

Table of Contents

- A. Agenda
- B. Albemarle County 2017 Legislative Priorities
 - 1. *Local Economic Revitalization Zones*
 - 2. *Equal Taxing Authority*
 - 3. *Land Use and Growth Management*
 - 4. *2017 Legislative Priorities and Policy Statements*

Albemarle County Board of Supervisors & State Legislators Meeting

**September 29, 2016
Room 241, County Office Building**

Agenda

Lunch	11:30
Welcome & Introductions <i>Liz Palmer, Chair, Albemarle County Board of Supervisors</i>	12:00
2017 Legislative Priorities <i>John Blair, Deputy County Attorney</i>	12:05
<ul style="list-style-type: none">• Albemarle County Requested Legislation<ul style="list-style-type: none">○ <i>Land Use and Growth Management</i>○ <i>Economic Revitalization Zones</i> <i>Faith McClintic, Economic Development Director</i>○ <i>Equal Taxing Authority</i> <i>Tom Foley, County Executive</i>	
Legislators' Priorities / Questions & Answers <i>Legislators</i>	12:30
Adjourn	1:00

LEGISLATIVE REQUEST

Economic Revitalization Zones

Albemarle County requests introduction of legislation that gives counties the same powers cities have in Virginia Code § 15.2-1129.2 to enable counties to create local economic revitalization zones.

Background:

§15.2-1129.2 of the *Code of Virginia* allows cities to establish economic revitalization zones for the purpose of providing incentives to private entities to purchase real property and interests in real property to assembly parcels suitable for economic development. Cities establishing such zones may grant incentives, such as reduction of permit and user fees, and gross receipts taxes, and regulatory flexibility, such as special zoning and exemption from specified ordinances, for a period of up to 10 years.

Rationale:

Albemarle and many other counties could benefit from this same type of tool in order to provide the incentives and regulatory flexibility for private entities to purchase property or interests in multiple properties for economic development purposes. Incentives that could be proposed and approved locally could include reduced permit fees and user fees, reduced gross receipts taxes, and waived tax liens to facilitate the sale of property. Regulatory flexibility could include special zoning for the economic revitalization zone and other incentives established by local ordinance.

Albemarle County's Places29 Master Plan targets the area around the Rio/Road/Route 29 intersection as a priority area for investment and redevelopment. With the near completion of the intersection improvements in this area, the County and citizen stakeholders are developing a Small Area Plan (SAP) that, among others things, will include opportunities for business development. This tool would be especially helpful as the County helps share the future of this area by partnering with the private sector and incentivizing business development/redevelopment in this area. Attracting economic development in a key business area should also boost revenue that can be used to provide additional services, which are becoming a necessity in the more "city-like," suburban areas of the county.

Request:

Introduce legislation to the 2017 General Assembly to allow counties to establish economic revitalization zones.

§ 15.2-1233

Creation of local economic revitalization zones.

A. Any county may establish by ordinance one or more economic revitalization zones for the purpose of providing incentives to private entities to purchase real property and interests in real property to assemble parcels suitable for economic development. Each county establishing an economic revitalization zone may grant incentives and provide regulatory flexibility. Such zones shall be reasonably compact, shall not encompass the entire county, and shall constitute one or more tax parcels not commonly owned. Properties that are acquired through the use of eminent domain shall not be eligible for the incentives and regulatory flexibility provided by the ordinance.

B. The incentives may include, but not be limited to: (i) reduction of permit fees, (ii) reduction of user fees, (iii) reduction of any type of gross receipts tax, and (iv) waiver of tax liens to facilitate the sale of property.

C. Incentives established pursuant to this section may extend for a period of up to 10 years from the date of initial establishment of the economic revitalization zone; however, the extent and duration of any incentive shall conform to the requirements of applicable federal and state law.

D. The regulatory flexibility provided in an economic revitalization zone may include (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding upon the county for a period of up to 10 years.

E. The governing body may establish a service district for the provision of additional public services pursuant to Chapter 24 (§ 15.2-2400 et seq.) of Title 15.2.

F. This section shall not authorize any local government powers that are not expressly granted herein.

G. Prior to adopting or amending any ordinance pursuant to this section, a county shall provide for notice and public hearing in accordance with subsection A of § 15.2-2204.

LEGISLATIVE REQUEST

Equal Taxing Authority

Albemarle County requests introduction of legislation to the 2017 General Assembly to allow certain suburban counties to have taxing authorities similar to those of cities.

Background:

Cities and counties have different authority to levy excise taxes on cigarettes, admissions, transient room rentals, and meals. Through their general taxing authority or by charter, cities have broad authority to levy these taxes, without caps and without the need to hold a referendum.

