



AGENDA

LOCAL BOARD OF BUILDING CODE APPEALS MEETING

6:00 PM - Thursday, February 1, 2024
Town Hall, 2nd Floor East Conference Room

1. Call to Order
2. Roll Call – Determination of Quorum
3. Election of Officers
 - Chairman
 - Vice Chairman
4. Minutes
 - February 2, 2023 – Regular Meeting
 - April 6, 2023 - Training
5. Other
 - Town Emails
 - LBBCA By-Laws
 - Review of Code Update Changes
6. Adjournment

MINUTES – FEBRUARY 2, 2023



Local Board of Building Code Appeals February 2, 2023

The Local Board of Building Code Appeals meeting of the Town of Front Royal, Virginia was held on February 2, 2023, at 6 p.m. Town Hall, 2nd Floor Conference Room.

CALL TO ORDER:

Monica McClure called the Local Board of Building Code Appeals (LBBCA), February 2, 2023, meeting to order at 6:00 p.m.

ROLL CALL – DETERMINATION OF QUORUM

Present: Ellen Aders
 George Cline
 Gary Gillespie
 Charles Gornowich
 Christopher Stankiewicz

Staff: Monica McClure, Property Maintenance Official
 Lauren Kopishke, Planning Director / Zoning Administrator
 John Ware, Deputy Zoning Administrator
 Connie L Potter, Executive Assistant / Clerk for LBBCA

MEMBER INTRODUCTIONS

Each Board member gave a brief introduction of themselves.

ELECTION OF OFFICERS

Mr. Cline moved, seconded by Mr. Stankiewicz to nominate Gary Gillespie as Chairman.

VOTE: Yes – Aders, Cline, Gillespie, Gornowich, Stankiewicz
 No – N/A
 Abstain – N/A
 Absent – N/A

VOICE VOTE

BY-LAWS

Ms. Kopishke shared that staff had provided two versions of the by-laws to the Board. She said that she would merge the Assistant Town Attorney George Sonnett's comments into one document.



Local Board of Building Code Appeals February 2, 2023

The proposed by-laws were derived from the Property Maintenance Code. Suggested changes to the by-laws were to nominate a Vice Chairman to the Board. Ms. Kopishke noted that the state does not require a Vice Chairman to the Local Board of Building Code Appeals.

Board members agreed they would like to appoint a Vice Chairman.

Mr. Gornowich moved, seconded by Mr. Stankiewicz to amend Article 1.1 to be as that the Local Board of Building Code Appeals shall organize and annually elect a Chairman and a Vice Chairman in the month of February.

VOTE: Yes – Aders, Cline, Gillespie, Gornowich, Stankiewicz

No – N/A

Abstain – N/A

Absent – N/A

VOICE VOTE

Mr. Stankiewicz moved, seconded by Mr. Gornowich to nominate George Cline as Vice Chairman.

VOTE: Yes – Gillespie, Gornowich, Stankiewicz, Aders, Cline

No – N/A

Abstain – N/A

Absent – N/A

VOICE VOTE

Vice Chairman Cline referred to Article 3.10 and 3.11 in the by-laws and asked if a time limit needed to be set for the presentation and rebuttal.

After some discussion the following motion was made.

Vice Chairman Cline moved, seconded by Mr. Gornowich to amend Article 3.10, and add a thirty (30) minute time limit for a presentation and Article 3.11 to allow fifteen (15) minutes for the rebuttal.

VOTE: Yes – Aders, Cline, Gornowich, Stankiewicz, Gillespie

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL

Ms. Aders moved, seconded by Mr. Gornowich to approve the by-laws as amended.

VOTE: Yes – Cline, Stankiewicz, Gornowich, Aders, Gillespie

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL



Local Board of Building Code Appeals February 2, 2023

MEMBERSHIP TERMS

The State Code requires members to have staggered terms so that no more than half the members are up for reappointment in any given year. Staff have randomly set term limits for each Board member. All individuals will serve a five-year term.

APPEAL APPLICATION AND FEE

Ms. Kopishke explained that the Property Maintenance Official Monica McClure, will conduct inspections and send a letter to address any violations. The property owner will have the opportunity to submit an appeals form and present it to the Local Board of Building Code Appeals. State Code allows an application fee to be charged.

Board members and staff discussed what they felt the application fee should be. In addition, there was discussion on the process for a property owner to appeal against a violation(s).

Mr. Gornowich moved, seconded by Mr. Stankiewicz to charge \$400 for the appeals application.

VOTE: Yes – Aders, Cline, Gillespie, Gornowich, Stankiewicz

No – N/A

Abstain – N/A

Absent – N/A

VOICE VOTE

OTHER

- Tax Forms

Ms. Potter explained that tax forms needed to be submitted to Human Resources in order for Board members to receive the stipend.

Vice Chairman Cline asked if the Board would have legal council present when they hear an appeal.

Mr. Sonnett said that staff is looking into whether there is a state resource. As far as the Town Attorney being council for the LBBCA there is an inherent conflict of interest and noted that his allegiance is to the staff.

Town Manager Joe Waltz reiterated they are looking into what avenue there is for representation for the LBBCA.



Local Board of Building Code Appeals February 2, 2023

Mr. Gornowich posed the question if the Board can go into a closed session to discuss and make a decision on the appeal.

Vice Chairman Cline stated that a decision is made when the appeal is heard. He noted that he finds it helpful to do a site visit so when Board members are hearing the case they can apply the visual to what they are hearing.

Ms. McClure noted that photographs and videos will be provided if needed.

Chairman Gillespie thanked everyone for volunteering to be on the Board.

ADJOURNMENT

With no further business before the Board,

Vice Chairman Cline moved, seconded by Mr. Gornowich to adjourn the meeting.

VOTE: Yes – Gornowich, Cline, Gillespie, Aders, Stankiewicz
 No – N/A
 Absent – N/A
 Abstain – N/A

VOICE VOTE

The meeting was adjourned at 6:51 p.m.

Approved by the Local Board of Building Code Appeals
Date: _____

MINUTES – APRIL 6, 2023



Local Board of Building Code Appeals April 6, 2023

The Local Board of Building Code Appeals meeting of the Town of Front Royal, Virginia was held on April 6, 2023, at 6 p.m. Town Hall, 2nd Floor Conference Room.

CALL TO ORDER:

Vice Chairman Cline called the Local Board of Building Code Appeals (LBBCA), April 6, 2023 meeting to order at 6:00 p.m.

ROLL CALL – DETERMINATION OF QUORUM

Present: Ellen Aders
 George Cline, Vice Chairman
 Charles Gornowich
 Christopher (Frank) Stankiewicz

Absent: Gary Gillespie, Chairman

Staff: Monica McClure, Property Maintenance Official
 Lauren Kopishke, Planning Director / Zoning Administrator
 John Ware, Deputy Zoning Administrator
 Connie L Potter, Executive Assistant / Clerk for LBBCA
 Joe Waltz, Town Manager
 George Sonnett, Town Attorney

Town Council: Wayne Sealock, Town Councilman
 Melissa DeDomenico, Town Councilwoman

Board members and staff introduced themselves.

LOCAL BOARD OF BUILDING CODE APPEALS STATE TRAINING

Presented by: W. Travis Luter, Sr.
 Secretary to the State Building Code Technical Review Board
 Code and Regulation Specialist
 Virginia Department of Housing and Community Development (DHCD)

Mr. Luter introduced himself and said he was available by telephone or email to answer any questions Board members or staff may have. He then gave the following presentation.

TABLE OF CONTENTS

Tab 1: LBBCA Training Presentation

Tab 2: Local Building or Fire Prevention Code Boards of Appeals Manual (July 2022 edition)

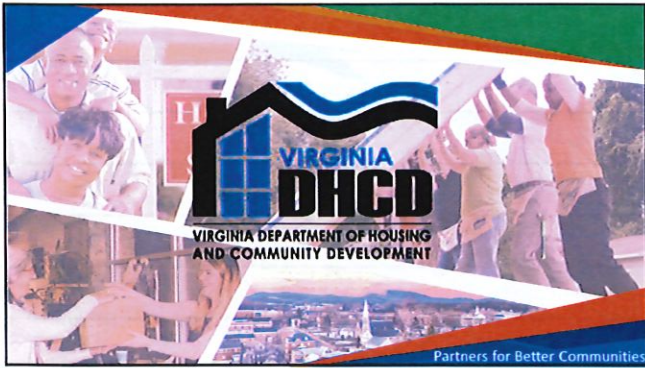
Tab 3: 2018 Virginia Construction Code Section 119

Tab 4: 2018 Virginia Maintenance Code Section 107

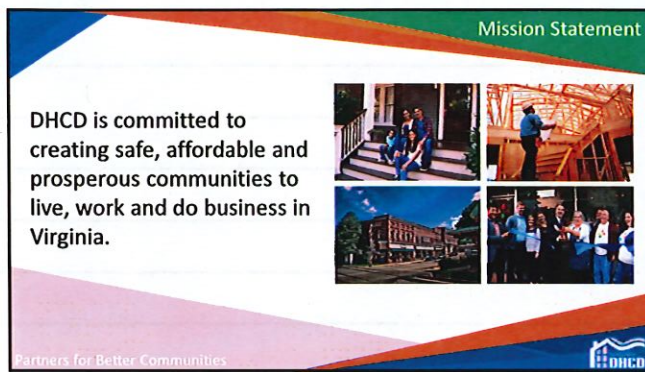
Tab 5: Related Sections of the Code of Virginia

- a) §36-105 – Enforcement of the Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits
- b) §2.2-3100 – State and Local Government Conflict of Interests Act

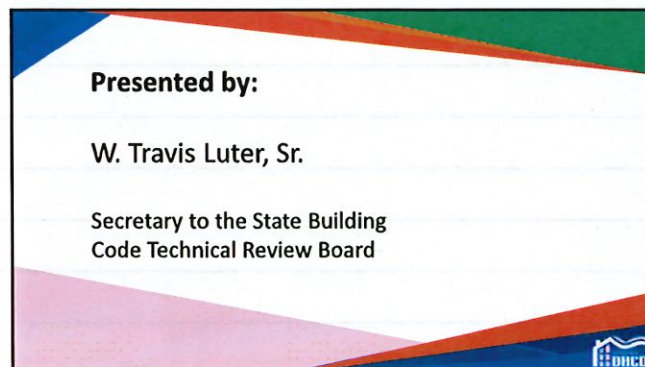
TAB 1: LBBCA TRAINING PRESENTATION



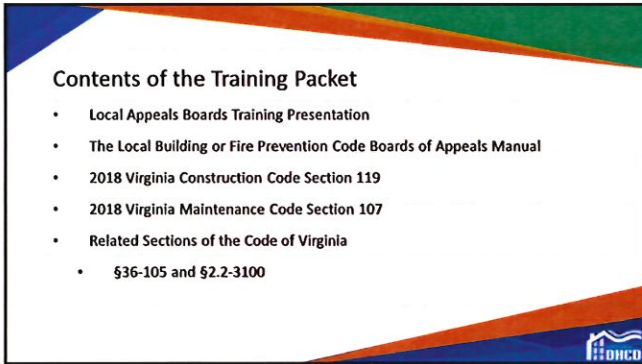
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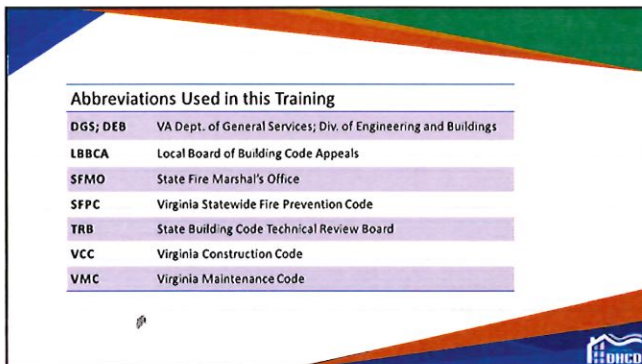
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4



