.” *RD418-2018*.

5. **Enable Public Bodies to Meet by Electronic Communication Means When a State or Local Emergency is Declared and Certain Conditions Exist**

Priority: Pursue legislation to enable public bodies to meet by electronic communication means when a State or local emergency has been declared, and it is dangerous for public health purposes or is physically impossible, for the local governing body to physically assemble

Rationale: The Board’s continuity of government ordinance was adopted pursuant to the authority in Virginia Code § 15.2-1413, which allows the Board to adopt such an ordinance “in the event of enemy attack or other disaster.” The COVID-19 pandemic was declared by the Governor in Executive Order 51 to be a “communicable disease of public health threat” and a “disaster.” Nonetheless, the Board was required to physically assemble in order to adopt the emergency ordinance to continue its government. This initiative would require amending the Virginia Freedom of Information to allow local governing bodies to assemble by electronic communication means to adopt a continuity of government ordinance where it is determined that it would impose a substantial risk to the health or safety for the governing body and the public to physically assemble. Staff also recommends that this legislation extend to other local public bodies.

6. **Amend Virginia Code § 15.2-915 to Clarify that it may Apply to Jointly-owned Public Facilities**

Priority: Amend Virginia Code § 15.2-915 to provide that the 2020 amendments may also apply to public facilities owned by more than one locality.

Rationale: Virginia Code § 15.2-915 was amended in 2020 to authorize localities to adopt ordinances to prohibit the possession or carrying of firearms, ammunition, or components, or any combination thereof, in: (1) any building, or part thereof, owned or used by the locality for governmental purposes; (2) any public park owned or operated by the locality; (3) any recreation or community center facility; or (4) any public street, road, alley, sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit (collectively, “public facilities”). Virginia Code § 15.2-915 requires that the public facilities must be owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes. The new law is unclear whether it applies to public facilities jointly owned by the County and the City, such as Darden Towe Park, or to the buildings of a “local governmental entity” jointly created by multiple localities, such as a regional library system.