For the most part, counties cannot levy cigarette and admissions taxes. Counties may levy transient occupancy taxes subject to a restrictive cap and the requirement that the revenue generated be spent only for designated purposes (most are subject to a 5% cap, with revenues in excess of two percent required to be spent for tourism-related purposes). Lastly, counties may impose a food and beverage tax which is subject to a cap and, for all but a very limited number of counties, the tax may be established only if approved by the voters in a referendum.

Rationale:

The distinction in taxing authority between cities and counties exists due to historical differences in the levels of services provided by (urban) cities and (rural) counties. A number of State-level studies, dating back as far as the early 1980's, have noted this and recommended the difference in authorities should be eliminated. Urbanizing counties such as Albemarle County are facing growing obligations and demands for services traditionally provided by cities. In addition, the State requires counties, as well as cities, to provide, deliver, and fund services in the areas of education, the environment, human services and public safety, among others.

Counties' ongoing dependency on the real property tax to fund these services and facilities is likely to grow in a way that is commensurate with the needs of the respective counties. Dependency on the real property tax adversely affects those counties with tax-exempt property and those who have real property tax programs, such as land use valuation, that promote other policies established by the State. Therefore, new local taxing authority for urbanized or urbanizing counties is necessary.

Under this proposal, an eligible county would be one that meets the population and density criteria for a county to become a city, as provided in *Virginia Code* § 15.2-3907. This would be a county having population of at least 20,000 persons and a population density of at least 300 persons per square mile, or alternately, a minimum population of 50,000 persons and a density of population of at least 140 persons per square mile, based either on the latest U.S. census, on the latest UVa. Weldon Cooper Center estimates, or on a special census conducted under court supervision.

Request:

Introduce legislation to the 2017 General Assembly to allow suburban counties meeting certain population and density criteria to have taxing authorities similar to those of cities.

LEGISLATIVE REQUEST

Land Use and Growth Management

Albemarle County supports introduction of legislation to amend Virginia Code § 15.2-2303.4 to provide more balanced and practical standards for determining whether a proffer is reasonable.

Background:

Virginia Code §15.2-2303.4 applies to rezoning applications filed after July 1, 2016 for new residential development or a new residential use, including the residential portion of a mixed-use development and to applications to amend existing proffers (referred to as *proffer condition amendments* in the statute) where the application for the original rezoning was filed on or after July 1, 2016. Virginia Code § 15.2-2303.4 limits the scope of impacts that may be addressed by proffers to transportation, schools, public safety, and parks. Proffers pertaining to affordable housing, phasing development, stormwater management, and other issues are no longer allowed. Virginia Code § 15.2-2303.4 was not supported by every member of the development community, and was not opposed by every Virginia locality.

Rationale:

Virginia Code § 15.2-2303.4(C) provides that any proffer is unreasonable unless it addresses an impact that is *specifically attributable* to a proposed new residential development or other new residential use (collectively, “residential development”). In addition to the foregoing, a proffer addressing off-site impacts, including any cash proffer, will be unreasonable unless it addresses an impact to an offsite public facility, such that the new residential development creates a need, or an identifiable portion of a need, for one or more public facility improvements *in excess of existing public facility capacity* at the time of the rezoning or proffer condition amendment and the development *receives a direct and material benefit from a proffer* made with respect to any such public facility improvements.

Virginia Code § 15.2-2303.4 is new for everyone, complex, and not every question can be answered now. Every applicant for a rezoning and every locality that accepts proffers will be dealing with the new law and, over time, the development community and the localities will find a reasonable approach that allows rezonings to continue to be approved with assurances that the impacts from those rezonings will be reasonably addressed to the extent allowed under the law. Virginia Code § 15.2-2303.4 is also complex. Amending Virginia Code § 15.2-2303.4 is necessary to provide more balanced and practical standards for determining whether a proffer is reasonable.

Request:

The County has no specific request at this time, but will support legislation introduced to the 2017 General Assembly which amends Virginia Code § 15.2-2303.4 to provide more balanced and practical standards for determining whether a proffer is reasonable.

Proposed 2017 Legislative Priorities

Local Economic Revitalization Zones

1. **PRIORITY:** Initiate or support legislation to adopt enabling authority that gives to counties the same powers cities have in Virginia Code § 15.2-1129.2 to enable counties to create local economic revitalization zones.

The 2007 General Assembly granted cities the enabling authority to create local economic revitalization zones. Albemarle County and many other counties would benefit from the same tool in order to provide incentives and regulatory flexibility to private entities to purchase real property and interests in real property to assemble parcels for economic development. Incentives may include reducing permit fees and user fees, reducing any type of gross receipts tax, and waiving tax liens to facilitate the sale of property. Regulatory flexibility may include special zoning for the economic revitalization zone and other incentives established by ordinance.