5



6

Part I: The Local Board of Building Code Appeals (LBBCA) Virginia Maintenance Code

Topics covered in this training

- Purpose of the appeals process
- Steps in the appeals process
- Purpose and Overview of the Local Appeals Board
- LBBCA Code Requirements



7

Purpose of the Code Appeals Process

"To provide a means for having a code official's decision reviewed by an independent body to assure the applicable code is being enforced properly"



8

Steps in the Appeals Process

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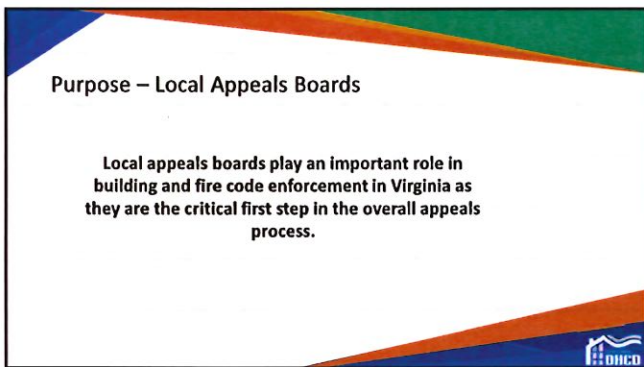
graph LR
    A[LOCAL CODE OFFICIAL DECISION] --> B[LOCAL APPEALS BOARD HEARING]
    B --> C[STATE REVIEW BOARD HEARING]
    C --> D[CIRCUIT COURT]
    D --> E[VIRGINIA COURT OF APPEALS]
    E --> F[VIRGINIA SUPREME COURT]
  
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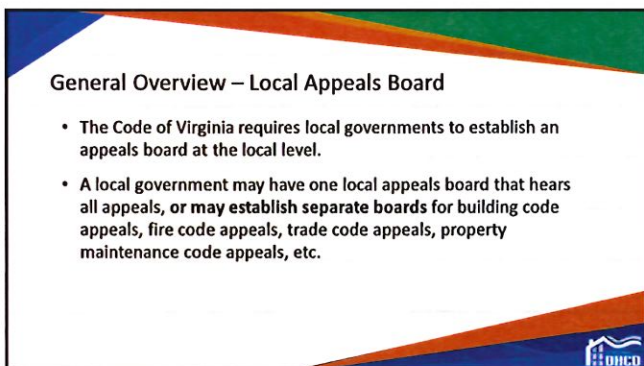
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10



11



12

General Overview – Local Appeals Board

- Warren County achieves this for the Town of Front Royal because the county administers the building code for the town
- HOWEVER, when the town adopted the VMC, the requirement for the town to have its own local board of building code appeal for maintenance appeals became required
- Warren County could administer the VMC in the town with an agreement



13

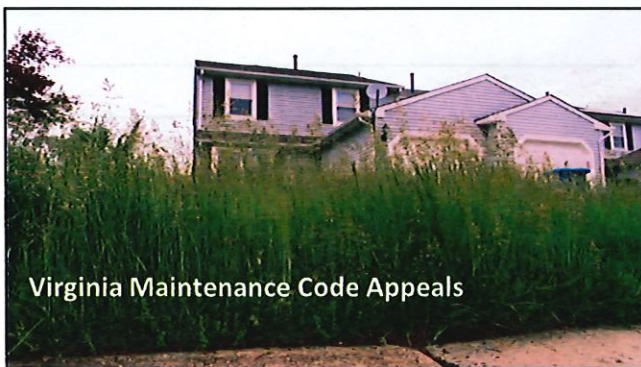
General Overview – Local Appeals Board (cont.)

- Whether a local government establishes one local appeals board or multiple appeals boards, prior to considering the merits (code violations) of any case, local appeals boards must first consider jurisdictional issues such as:
 - application of the code
 - properness before the Board
 - timeliness
 - right to appeal
 - aggrievement



14

Virginia Maintenance Code Appeals



15

Local Board of Fire Prevention Code Appeals - LBBCA

We'll review the Virginia Code Requirements for LBBCAs, including

- Establishment of the Local Board
- Membership requirements
- Officers and qualifications of members
- Conduct of members
- Right of appeal (who can file an appeal)
- Meeting rules
- Hearings and decisions
- Appeals to State Review Board



16

VMC 107.1 - Establishment of LBBCA

- Code of VA 36-105 mandates that each local building department establish and maintain a local appeals board
 - Alternatively, the locality can enter into an agreement with another locality, other agency, or a state agency approved by DHCD
- Fees may be levied to offset the cost of appeals, but may not be so high as to deter the filing of appeals
- Board meets as necessary to assure a duly constituted board, elect officers, and to receive training on the code



17

VMC 107.2 – Membership of the LBBCA

- At least 5 members must be appointed by each local government body, for a specific term, by written policy; Alternates can be appointed
- Written record of current membership must be maintained in local government office; including record of current Chair and Secretary
- To provide continuity, the terms of the members may be different lengths so that less than half will expire in any one year period
- Members are not required to reside in the locality of the board for which they serve.



18

VMC 107.3 – Officers and Qualifications of LBBCA Members

- Members are selected on ability to render fair and competent decisions
- Members should represent different occupational and professional fields relating to the construction industry
- Employees or officials of the locality shall not serve (likely a conflict of interest)



19

VMC 107.3 – Officers and Qualifications of LBBCA Members (cont.)

Membership of the Local Appeals Board should be a minimum of:

1 Registered Design Professional	1 Experienced Builder	1 Property Manager
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Recommended but optional:

1 Consumer or Public Rep.	1 Trade Contractor
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20

VMC 107.3 – Officers and Qualifications of LBBCA Members (cont.)

- The local board must meet annually to select a Chair from its regular members.
- When the Chair is not present at a meeting, the board must appoint an Acting Chair for that meeting
- The local government Board or CEO of the locality shall appoint an appeals board secretary (cannot be the Building Official, but could be staff of the Building Official)



21

VMC 107.4 – Conduct of LBBCA Members

- A member shall not hear an appeal if that member has a conflict of interest (COV Section 2.2-3100 et seq.)
- Members must not discuss cases with involved parties or their representatives prior to any hearings before the LBBCA
- A member must recuse themselves (from that specific hearing) if any connection, such as:
 - They know the party or parties OR
 - They are somehow connected to, or have a financial interest in the project or property



22

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application

Who can file an appeal to the Local Board of Building Code Appeals?

- Anyone aggrieved by the application of the USBC or the refusal to grant a modification to the provisions of the VMC by a local building department
- All appeals applications must be processed and presented to the local appeals board for consideration pursuant to the requirement in the code
- No one person can decide whether an appeal is to be heard by any local appeals board (Code official, dept. staff, County/City Administrator, County/City Attorney, etc.)

Note: Decisions of the Virginia DGS; DEB are appealed directly to the Review Board.



23

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

What is an “application” of the code?



24

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

Is a verbal decision of the code official an “application” of the code?



25

Common applications of the VMC that are appealable:

- An inspection ticket or report
- A notice of corrective work
- A notice of violation
- An official letter from the code official
- An email from the code official
- A verbal decision by the code official



26

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)



How long does someone have to file an appeal to the LBBCA?

Written appeal must be filed within 14 calendar days of receipt of the decision being appealed – late applications considered at the discretion of the local board of appeals



27

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

Application Requirements and Considerations

- All applications must be marked by the local appeals board, usually the secretary, indicating the date received
- Applications must have the following:
 - Name and address of the building owner
 - Name of the person appealing when not the owner
 - A copy of the code official's decision



28

VMC 107.6 – Meeting and Postponements of the LBBCA

- Board shall meet within **30 calendar days** from receipt of an appeal application (or 45 where the Board has regularly scheduled monthly meetings)
- A longer time period shall be permitted if agreed to by all the parties involved in the appeal



29

VMC 107.6 – Meeting and Postponements of the LBBCA

- Formal notice of the time and place of the hearing shall be sent to all parties in writing at the address listed on the application if requested or by electronic means at least **14 calendar days** before the hearing;
- If a quorum is not present, any party can request postponement, which shall be within 30 calendar days, but can be longer if agreed by all parties



30

VMC 107.7 – Hearings and Decisions of the LBBCA

- All local appeals board meetings and hearings must be open to the public
- The appellant, its representative, the locality's representative, and any person whose interests are affected by the code official's decision shall be given the opportunity to be heard (public comment)
- Each party can bring witnesses to offer testimony
- The Chair shall have the power and duty to:
 - Direct the hearing
 - Rule upon the acceptance of evidence
 - Oversee the record of all proceedings



31

VMC 107.7 – Hearings and Decisions of the LBBCA (cont.)

- The local board can uphold, reverse, or modify a code official's decision by a majority vote of those present that heard the appeal (except members who recused themselves).
- The decision of the local board is binding unless further appealed.
- Decisions are to be documented, signed by the Chair, include a statement of further right of appeal (see specific language in Section 107.7), and retained as part of the appeal record.
- Copies shall be sent to all parties by certified mail.



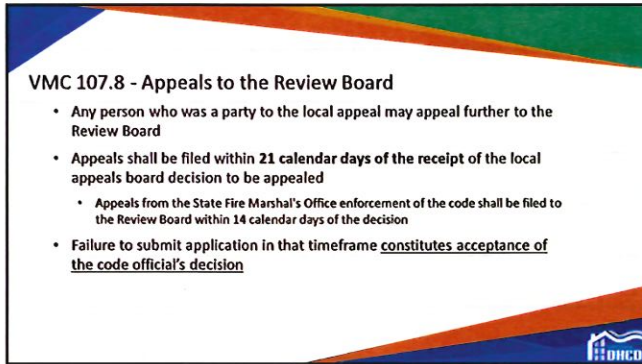
32

VMC 107.7 – Hearings and Decisions of the LBBCA (cont.)

Local Board Decisions shall contain the following wording:

- *"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."*

33



VMC 107.8 - Appeals to the Review Board

- Any person who was a party to the local appeal may appeal further to the Review Board
- Appeals shall be filed within **21 calendar days** of the receipt of the local appeals board decision to be appealed
 - Appeals from the State Fire Marshal's Office enforcement of the code shall be filed to the Review Board within 14 calendar days of the decision
- Failure to submit application in that timeframe constitutes acceptance of the code official's decision

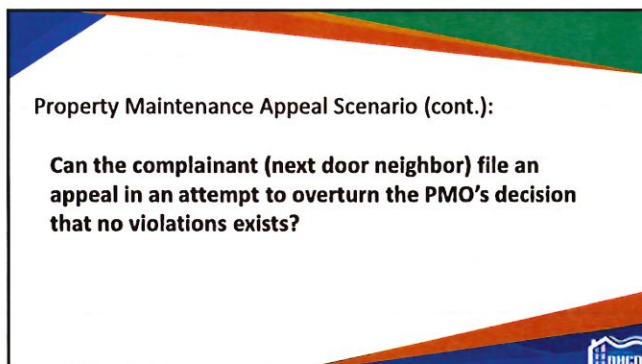
34



Consider this Property Maintenance Appeal Scenario:

- The Property Maintenance Official (PMO) receives a complaint about a dilapidated home
- The PMO investigates and determines that no property maintenance violations exist on the property

35



Property Maintenance Appeal Scenario (cont.):

Can the complainant (next door neighbor) file an appeal in an attempt to overturn the PMO's decision that no violations exists?

