

Select 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. Staff will provide more information to the Board at the September 2 meeting.

3. Enable Localities to Carry Over Appropriated Funds for Multi-year Capital Projects

Priority: Pursue legislation to allow appropriated funds for multi-year capital projects to be carried over for one 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 utilizing a more efficient appropriation 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 is 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.

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 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](#). Staff anticipates that there would be opposition to any change to the current law from the farm winery and other agriculture industries.

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 an 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.