Equal Taxing Authority for Urban Counties

2. **PRIORITY:** Initiate or support legislation granting urban counties taxing powers equal to those granted to cities, without decreasing, limiting, or changing city taxing authority.

Cities and counties have different authority to levy excise taxes on cigarettes, admissions, transient room rentals, and meals. Through their general taxing authority or by charter, cities have broad authority to levy these taxes, without caps and without the need to hold a referendum. Counties, to the contrary, cannot levy cigarette and admissions taxes. Counties may levy transient occupancy taxes subject to a restrictive cap and the requirement that the revenue generated be spent only for designated purposes. Many counties, including Albemarle County, are subject to a five percent cap and are required to spend all taxes in excess of two percent on tourism-related purposes. Lastly, counties may impose a food and beverage tax which is subject to a cap and, for all but a very limited number of counties, the tax may be established only if it is approved by the voters in a referendum. The distinction in taxing authority between cities and counties exists due to historical differences in the levels of services provided by cities (urban level) and counties (rural level). Urbanizing counties such as Albemarle County are facing increasing obligations and demands for services traditionally provided by cities. In addition, the State requires counties as well as cities to provide, deliver, and fund services in the areas of education, the environment, human services, and public safety, among others. The counties' ongoing dependency on the real property tax to fund these services and facilities is likely to grow in a way that is commensurate with the needs of the respective counties. Dependency on the real property tax adversely affects those counties with tax-exempt property and those who have real property tax programs, such as land use valuation, that promote other policies of the State. Therefore, new local taxing authority for urbanized or urbanizing counties is necessary.

Land Use and Growth Management

3. **PRIORITY:** Initiate or support legislation to amend Virginia Code § 15.2-2303.4 by clarifying the phrases italicized below.

Virginia Code § 15.2-2303.4(C) provides that any proffer is unreasonable unless it addresses an impact that is *specifically attributable* to a proposed new residential development or other new residential use (collectively, “residential development”). In addition to the foregoing, a proffer addressing off-site impacts, including any cash proffer, will be unreasonable unless it addresses an impact to an offsite public facility, such that the new residential development creates a need, or an identifiable portion of a need, for one or more public facility improvements *in excess of existing public facility capacity* at the time of the rezoning or proffer condition amendment and the development *receives a direct and material benefit from a proffer* made with respect to any such public facility improvements. The phrase “specifically attributable” requires a level of certitude that may not be achievable in studies and therefore the validity of any proffer that may provide any benefit to the public that lives outside of the development is jeopardized. The phrase “in excess of existing public facility capacity” prohibits a locality from addressing the incremental impacts of development if there is existing capacity, and exposes the locality to applications to amend proffers as capacity changes over time, such as when schools are redistricted. The phrase “direct and material benefit” requires a level of certitude that may not be achievable in practical application and fails to acknowledge the lag time between the payment of a cash proffer and when the public facility for which the cash was contributed is constructed, thereby exposing the locality to a challenge to the validity of the proffer which, in turn, creates untenable uncertainty in ensuring that impacts are addressed. Virginia Code § 15.2-2303.4(D) provides that, in an action challenging the denial of a rezoning application or an amendment to an existing proffer, if the applicant “proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was *suggested*, requested, or required by the locality, the court must presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial. With the uneven burden of proof in favor of the applicant, this provision allows an applicant to invalidate a proffer by providing evidence of the mere *suggestion* of an unreasonable proffer by any person at any level of local government. Therefore, amending Virginia Code § 15.2-2303.4 is necessary to provide more balanced and practical standards for determining whether a proffer is reasonable.

Albemarle County's 2017 Legislative Positions and Policy Statements

Growth Management, Land Use and Transportation

Broadband – Support legislation by the Commonwealth and the Federal Government that would assist communities in their efforts to deploy universal affordable access to broadband for all areas, particularly in underserved and rural areas while preserving local land use, permitting, fees, and other local authority.

Water Quality and Resources – Support state funding for the following: 1) agriculture best management practices, 2) stormwater grant initiatives, and 3) wastewater treatment plant upgrades.

Stormwater Management – Oppose any legislation that would impact the resource and funding needs of the Department of Environmental Quality (DEQ) to fully administer, enforce, and maintain the Stormwater Management Laws.

Transportation Funding - Support legislation to 1) establish a new dedicated funding source for a Charlottesville-Albemarle Regional Transit Authority; 2) establish stable and consistent state revenues for Virginia's long-term transportation infrastructure needs; 3) direct funding efforts to expand transportation choices and engage in multimodal transportation planning; and 4) fund maintenance of rural road systems. The County also strongly opposes any legislation or regulations that would require the transfer of responsibility to counties for construction, maintenance or operation of new and existing secondary roads.