36

Property Maintenance Appeal Scenario (cont.):

Answer: Yes

It is up to the local appeals board to decide the jurisdictional issue of aggrievement.



37

Topics covered in this training

- ✓ The Local Board of Building Code Appeals (LBBCA) – Virginia Maintenance Code
- Recommendations and Best Practices for LBBCA members and secretaries
- Virginia State Building Code Technical Review Board (Review Board)
- Beyond the Board
- Historical Review Board Decisions



38

Local Board of Maintenance Code Appeals - LBBCA

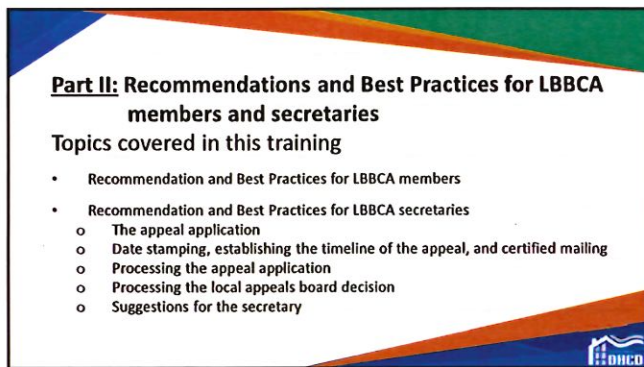
What questions do you have about the local board of building code appeals LBBCA?



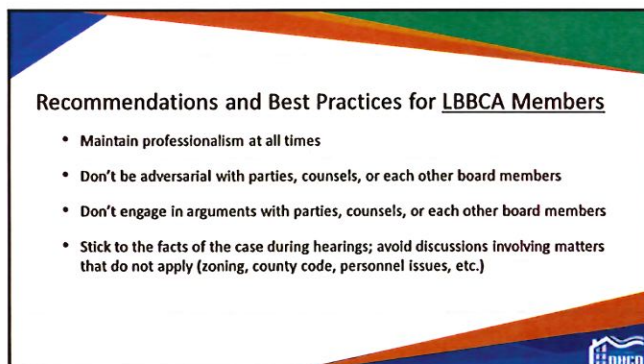

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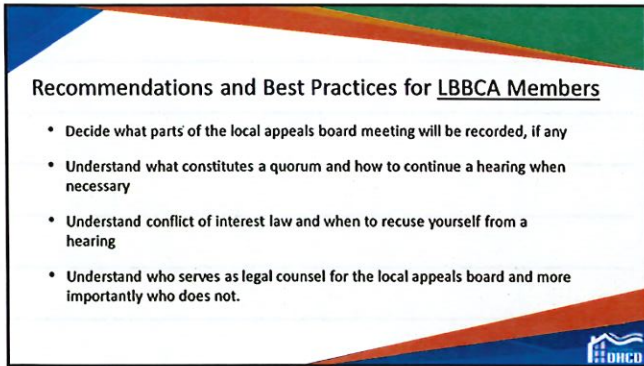
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41



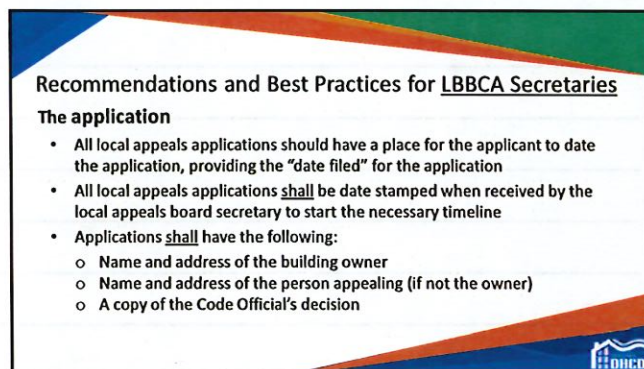
42



Recommendations and Best Practices for LBBCA Members

- Decide what parts of the local appeals board meeting will be recorded, if any
- Understand what constitutes a quorum and how to continue a hearing when necessary
- Understand conflict of interest law and when to recuse yourself from a hearing
- Understand who serves as legal counsel for the local appeals board and more importantly who does not.

43

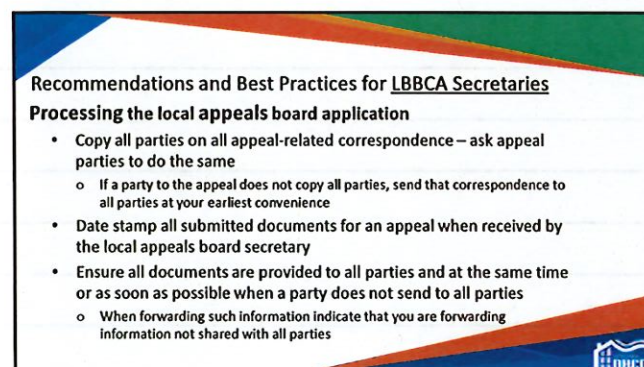


Recommendations and Best Practices for LBBCA Secretaries

The application

- All local appeals applications should have a place for the applicant to date the application, providing the "date filed" for the application
- All local appeals applications shall be date stamped when received by the local appeals board secretary to start the necessary timeline
- Applications shall have the following:
 - Name and address of the building owner
 - Name and address of the person appealing (if not the owner)
 - A copy of the Code Official's decision

44



Recommendations and Best Practices for LBBCA Secretaries

Processing the local appeals board application

- Copy all parties on all appeal-related correspondence – ask appeal parties to do the same
 - If a party to the appeal does not copy all parties, send that correspondence to all parties at your earliest convenience
- Date stamp all submitted documents for an appeal when received by the local appeals board secretary
- Ensure all documents are provided to all parties and at the same time or as soon as possible when a party does not send to all parties
 - When forwarding such information indicate that you are forwarding information not shared with all parties

45

Recommendations and Best Practices for LBBCA Secretaries

Processing the local appeals board decision

- Accurately draft the local board decision
- Ensure the Chair reviews and signs the local board decision (written document; no longer a resolution requiring board approval)
- Local appeals board decisions shall be sent certified mail to all parties to the appeal



46

Recommendations and Best Practices for LBBCA Secretaries

Suggestions for the Secretary of the Local Appeals Board

- Always remain neutral and never speculate on potential local appeals board ruling
- Use electronic correspondence to more quickly get information to the parties; use read receipt or require a response for proof of the timeline
- Any correspondences that are mailed should be sent certified mail to provide proof of timeline
- Establish a robust electronic searchable database for all appeals cases
- Draft an SOP and work instructions for the secretary to the local appeals board position outlining all tasks and responsibilities



47

Recommendations and Best Practices for LBBCA Secretaries

Suggestions for the Secretary of the Local Appeals Board

- Encourage the local appeals board to establish policies for processing appeals and how the board will conduct business
- Encourage the local appeals board to establish a participant guide to assist citizens with the appeals process
- Encourage your local appeals board members to attend training to better understand their roles and responsibilities
- Use the Local Building or Fire Prevention Code Boards of Appeals Manual as a guide and refer to it often
- Contact Review Board Secretary for assistance



48

Topics covered in this training

✓ The Local Board of Building Code Appeals (LBBCA) – Virginia Maintenance Code

✓ Recommendations and Best Practices for LBBCA members and secretaries

• Virginia State Building Code Technical Review Board (Review Board)

• Beyond the Board

• Historical Review Board Decisions



49

Recommendations and Best Practices for LBBCA members and secretaries

What questions do you have about recommendations and best practices for LBBCA members and secretaries?





50

State Building Code Technical Review Board (Review Board)



51

Part III: State Building Code Technical Review Board

Topics covered in this training

- Appeals
- Formal Interpretations of the Code
- Code Change Proposals

DMCO

52

Current Review Board Members

VBCOA - VA Building & Code Officials Association Eric Mays & James S. Moss	American Institute of Architects Virginia R. Jonah Margarella	Commonwealth at Large Christina Jackson & Elizabeth White	Home Builders Association Vince Butler
VA Assoc. of Plumbing Heating & Cooling Contractors Daniel Crigler & Alan Givens	VA Fire Chiefs Association James Dawson	VA Society of Professional Engineers Aaron Zdinak	Association of General Contractors Joseph Kessler
Electrical Contractor David Hutchins	VA Building Owners and Managers Joanne Monday	National Apartment Association Shaun Pharr	

DMCO

53

Review Board Responsibilities

1. To hear appeals de novo (Latin "from the beginning") of:
 - Local appeals boards
 - The State Fire Marshal's Office
 - DGS; DEB (State-owned buildings)
 - State Building Codes Office (Industrialized buildings)
2. To issue formal code interpretations
3. To propose code changes based on previous appeals or interpretation requests

DMCO

54

Primary Purpose of the Review Board

The primary purpose of the Review Board is to hear appeals from enforcement actions under the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Industrialized Building Safety Regulations, and Virginia Amusement Device Regulations.



55

§ 36-114. Board to hear appeals.

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.



56

Review Board

Appeal Application

Must include a copy of:

- The maintenance official's decision
- The local appeals board application and written decision
- The Review Board appeal application and statement of relief sought
- Any other pertinent information deemed necessary by the Secretary to the Review Board



57

Review Board
Timeframe to Process Appeal

- Day 1 – Application received by Review Board Secretary
- Day 7 – Email sent to all parties announcing the appeal and requesting additional information
- Day 21 – Initial submittal due from parties
- Day 35 – Review case, determine whether jurisdictional issues exist, IFFC is necessary, or to process with staff document
- Day 56 – IFFC held in the locality where the appeal originated
- Day 77 – Staff Document sent to the parties
- Day 98 – Final submittal due from the parties
- Day 120 – Case ready for preliminary hearing before the Review Board



58

Review Board – Appeals
Review Board Hearing – Order of Events

- Hearing open and all parties are sworn in by the Chair
- Appellant's opening statement/Testimony by the appellant/ Witnesses for the appellant
- Cross-examination of appellant and witnesses
- Appellee's opening statement/Testimony by appellee/Witnesses for the appellee
- Cross-examination of appellee and witnesses
- Questioning by Review Board members
- Closing statements and closing of hearing
- Review Board deliberations



59

Review Board
Review Board Hearing – Time Limits

Appellant/Appellee's Opening Statement/Testimony by the Appellant/ Witnesses for the Appellant:

- Time limit twenty (20) minutes for appeals hearings
- Time limit eight (8) minutes for preliminary hearings

Cross-examination of Appellant/Appellee and Witnesses:

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings

Questioning by Review Board Members of the Appellant/Appellee:

- Time limit thirty (30) minutes for appeals hearings.
- Time limit thirteen (13) minutes for preliminary hearings

Closing Statements of Appellant/Appellee:

- Time limit five (5) minutes for appeals hearings.
- Time limit two (2) minutes for preliminary hearings



60

Review Board

Review Board Hearing – Closing the Hearing

Closing the Hearing
The Chair formerly closes the hearing. The Chair then informs the parties of the following:

- The matter will be openly considered and a decision during the open meeting
- The parties may stay to hear the deliberations of the Board; however, no further testimony will be heard
- How the final decision will be entered and distributed to the parties

**Note: There is no time limit on Board deliberations*



61

Review Board

Final Decisions – Final Orders of the Review Board

- Written final order is drafted by the Secretary after the meeting in which the appeal was heard
- Written final order is brought back before the Review Board for consideration and approval at the next Review Board meeting
- Once the written final order is approved, the decision becomes final, a copy of the final order is sent to all parties, and the clock start for the parties' further appeal right to circuit court



62

Review Board - Continuances

If an appeal hearing is scheduled

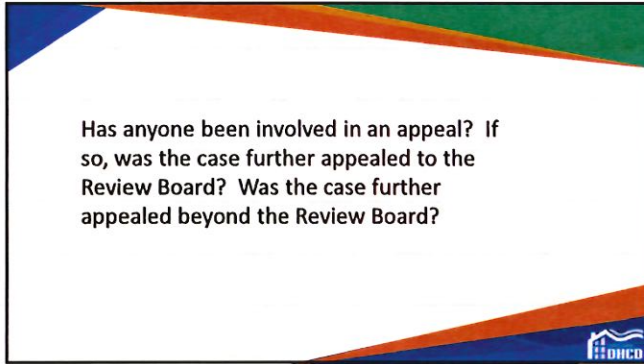
- Review Board staff will continue an appeal upon agreement of all parties (Review Board Policy #5)

When any parties to the Appeal do not agree to the continuance

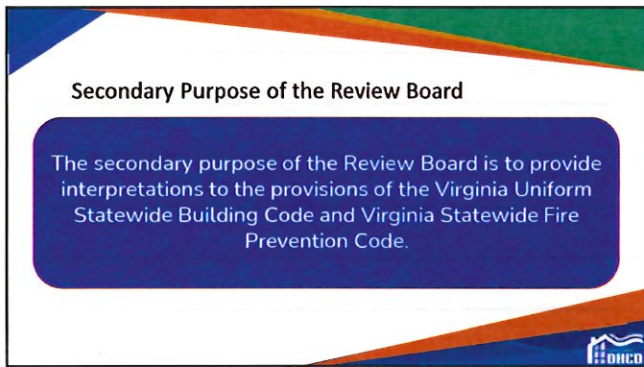
- The Secretary contacts the Chair and outlines the continuance request.
- The Chair makes the determination of whether to continue the case, and directs the Secretary when to bring the case before the Board. (Review Board Policy #5)



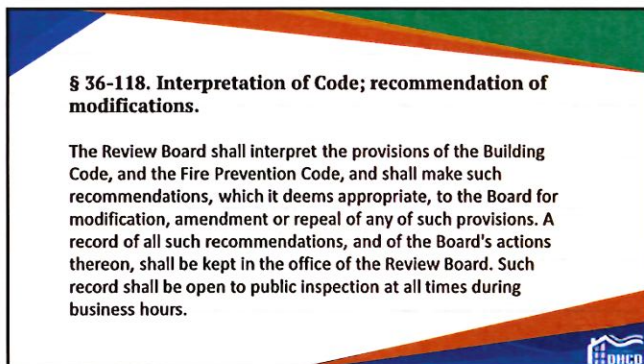
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64



65



66

Review Board
Formal Interpretations of the Code

The Review Board issues interpretations of the USBC and SFPC when:

- Requests are made by Code Officials or staff of the Code Official with the approval of the code official
- There is no potential or pending appeal.

USBC

67

Review Board
Formal Interpretations of the Code

Formal Interpretations of the Review Board are:

- Drafted by the Secretary after the meeting
- Brought back before the Review Board for consideration and approval at the next Review Board meeting
- Once approved the Interpretations are enforceable by the code officials

USBC

68

Does an interpretation from the Review Board require a code change to be submitted/made?

USBC

69

Example 1:

VCC Section 202 (Definition of "night club")
Code Interpretation No. 1/09
First Issued: 06/17/11, 2009 Edition

QUESTION: How do you apply the "main use" terminology in the definition of night club?

ANSWER: Determining the main use of a structure is a factual question to be made at the discretion of the local official.



70

Example 2:

VCC Section 104.1 Code
Interpretation No. 2/06
First Issued: 06/20/08, 2006 Edition

QUESTION: In jurisdictions which have not elected to enforce the Virginia Maintenance Code, does the third paragraph of Section 104.1 give authority to investigate complaints of immediate and imminent threats to the health and safety from any complainant rather than just complaints by a tenant of a residential rental unit that is the subject of such complaint?

ANSWER: No, this provision would only apply to enforcement actions under the previous paragraph unless the locality has elected to enforce the Virginia Maintenance Code.



71

Example 3:

VCC Section 2801.1 (International Mechanical Code Section 602.1)
Code Interpretation No. 20/90
First Issued: 07/17/92, 1990 Edition

QUESTION: Does Section 602.1 prohibit completely sealed (combustion chamber and combustion air) fuel-fired mechanical appliances from being located in a return-air plenum?

ANSWER: Yes. Section 602.1 prohibits the installation of fuel-fired equipment in plenums. However, technical data, research reports or other information may be submitted to the code official to substantiate the approval of a modification request for the use of a specific unit listed for that purpose.



72

Example 4:
Interpretation Number: 1/2017
Code: USEC, Part 1, Virginia Construction Code/2012 International Swimming Pool and Spa Code (ISPSC)
Section No(s): Section 305.2.9
Section 305.2.9 Clear zone. There shall be a clear zone of not less than 36" (914 mm) around the exterior of the barrier and around any permanent structures or equipment such as pumps, filters and heaters that can be used to climb the barrier



73

Example 4 (cont.):
Interpretation Number: 1/2017
QUESTION #1: May a clear zone, as required by 305.2.9, be satisfied by being located on an adjacent property?
ANSWER: No, unless the pool owner has provided written legal proof of a continuing right to use the adjacent property as long as the pool exists.
QUESTION #2: Is the property owner that is constructing the swimming pool required to install barriers a minimum of 36 inches from the property line to create the clear zone on their own property?
ANSWER: Yes, unless previously satisfied by statement above.



74

Third Purpose of the Review Board

The third purpose of the Review Board is to make recommendations to the Virginia Board of Housing and Community Development for future modifications, amendment, or repeal of the Virginia Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.



75

§ 36-118. Interpretation of Code; recommendation of modifications.

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.



76

Review Board

Review Board Code Change Proposals

The Review Board may propose code changes based on previous appeals or interpretation requests when the Board finds a code change is needed and/or there is a conflict in the code.

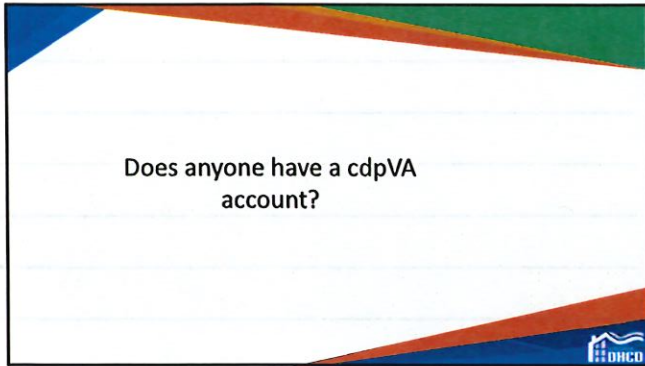


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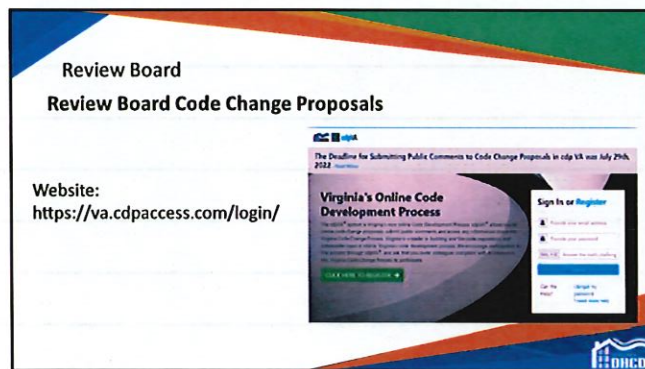
Does anyone know how to submit a code change proposal?



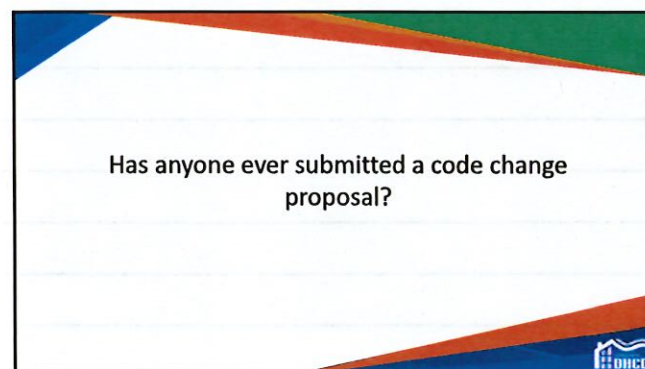
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79



80



81

Review Board

Example of a Code Change Proposals

Code Change Proposal Example:

CTS-305.2.9 cdpVA-15

Proponent: Ronald Clements, Jr, Representing VBCOA Board of Directors(clementsro@chesterfield.gov)

2015 International Swimming Pool and Spa Code

305.2.9 Clear Equipment clear zone. There shall be a clear zone of not less than 36 inches (914 mm) between the exterior of the barrier and any permanent structures or equipment, including pool equipment such as pumps, filters and heaters that can shall not be used to climb installed within 36" (914 mm) of the exterior of the barrier when located on the same property.



82

Review Board

Review Board Code Change Proposals

Reason Statement

CTS-305.2.9 cdpVA-15 (cont.)

Reason: The requirement for a clear zone adjacent to a pool barrier prohibits placement of fences and barriers on or within 3 feet of a property line per **TRB rulling 1/2017**....



83

SECTION R326
SWIMMING POOLS, SPAS AND HOT TUBS

R326.1 General.

The design and construction of pools and spas shall comply with the International Swimming Pool and Spa Code.

R326.1.1 Changes to the ISPSC.

The following change shall be made to the ISPSC:

1.Change Section 305.2.9 to read:

305.2.9 Equipment clear zone. Equipment, including pool equipment such as pumps, filters, and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.



84

CHAPTER 31
SPECIAL CONSTRUCTION

SECTION 3109
SWIMMING POOLS, SWIMMING POOL ENCLOSURES AND AQUATIC RECREATIONAL FACILITIES

1. Change Section 305.2.9 of the ISPC to read:

305.2.9 Equipment clear zone. *Equipment*, including pool equipment such as pumps, filters and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.

85

Review Board –Participant Guide

STATE BUILDING CODE
TECHNICAL REVIEW BOARD
APPEAL PARTICIPANT GUIDE
REV 2022

TABLE OF CONTENTS
Part 1- Overview 3
Part 2- Application for Appeal 3
Part 3- Reviewing the Appeal 4
Part 4- Appeal Hearing 6
Part 5- Review Board Decision 7
Part 6- Right of Further Appeal 7
Part 7- Mediation Conciliation 7
Part 8- Consent and Final Submissions 8

86

Review Board – Policy Manual

Topics in the manual

- Processing Appeals Applications
- Processing Request for Interpretations
- Continuances
- Informal Fact Finding Conference
- Identifying Jurisdictional Issues and Issues for Resolution
- Establishment of Deadlines
- Orders of Events
- Document Management
- Hearing Time Limits

STATE BUILDING CODE
TECHNICAL REVIEW BOARD
POLICY MANUAL

87

Topics covered in this training

- ✓ The Local Board of Building Code Appeals (LBBCA) – Virginia Maintenance Code
- ✓ Recommendations and Best Practices for LBBCA members and secretaries
- ✓ Virginia State Building Code Technical Review Board (Review Board)
 - Beyond the Board
 - Historical Review Board Decisions



88

State Building Code Technical Review Board

What questions do you have about the State Building Code Technical Review Board?

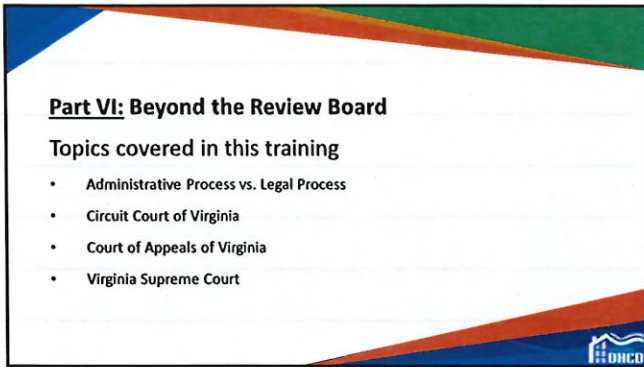



89



Beyond the Review Board

90



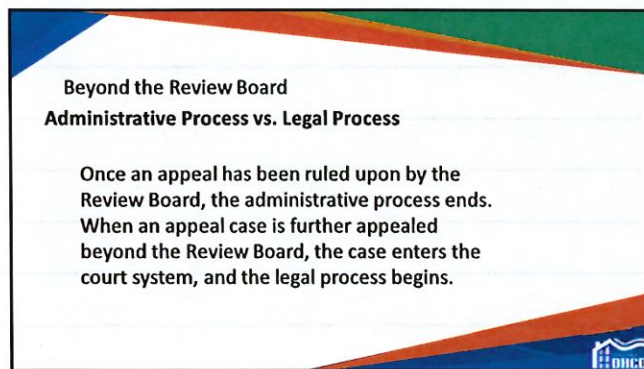
Part VI: Beyond the Review Board

Topics covered in this training

- Administrative Process vs. Legal Process
- Circuit Court of Virginia
- Court of Appeals of Virginia
- Virginia Supreme Court



91



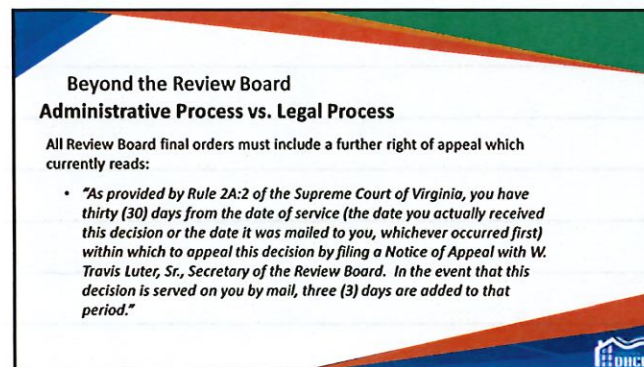
Beyond the Review Board

Administrative Process vs. Legal Process

Once an appeal has been ruled upon by the Review Board, the administrative process ends. When an appeal case is further appealed beyond the Review Board, the case enters the court system, and the legal process begins.



92



Beyond the Review Board

Administrative Process vs. Legal Process

All Review Board final orders must include a further right of appeal which currently reads:

- *"As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with W. Travis Luter, Sr., Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period."*



93

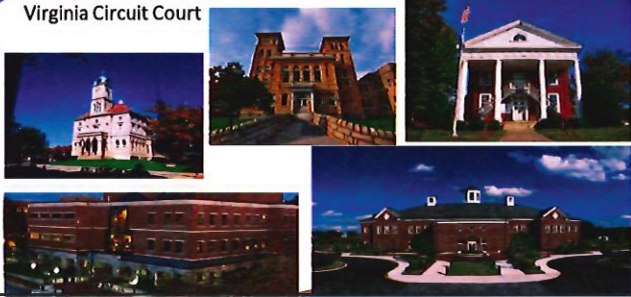
**Beyond the Review Board
Virginia Circuit Court**

All appeals from the State Building Code Technical Review Board have a further right to appeal to the Circuit Court in the locality in which the case originated.



94

**Beyond the Review Board
Virginia Circuit Court**



95

**Beyond the Review Board
Virginia Circuit Court**

- The party that further appeals to Circuit Court shall file a Notice of Appeal with the Review Board Secretary. Occasionally the Petition for Appeal is filed with the Secretary of the Review Board but is not required
- Within 30 days of filing the Notice of Appeal, the Transcript of Testimony or Statement of Testimony in Narrative Form shall be filed with the Secretary of the Review Board



96

**Beyond the Review Board
Virginia Circuit Court**

Upon receiving the Notice of Appeal and Transcript of Testimony or Statement of Testimony in Narrative Form the final duties of the Review Board secretary for the appeal are:

- Email the notice of appeal to the Review Board counsel (AG representative)
- Prepare and certify the official Record of the Appeal (Per Virginia Supreme Court Rule 2A:3) which includes every document filed pertaining to the case being further appealed



97

**Beyond the Review Board
Virginia Circuit Court**

Upon receiving the Notice of Appeal and Transcript of Testimony or Statement of Testimony in Narrative Form the final duties of the Review Board secretary for the appeal are (cont.):

- Review the transcript of Testimony or Statement of Testimony in Narrative Form and if either are inaccurate provide a response to be include in the official record of the appeal
- Distribution of the Record of the Appeal



98

**Beyond the Review Board
Virginia Court of Appeal**



99

Beyond the Review Board Virginia Court of Appeal

- Created by the General Assembly in 1983
- Provides appellate review of final decisions of the circuit courts in appeals from decisions of administrative agencies
- The Virginia Court of Appeals grants appeals of APA decisions from Circuit Courts as a right ("an appeal of rights")
- Any party aggrieved by a decision of the Court of Appeals may petition the Virginia Supreme Court for an appeal.



100

Beyond the Review Board Virginia Supreme Court



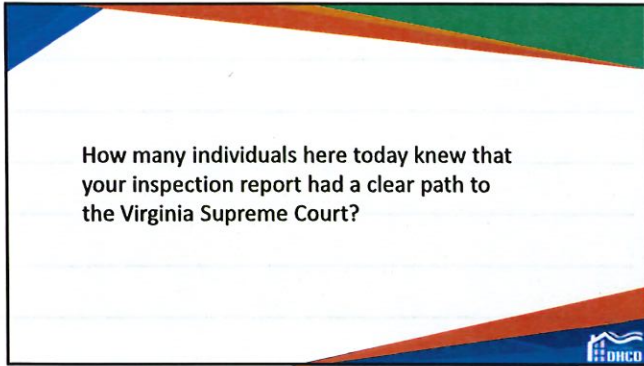
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Beyond the Review Board Virginia Supreme Court

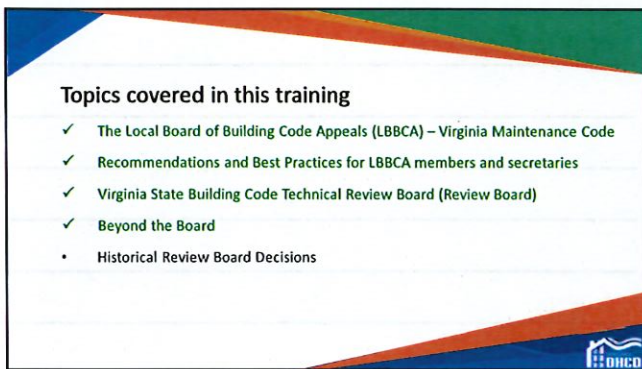
- An appeal to the Virginia Supreme Court is not "an appeal of right"; therefore, is not automatically granted
- The Virginia Supreme Court may review decisions of the Court of Appeals if it finds that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value
- Otherwise, the party must petition the Virginia Supreme Court and must prove to the Virginia Supreme Court that the case is the right case for the Virginia Supreme Court to take



102



103



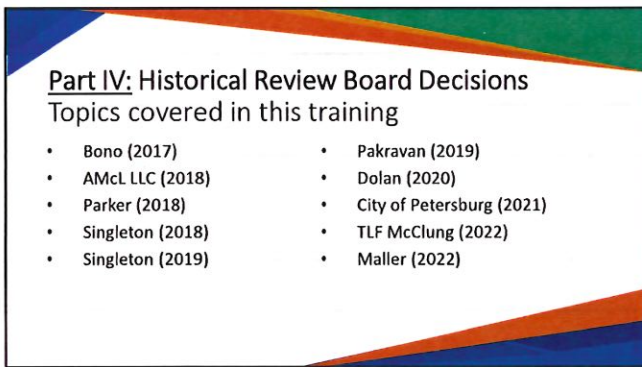
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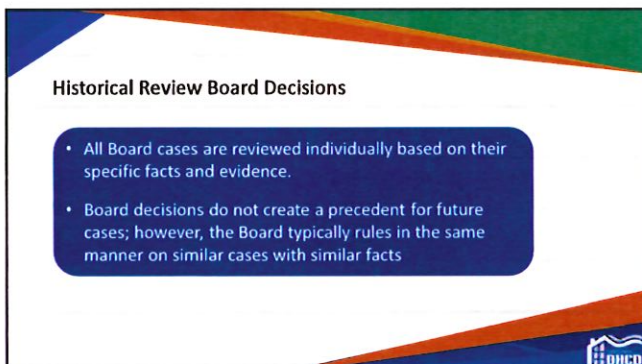
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106



107



108

Historical Review Board Decisions – Aggrieved

Deborah Caldwell-Bono and Benny Bono (2017)

- The couple owned a horse farm next to a property with a farm structure occasionally used as a wedding venue
- They appealed the Building Official's determination of the structure as a farm building. The Review Board found that "the Bono's are not an aggrieved party as required by the statute governing appeals under the state building code"



109

Virginia Court Guidance on "Aggrieved Parties"

- In Virginia Supreme Court cases, the court has held that to have standing, a person's rights have to be affected by the disposition of the case and that to be an aggrieved party, the party must have **direct interest in the subject matter and an immediate, pecuniary (monetary) and substantial interest, and not a remote or indirect interest.**
- In addition, the court has held that to be aggrieved, there is a **denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.**



110

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

- The County issued AMcL, LLC a Notice of Violation for lack of water service to a home due to non-payment and service discount.
- By the time the Review Board heard the appeal, water service was restored to the home and the notice had been rescinded.
- The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggrievement by applications of the code. In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal



111

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

Outcome:

When the building official rescinded the NOV, which is the application of the code, he removed the application of the code. The removal of the application also ended whatever grievance there was against AMcL. Therefore, without the NOV there is no right to appeal. The Review Board ruled that by rescinding the NOV, the County rescinded the cited violation and application of the code; therefore, AMcL no longer has a right to appeal.