Biosolids - Support legislation enabling localities, as part of their zoning ordinances, to designate and/or reasonably restrict the land application of biosolids to specific areas within the locality based on criteria related to the public safety and welfare of its citizens and the environment. In addition, support legislation regarding land application of biosolids that protect the environment, public health and safety.

Impact Fee Authority - Support impact fee legislation that allows for 1) effective implementation through simple locally-based formulae and reasonable administrative requirements; 2) does not cap or limit localities' impact fee updates; and 3) does not diminish the existing proffer system.

Conservation Easements - Support legislation that augments local efforts in natural resource protection through 1) continued funding of the Virginia Land Conservation Foundation (VLCF) for locally established and funded Purchase of Development Rights programs (e.g. ACE Program in Albemarle County); 2) continued provision of matching funds to localities for their Purchase of Development Rights programs through the Office of Farmland Preservation; 3) retaining provisions in transient occupancy tax legislation so that funds can continue to be used to protect open-space and resources of historical, cultural, ecological and scenic value that attract tourism; and 4) increased incentives for citizens to create conservation easements.

Scenic Protection and Tourist Enhancement - Support enabling legislation for Albemarle County to provide for a scenic protection and tourist enhancement overlay district. Such legislation would provide a method to ensure full consideration of visual resources and scenic areas when the County or state make land use decisions in designated areas.

Health and Human Services

Administrative appeals and findings – Support legislation to amend Virginia Code § 63.2-1526(A) to require that an administrative finding be controlled by a court’s civil or criminal finding if those matters involve the same conduct and the same victim. Support legislation to amend Virginia Code § 63.2-1526(C) to stay CPS administrative appeals while abuse and neglect proceedings and/or findings are pending through circuit court.

Abuse and neglect – Support legislation to expand the definition of “abuse and neglect” to include parents who use Schedule I/II controlled substances or are habitually intoxicated while being responsible for children.

Comprehensive Services Act (CSA) - Request that the legislature assist localities’ implementation of CSA in a consistent, financially stable manner by: 1) fully funding the state pool for CSA with allocations based on realistic anticipated levels of need and a cap on local expenditures for serving a child through CSA, and 2) encouraging the state to be proactive in making service providers available and to support local and regional efforts to address areas of cost sharing among localities by procuring services through group negotiation.

Local Department of Social Services (LDSS) - Request the legislature increase funds for LDSS to match all available federal dollars to assist LDSS staffing needs in order to meet state mandated services and workloads.

Child Care for Low Income Working Families - Request the legislature provide additional funds to local governments to assist low-income working families with childcare costs. Funding helps working-class parents pay for supervised day care facilities and supports efforts for families to become self-sufficient.

Local Government Administration and Finance

Body Worn Cameras – Support legislation to amend Virginia Code § 2.2-3706 of the Virginia Freedom of Information Act to clarify that local law enforcement agencies have the authority to withhold from mandatory disclosure under FOIA those records, including body worn cameras and dashcam video, that contain identifying information of a personal, medical or financial nature where the release of such information could jeopardize the safety or privacy of any person.

June Primary Elections – Support legislation to move the annual date for June primary elections in the Commonwealth from the second Tuesday in June to the third Tuesday in June to avoid conflicts between local election administration and local school systems, where schools serve as voting precinct polling places.

Composite Index - Support legislation to amend the Composite Index Funding Formula by re-defining the local true value of real property component of the formula to include the land use taxation value of real property rather than the fair market assessed value for those properties that have qualified and are being taxed under a land use value taxation program

Seat Belts – Support legislation that would make the failure to use a seat belt a primary offense.

Drones – Support legislation enabling local governments to have authority to regulate the use of unmanned aerial vehicles in their jurisdictions not preempted by federal law.

Virginia Retirement System - The County supports restoration of funds to the Virginia Retirement System to maintain the long-term solvency of the plan without further devolving the funding responsibility to localities.

Community College Capital Costs – Support legislation for the state to fund 100% of public funding required for community college costs. Currently, localities are required to fund a portion of operating and capital costs.

Public Defender funding- Request the state to adequately fund compensation for public defenders in Commonwealth jurisdictions.

Full Funding of State Mandates - Request full funding for state mandates in all areas of local government including, but not limited to, the Standards of Quality (SOQs) and other mandates imposed on local school divisions, positions approved by the Compensation Board, costs related to jails and juvenile detention centers and human services positions.

Drug Court Funding- Request full funding for the Drug Court Program, which provides effective treatment and intensive supervision to drug offenders through the Circuit Courts of several Virginia localities.