112

Historical Review Board Decisions – Properness Before the Board & Aggrieved

Raymond Parker (2018)

- Parker was the adjacent property owner where a new building was constructed and the CO issued
- Parker asserted the well on his property was too close the primary and reserve drain fields of the new building on the adjacent property
- Parker asserted all pertinent laws in accordance with VCC Section 116.1 were not properly enforced
- Review Board dismissed the appeal because Parker was not aggrieved by the decision of the code official to CO the new building



113

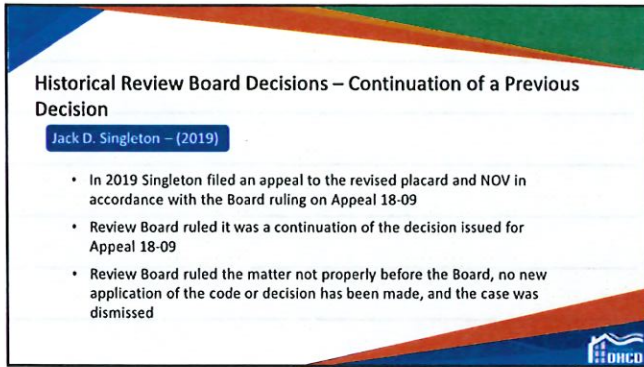
Historical Review Board Decisions – Placard Remand

Jack D. Singleton – (2018)

- In 2018 Singleton filed an appeal to an NOV and placard for violations existing prior to his ownership of the property
- Town re-posted NOV on Singleton's home; not the subject property
- Review Board ruled the placard was improper
- Review Board remanded the placard to the Town to be re-issued with proper date and in full compliance with VMC Section 105



114



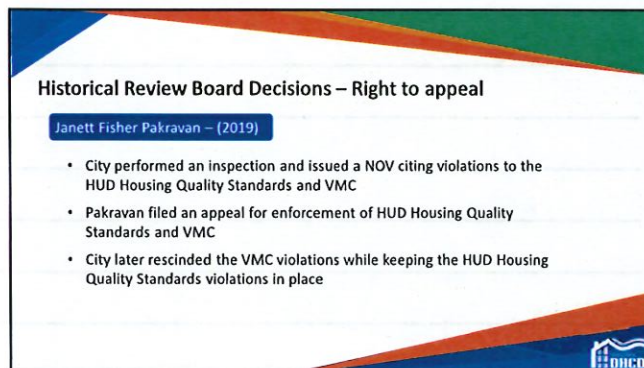
Historical Review Board Decisions – Continuation of a Previous Decision

Jack D. Singleton – (2019)

- In 2019 Singleton filed an appeal to the revised placard and NOV in accordance with the Board ruling on Appeal 18-09
- Review Board ruled it was a continuation of the decision issued for Appeal 18-09
- Review Board ruled the matter not properly before the Board, no new application of the code or decision has been made, and the case was dismissed

OHCO

115



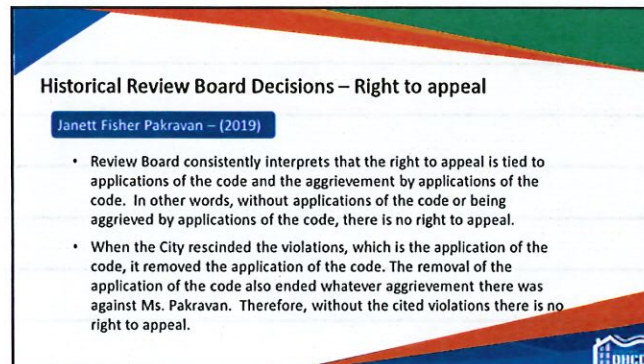
Historical Review Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

- City performed an inspection and issued a NOV citing violations to the HUD Housing Quality Standards and VMC
- Pakravan filed an appeal for enforcement of HUD Housing Quality Standards and VMC
- City later rescinded the VMC violations while keeping the HUD Housing Quality Standards violations in place

OHCO

116



Historical Review Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

- Review Board consistently interprets that the right to appeal is tied to applications of the code and the aggrievement by applications of the code. In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.
- When the City rescinded the violations, which is the application of the code, it removed the application of the code. The removal of the application of the code also ended whatever aggrievement there was against Ms. Pakravan. Therefore, without the cited violations there is no right to appeal.

OHCO

117

Historical Review Board Decisions – Lack of Action = Application of the Code

Dolan – (2020)

- Dolan filed an appeal for lack of action by the code official to act on his permit application
- County refused to convene the LBBCA citing no action had been taken by the code official
- Review Board Secretary informed the County of the requirement to convene the LBBCA in accordance with VCC Section 119



118

Historical Review Board Decisions – Lack of Action = Application of the Code

Dolan – (2020)

- The LBBCA hearing was scheduled and the hearing was conducted
- Review Board ruled that “at the time of application for appeal” a decision by the code official had not occurred; discussions were ongoing



119

Historical Review Board Decisions – Lack of Standing

City of Petersburg – (2021)

- Restaurant was operating as a nightclub without the required operational permit
- City cited several violations and ordered operations to cease and desist
- City argued the restaurant did not have a valid lease because the foreclosed property had been recently purchased by a new owner
- City further argued that the current lease was unenforceable because it had not been recorded



120

Historical Review Board Decisions – Lack of Standing

City of Petersburg – (2021)

The appeal was dismissed due to the lack of standing because the restaurant had no right to occupy the commercial building based on state recordation and case law which extinguished the lease from the previous owner of the property because it was not recorded.



121

Historical Review Board Decisions – Properness Before the Board

TLF McClung – (2022)

- NOV issued for a dilapidated structure
- NOV referenced city code with the right to appeal language from the VCC
- McClung never filed an appeal but the city scheduled and convened the LBBCA
- LBBCA ruled McClung had to obtain a demolition permit and demolish the structure
- McClung further appealed to the Review Board



122

Historical Review Board Decisions – Properness Before the Board

TLF McClung – (2022)

- Review Board Secretary advised the parties that the Review Board lacked jurisdiction to hear appeals for application of local ordinances
- Review Board dismissed the appeal stating in part that "...the City did not cite a violation to the VMC. Moreover, the appeals board did not reference or cite a violation of the VMC in its decision. The Review Board finds that its basic law, §36-114 of the Code of Virginia, does not authorize it to hear appeals of local ordinances..."
- "Additionally, the Review Board finds that it lacks jurisdiction to hear a further appeal from the decision of the appeals board predicated on a city ordinance."



123

Historical Review Board Decisions – Remand

Maller – (2022)

- County issued NOV for construction without required permits and lack of required inspections
- Maller filed an appeal to LBBCA
- Code official administratively denied the owner's appeal application for being untimely
- Maller appealed to the Board due to the denial of a local appeals board hearing



124

Historical Review Board Decisions – Remand

Maller – (2022)

- Review Board secretary advised County of requirement to convene the LBBCA in accordance with VCC Section 119 and that no appeal to the Review Board shall lie prior to final determination by the LBBCA
- County argued that the appeal was filed beyond the 30 day timeframe; therefore, the County did not have to convene the LBBCA
- County disagreed with Review Board Secretary and refused to convene the LBBCA to hear the appeal
- Review Board Secretary processed the appeal to the Review Board



125

Historical Review Board Decisions – Remand

Maller – (2022)

The Review Board ruled "that no appeal to the Review Board shall lie prior to a final determination by the local appeals board (§36-105). Further the local appeals board, not the building official, has the authority to determine whether an appeal is timely filed. Therefore, the Review Board remands the case to the local appeals board for decision."



126

Topics covered in this training

- ✓ The Local Board of Building Code Appeals (LBBCA) – Virginia Maintenance Code
- ✓ Recommendations and Best Practices for LBBCA members and secretaries
- ✓ Virginia State Building Code Technical Review Board (Review Board)
- ✓ Beyond the Board
- ✓ Historical Review Board Decisions



127

Historical Review Board Decisions

What questions do you have about historical Review Board decisions?




128

Appeals Timeframes Cheat Sheet

Code	To appeal enforcement decision to local board	To notify parties of the hearing	LBBCA Hearing	To appeal decision to TRB*
VMC	14 days from receipt of decision	14 days prior	30 days	21 days

* From receipt of local board decision



129

Additional Information and Resources – Review Board Website

<https://www.dhcd.virginia.gov/state-building-code-technical-review-board-sbctrb>
 OR www.dhcd.virginia.gov/codes > then look for "State Building Technical Review Board"

Includes:

- Timeframes and FAQs
- File an Appeal (link to appeal application)
- Previous Review Board Decisions
- Local Building and Fire Prevention Code Boards of Appeals Manual
- Appeal Participant Guide



130

Thank You

W. Travis Luter, Sr.
 Secretary to the State Building Code Technical Review Board
travis.luter@dhcd.virginia.gov
 (804) 371-7163



131



132

**TAB 2: LOCAL BUILDING OR FIRE PREVENTION
CODE BOARDS OF APPEALS MANUAL
(JULY 2022 EDITION)**

LOCAL BUILDING OR FIRE PREVENTION CODE BOARDS OF APPEALS MANUAL

JULY 2022

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF BUILDING AND FIRE REGULATION



FOREWORD

In Virginia's system of building and fire prevention codes, the local building or fire prevention code appeals board is a quasi-judicial board providing a first tier due process right of adjudication of decisions of local government building or fire officials under the enforcement of either the Virginia Uniform Statewide Building Code (USBC) or the Virginia Statewide Fire Prevention Code (SFPC).

This manual provides guidance to the local building or fire prevention code appeals board members and to the local governments and to the building and fire prevention departments they serve to assure the proper constitution and operation of the local appeals boards.

Many issues and subjects in this manual are somewhat legal in nature. It is always recommended that the local government, the local building and fire prevention department personnel, and the local appeals board members have access to the legal counsel of the locality for consultation and assistance.

Staff of the Division of Building and Fire Regulation, within the Virginia Department of Housing and Community Development (DHCD), are also available to assist with the organization and functions of the local appeals boards. For training opportunities, or to have DHCD staff meet with the members of a local appeals board or with the local building or fire prevention departments, please call (804) 371-7150 or contact Office of the Review Board staff at sbco@dhcd.virginia.gov.

Table of Contents

CHAPTER 1: LEGAL FRAMEWORK	1
LAWS THAT ESTABLISH THE LOCAL BOARDS OF APPEALS	1
<i>Appointment and Arrangement of Boards</i>	1
<i>Fees</i>	2
LAWS THAT GOVERN THE APPEALS PROCESS	2
<i>Basic Laws</i>	2
<i>Appeals to the State Technical Review Board</i>	3
<i>Virginia Freedom of Information Act</i>	3
<i>Virginia State and Local Governments Conflict of Interests Act</i>	4
CHAPTER 2: REGULATORY REQUIREMENTS	4
COMPOSITION OF BOARDS	4
<i>Membership Requirements</i>	4
<i>Bylaws</i>	4
<i>Election of Chair</i>	5
<i>Appointment of Secretary</i>	5
DUTIES OF LOCAL BOARD MEMBERS	5
<i>Meetings</i>	5
CHAPTER 3: BEFORE THE HEARING	5
APPLICATION FORM	6
ROLE OF SECRETARY	6
CHAPTER 4: THE HEARING	6
ROLE OF CHAIR	7
<i>Presiding Officer</i>	7
<i>Continuances</i>	7
<i>Other Powers and Duties</i>	7
ROLE OF BOARD MEMBERS	7
<i>Recusal</i>	7
<i>Questions by Board Members</i>	8
<i>Raising Issues</i>	8
ROLE OF SECRETARY	8
<i>Minutes and Exhibits</i>	8
ORDER OF EVENTS IN HEARINGS	8
<i>Quorum</i>	8
<i>Testimony and Evidence</i>	9

<i>Closing the Hearing and Deliberations</i>	9
<i>Voting and Verbal Decision</i>	10
CHAPTER 5: THE DECISION	10
WRITTEN DECISION	10
<i>Statement of Further Right of Appeal</i>	10
<i>Notification of Decision</i>	11
APPENDIX A: SAMPLE BYLAWS	12
APPENDIX B: SAMPLE APPEAL APPLICATION FORM	14
APPENDIX C: SAMPLE WRITTEN DECISION	15

CHAPTER 1: LEGAL FRAMEWORK

There are a number of laws that influence the establishment and functioning of a local government board of building or fire prevention code appeals. As an appeals board is quasi-judicial in nature, all applicable laws and constitutional guarantees of due process are inherent in the operation of the boards. Some due process considerations are stated specifically in the basic laws and regulations the boards are subject to and others are just general matters of law. In addition, the laws and regulations governing the local appeals boards establish the constitution, powers and duties of the boards. This manual attempts to outline and organize those requirements for easy reference by board members and local government representatives.

As this manual addresses appeals boards established under the both the USBC and SFPC, where there are differences in the laws and regulations affecting one or the other board, such differences will be delineated. Otherwise, this manual applies equally to either board. It should be noted that local appeals boards under the USBC are also charged with hearing appeals under the Virginia Amusement Device Regulations, which for the purposes of this manual, may be treated as appeals under the USBC.

LAWS THAT ESTABLISH THE LOCAL BOARDS OF APPEALS

Appeals boards under both the USBC and SFPC are established by state statute. The specific legislative provisions are set out below.

For appeals boards under the USBC, § 36-105 of the Code of Virginia states:

“There shall be established within each local building department a local Board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom.”

For appeals boards under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

APPOINTMENT AND ARRANGEMENT OF BOARDS

As indicated in the above laws, the local boards of appeals are to be established within the local governments that enforce the USBC and SFPC. The laws do not specify the details of appointment or arrangement of the boards, however, it is generally recognized that the local appeals board members should be appointed by the local governing body, or the local governing body would sanction the use of an already existing board to fulfill the purpose of the local appeals board. For instance, there could be a regional board which the local governing body of several localities

sanctioned for hearing appeals from the local building or fire prevention departments of those localities. In addition, a local governing body could have a single board of appeals to hear appeals concerning the application of both the USBC and the SFPC, or could have a separate board for hearing appeals relative to each code. There could also be multiple boards for varying subject matter under either the USBC or the SFPC, such as a board for hearing appeals of electrical, plumbing or mechanical decisions of a local building department and a separate board for decisions concerning building construction or fire prevention.

Whatever the arrangement decided upon by a local governing body, it is simply recommended that the powers and duties of the boards be clearly delineated in the ordinance or action by the local governing body in establishing the local appeals boards.

In addition, the local governing body should set terms for the board members so there is a clear record of who is appointed to the local appeals board and for how long they will be serving. As the laws governing the local appeals boards permit the USBC and SFPC to also address the composition of the local boards, adherence to any relevant provisions in the appeals sections of both codes should also be given consideration by the local governing bodies in the appointment of the board members (see also Chapter 2 of this manual for an overview of the relevant regulatory provisions).

FEES

The laws establishing the USBC and SFPC appeals boards permit the charging of fees. Both §§ 27-98 and 36-105 of the Code of Virginia state:

“Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.”

LAWS THAT GOVERN THE APPEALS PROCESS

BASIC LAWS

For appeals under the USBC, § 36-105 of the Code of Virginia states:

“Any person aggrieved by the local building department’s application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals.”

For appeals under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals from the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

An additional law addressing appeals concerning the application of local fire prevention regulations, in § 27-98 of the Code of Virginia, states:

“Any local fire code may provide for an appeal to a local board of appeals. If no local board exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.”

To elaborate on the issue of local fire prevention regulations, § 27-97 of the Code of Virginia establishes the SFPC, which is a state regulation. However, the law also provides that local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair or use of a building or structure. Consequently, enforcement of such more restrictive local fire prevention regulations is not enforcement of the SFPC and prior to the enactment of the law referenced above; the local appeals boards established under the SFPC did not have authority to hear appeals of the application of such local regulations. Under the current law, the appeals boards established under the SFPC may hear such appeals if the local ordinance establishing the SFPC appeals board specifically authorizes the board to hear appeals of the application of local fire prevention regulations. The local ordinance may establish a different appeals board for hearing such appeals, or may be silent on appeals of local fire prevention regulations, in which case the appeal of a local fire prevention regulation would not be appealed to the SFPC appeals board, but would rather be appealed directly to the State Building Code Technical Review Board (see below).

APPEALS TO THE STATE TECHNICAL REVIEW BOARD

As the basic laws under the USBC and the SFPC indicate, appeals under those codes are first heard by the local government boards of appeals, and may be further appealed to the State Building Code Technical Review Board (State Review Board). The State Review Board has its own set of basic laws governing appeal proceedings and further appeals from decisions of the local appeals boards. This manual does not address appeals to the State Review Board or proceedings involving the State Review Board; however, it is worth noting that the State Review Board's basic laws enable it to hear appeals *de novo*, which is essentially a new evidentiary hearing, so any deficiencies or incompleteness in a local appeals board proceeding may be addressed upon a further appeal to the State Review Board. Questions concerning State Review Board proceedings should be addressed to the Office of the Review Board. Contact information is provided in the preface of this manual.

VIRGINIA FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) are state laws assuring the free entry to meetings of public bodies to afford every opportunity to citizens to witness the operations of government. This would include meetings of the local appeals boards. While the Freedom of Information Act does include exceptions which permit closed meetings under certain circumstances, in general, the hearings conducted by local appeals boards and the deliberations of the boards should be conducted in open, not closed, meetings. Should the chair of a local appeals board, or any of its members, believe a proceeding should be conducted in closed session, it would be advised to discuss the matter with the board's legal counsel to assure compliance with the Act.

VIRGINIA CONFLICTS OF INTEREST ACT

The Virginia State and Local Government Conflicts of Interests Act (Chapter 31 of Title 2.2 of the Code of Virginia) are state laws addressing inappropriate conflicts in the actions of public officers and employees so that the standards of conduct for such officers and employees are uniform. Members of local boards of appeals should consider recusal from participating in appeal hearings or proceedings in which they may have a conflict of interest with any of the parties involved. In questions of whether a conflict of interest is present, board members should consult with the locality's legal counsel or other appropriate legal counsel familiar with the provisions of the Act.

CHAPTER 2: REGULATORY REQUIREMENTS

As the laws authorizing the USBC and the SFPC and establishing the appeals process permit the codes to address the composition, duties and responsibilities of the local appeals boards, both the USBC and the SFPC have specific provisions affecting the make-up and operations of a local appeals board. This chapter outlines those specific requirements and practices inherent in the functioning of the local appeals boards.

COMPOSITION OF BOARDS

MEMBERSHIP REQUIREMENTS

Local governing bodies should be made aware of the specific appeal provisions in the USBC and SFPC that affect the appointment of board members. Both the USBC and SFPC require a local appeals board to consist of at least five members and permit the appointment of alternate members. The codes do not prohibit the reappointment of regular or alternate members.

To provide for continuity of the board members serving, the appeal provisions also suggest that the terms of the board members be staggered so that less than half of the terms will expire in any given year.

Guidance is also provided in the appeal provisions of the codes for the qualifications of the board members and there is a prohibition against employees or officials of the locality serving as board members.

BYLAWS

While not required by either state law or the appeal provisions of the codes, general parliamentary procedures would encompass the approval and use of bylaws by a local appeals board to ratify certain aspects of the functioning of the board. Appendix A of this manual contains sample bylaws that may be considered by the appeals board in the formulation of bylaws if determined necessary or appropriate.

ELECTION OF CHAIR

Both the USBC and SFPC appeals provisions specify the election of a chair by the board members annually. The codes do not prohibit the re-election of the chair. The appeals provisions also

provide that if the chair is absent at a meeting, the board members would appoint a chair pro tem to serve as chair for that meeting.

While the appeals provisions are silent on the election of a vice-chair, it would not be prohibited and if a vice-chair is elected, then the vice-chair would serve as chair in the chair's absence.

General parliamentary procedure should be used in electing officers within the appeals board, which typically involves a nomination procedure.

The role of the chair in meetings and appeal hearings is discussed in detail in Chapter 4 of this manual.

APPOINTMENT OF SECRETARY

The wording in the appeals provisions of both the USBC and SFPC indicate that the secretary to the local appeals board is a non-member of the board, appointed by the locality. Due to the role of the secretary, which is fully discussed in Chapter 3 of this manual, it is recommended that the secretary be an employee of the local building or fire prevention department with good organizational skills, competent in computer and word processing capabilities, and possess a general knowledge of the functioning of the local building or fire prevention department.

DUTIES OF LOCAL BOARD MEMBERS

MEETINGS

The local boards of appeals members' primary duty is to participate in appeal hearings when appeals are filed to the local boards and to render decisions on such appeals. Detailed discussions of hearing and deliberation procedures are found in Chapter 4 of this manual.

In addition to outlining the members' roles in appeals proceedings, the USBC appeal provisions require local board members to meet as necessary to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality. The SFPC appeal provisions require local board members to meet at least once annually to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality.

CHAPTER 3: BEFORE THE HEARING

APPLICATION FORM

While not required by the USBC or the SFPC, an appeal application form (written or electronic) may and should be used to document the filing of an appeal and the steps taken in acknowledging and processing the appeal. A suggested appeal application form for use by the local appeals boards may be found in Appendix B of this manual.

Note that the parties to an appeal typically include the appealing party and the enforcing agency representative (usually the building official or the fire code official). Owners of the property involved are typically considered parties and should be included in all correspondence.

Once an appeal applicant files an application for appeal, including a verbal request for appeal where written application forms are not utilized, the application must be processed and presented to the local appeals board for consideration. No one person, to included but not limited to the code official, department staff, local appeals board secretary, county administrator or city manager, county attorney, or local governing body member, can decide whether an appeal is to be heard by any local appeals board based on a jurisdictional issue such as timeliness, application of the code, properness before the board, right to appeal, aggrievement, etc.; furthermore, no one person can make a determination related to any merit of any case. Only the local appeals board can render a decision for any matter in an appeal.

ROLE OF SECRETARY

The secretary to the local appeals boards functions as the point of contact for all business relating to the board outside of a meeting of the board. Any persons inquiring about appeals should be put in touch with the secretary, who would provide the appeal application form, if one is used, and explain the appeals process to the potential applicant.

The appeal application form, once completed, would be submitted to the secretary and the secretary would collect any fees required. The secretary would also document the date the appeal was received as the codes have timeframes within which an appeal must be filed.

The secretary would then schedule the board meeting, taking into consideration any time constraints required by the codes. Both the USBC and the SFPC require the local appeals board to meet within **30** days of the receipt of the application for appeal and requires **14** days notice of the meeting to the parties, unless the parties agree to a meeting date with less than **14** days notice.

As mentioned under the Basic Laws section of Chapter 1 of this manual, since the functions of local appeals boards are subject to the Virginia Freedom of Information Act, the secretary should consider any meeting notice requirements of that Act in preparing for the meetings.

The parties should be asked by the secretary to furnish any information they wish the board members to consider in advance of the hearing so that copies can be made and be available for the board members at the hearing. While there is no requirement to do so, if the parties can provide the information in a timely fashion, the secretary may furnish the information to the board members prior to the meeting, however, caution should be taken to treat all parties equally, so in cases where the parties cannot agree to provide the appeal information prior to the hearing, all documents, pictures or exhibits should just be held to be distributed at the hearing.

CHAPTER 4: THE HEARING

Once the secretary has scheduled a meeting to hear an appeal, a hearing is conducted at the meeting to address an appeal. Board members, including the chair, should be cautioned against having any

contact with the parties in an appeal outside of the hearing itself, as ex parte communication may be seen as a violation of due process rights. This is why the secretary fulfills the role of being the board's representative outside of meetings, as the secretary is not a board member and does not have voting power or sway over the outcome of a hearing.

ROLE OF CHAIR

PRESIDING OFFICER

The role of the chair of the local appeals boards is to preside over the hearing and to rule on any procedural matters which are presented. The flow of the hearing is controlled by the chair in accordance with the order of events, as outlined below. The chair is given no authority outside of a meeting of the local appeals board in either state law or in the USBC or SFPC. All administrative functions, such as scheduling hearings, contacting the parties, requesting documents to be submitted (outside of a hearing), are handled by the secretary to avoid the appearance of bias by the chair or any board members.

CONTINUANCES

Any party may ask for a continuance at the hearing and the chair may rule on the continuance request, or may defer to a vote of the board itself on the continuance request. The chair or the board members should take into consideration the timeframes established in the USBC or the SFPC for postponements where continuance requests are not agreed to by all parties and, in deciding whether to grant a continuance, consideration should be given to whether the refusal to grant the continuance request will substantially inhibit the ability of a party to properly present its case.

OTHER POWERS AND DUTIES

The chair may rule on the submittal of evidence at the hearing and may consider the objections of any party as to the relevance of the evidence. As is typical with administrative appeals, hearsay or other unsubstantiated evidence is generally permitted with the understanding that the board members may determine the appropriate deference to afford such evidence.

ROLE OF BOARD MEMBERS

The board members' role is to listen to the testimony and review the evidence presented by the parties in an appeal and to ultimately decide on the outcome of the case.

RECUSAL

As previously outlined concerning conflicts of interest, at the outset of an appeal hearing, should any board members determine their recusal is warranted due to a conflict of interest, then that member should inform the chair and state for the record that they will not be participating in the hearing or deliberations in the appeal. It is typical for that board member to then remove themselves physically from the meeting and the secretary would let them know when they may return to the meeting for other business of the board. Should a board member wish to stay in the

meeting, but not participate in the proceedings, then it would be advisable to discuss the issue with legal counsel to assure no components of conflict of interest are present.

QUESTIONS BY BOARD MEMBERS

Board members may ask questions of the parties as the appeal proceedings progress. It is advisable for the chair to control such questioning and for the board members to direct questions through the chair. There may be established procedures for such questioning within the flow of events outlined in the Order of Events in Hearings section of this chapter.

RAISING ISSUES

The chair, or any board member, has the right to raise issues in the course of a hearing, and to determine the issues, which are, or are not, properly before the board in an appeal. Issues which, if decided upon, may have the effect of dismissing an appeal without a hearing upon the substantive issues in an appeal, such as whether a party is a proper party to bring an appeal, whether the timeframes have been met for a proper appeal to exist, or whether the nature of the appeal is improper for other reasons, should be raised at the beginning of an appeal hearing and a decision should be made on any such issues raised prior to hearing the full appeal. Suggested procedures for handling such issues are outlined in the Order of Events in Hearings section of this chapter.

ROLE OF SECRETARY

MINUTES AND EXHIBITS

The secretary should take sufficient notes to enable minutes to be developed of appeal hearings. Recording the proceedings is permissible as a method to later develop minutes. There is no requirement in state law, or in the USBC or the SFPC for the hearings to be recorded, or for a transcript of the hearings to be made. The minutes of the meeting in which the hearing was held, and the written decision of the local appeals board, is sufficient to document the action of the board and to enable a further appeal of a local appeals board decision.

If exhibits are introduced at a hearing, typical procedure would be for the secretary to give a copy of the exhibit to the chair and to the other party or parties. The chair would then ask the other parties if they objected to the submittal of the exhibit. If there is an objection, then the chair would rule on the objection. If there are no objections, then the chair would rule on the admissibility of the exhibit. The chair could exclude the exhibit as not relevant or accept the exhibit into evidence. The secretary should then mark the exhibit for identification purposes and if it was accepted into evidence, pass it into circulation to the other board members.

ORDER OF EVENTS IN HEARINGS

QUORUM

General parliamentary procedure requires a quorum of the members of a board to be present for official action to be taken. However, both the USBC and the SFPC, in the appeal provisions, state that if a quorum is not present, a party may request that the hearing be rescheduled. In addition, the appeal provisions in both codes state that a decision may be made by an appeals board by a

concurring vote of a majority of those board members present. Taken together, those provisions indicate that a local appeals board may hear an appeal with less than a quorum of the board members present. Irrespective of the above, it is generally advisable to make every attempt to have a quorum of the board members present at hearings to avoid any allegations of impropriety.

TESTIMONY AND EVIDENCE

The chair should have an established order of events for the presentation of testimony in an appeal hearing. The order of events used by the State Review Board, which may be used by the local appeals boards, is generally as follows:

- Appellant's Opening Statement/Testimony by the Appellant/ Witnesses for the Appellant:

The Appellant gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellant or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellant and Witnesses

The Appellee is permitted to direct cross-examination questions to the Appellant and all witnesses for the Appellant.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Appellee's Opening Statement/Testimony by Appellee/Witnesses for the Appellee

The Appellee gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellee or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellee and Witnesses

The Appellant is permitted to direct cross-examination questions to the Appellee and all witnesses for the Appellee.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Questioning by Review Board Members

Review Board members may question any party or witness after testimony is complete.

- Time limit thirty (30) minutes for appeals hearings.
- Time limit thirteen (13) minutes for preliminary hearings.

- Closing Statements and Closing of Hearing

All parties are permitted to present closing statements, after which the presiding officer closes the hearing.

- Time limit five (5) minutes for appeals hearings.
- Time limit two (2) minutes for preliminary hearings.

NOTE: When needed, testimony and cross-examination by any other party to the appeal, such as the owner, etc., will take place prior to #5 Questioning by Review Board Members.

Any additional evidence submitted by the parties at an appeal hearing is subject to consideration and ruling by the chair as to relevance and should be marked into evidence by the secretary. See the Role of the Secretary section in this chapter for additional information and procedures for submitting evidence.

CLOSING THE HEARING AND DELIBERATIONS

Once testimony is completed and the board members have asked any questions, the hearing should be concluded with a statement such as *“The hearing of this matter is now concluded. The board will deliberate the matter and the parties may be present for the deliberations, however, no further testimony will be taken.”*

The board may then hear additional appeals if there are any others on the docket for the day, or may decide to deliberate the appeal they have just heard prior to conducting another hearing. The Virginia Freedom of Information Act provides limited exceptions for going into closed session (legal advice from counsel on pending or potential litigation, etc.) for deliberations and there are procedural requirements which must be met in exercising that option, so if deliberations are not to be conducted in open session, it is advisable to discuss going into closed session with a legal representative prior to any such action.

VOTING AND VERBAL DECISION

In deliberations, it is permissible for discussions to ensue prior to a motion to resolve the case, or for any board member to move to resolve the case. The chair would yield the floor to any board member wishing to speak while controlling the overall debate. Board members may state their position and reasons for such position as a means to illicit all perspectives to assure complete and thorough deliberations. If there is a motion and a second to the motion to resolve the appeal, the chair may ask for discussion on the motion prior to calling for a vote. The motion should be made in a form similar to “I move to uphold (or overturn or amend) the decision of the code official for the following reasons ...” If the code official’s decision is to be amended, the amendments should be clearly stated in the motion.

Once deliberations are complete and a motion to resolve the appeal has been made and seconded, the vote is taken. The chair may exercise the option of abstaining from the vote unless it is necessary to break a tie vote. If the motion passes, it then becomes the verbal decision of the board for the appeal case. The decision is to be reflected in the minutes for the meeting, which should be prepared by the secretary and held for ratification at the next meeting of the board. The verbal decision shall be explained in writing and signed by the chair.

CHAPTER 5: THE DECISION

WRITTEN DECISION

As discussed in Chapter 4 of this manual, the verbal decision of the board in an appeal shall be explained in writing and signed by the Chair. It is the chair's responsibility, to assure that the written decision matches the minutes and accurately conveys the verbal decision voted upon by the board.

STATEMENT OF FURTHER RIGHT OF APPEAL

The appeals provisions of both the USBC and the SFPC require a statement of further right of appeal to be contained in the written decision. See Appendix C of this manual for the wording to be used.

NOTIFICATION OF DECISION

In addition, the appeals provisions of both the USBC and the SFPC call for the written decision of the local appeals boards to be sent to the parties by certified mail. This ensures that there is a record of when the decision was received by the parties, which then is used to determine whether any further appeal is filed within the timeframes required by the codes.

APPENDIX A: SAMPLE BYLAWS

Local Board of Appeals (Substitute actual name of board)

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chair and vice-chair and appoint a secretary in the month of _____.
- 1-2. The chair shall preside at meetings and hearings and shall decide points of order or procedure.
- 1-3. The vice-chair shall assume the duties of the chair in the chair's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the _____ of each month at a designated time, unless there are no pending appeals before the board.
- 2-2. Special meetings may be called by the chair, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order or other parliamentary procedure.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official on a form provided by the board and any applicable fees paid. The code official shall transmit the appeal application form to the secretary of the board along with all papers constituting the record of action upon which the appeal is based.

- 3-2. The applicant shall provide the secretary with all information requested on the form provided by the board and any such additional information or evidence as may be reasonably required consideration of the matter.
- 3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.
- 3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.
- 3-5. The applicant may appear in his own behalf at the hearing or may be represented by legal counsel or an agent.
- Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.
- 3-6. The final decision on any appeal to the local board of appeals shall be in the form of a written decision that matches the minutes and accurately conveys the verbal decision voted upon by the board.
- 3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the written decision by the chair, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

- 4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.
- 4-2. All records of the board shall be public records.

Attest: _____
Chair

Secretary

APPENDIX B: SAMPLE APPEAL APPLICATION FORM

Appeal No. _____

Application for Appeal

Locality

I (we) _____ of _____
(Name) (Mailing address)

respectfully request that the Local Board of Appeals review the decision made on

_____, 20__ by the code official.

Description of Decision Being Appealed: _____

Location of Property Involved: _____

What is the applicant's interest in the property?

- ☐ Owner
- ☐ Contractor
- ☐ Owner's agent
- ☐ Other (explain) _____

Relief Sought: _____

Attach the Decision of the Code Official and Any Other Pertinent Documents.

Signature of Applicant

Filed at _____, Virginia, the _____ day of _____, 20__

APPENDIX C: SAMPLE WRITTEN DECISION

Written Decision

Appeal No. _____

IN RE: _____ v. _____

The appeal is hereby _____, for the reasons set out below:

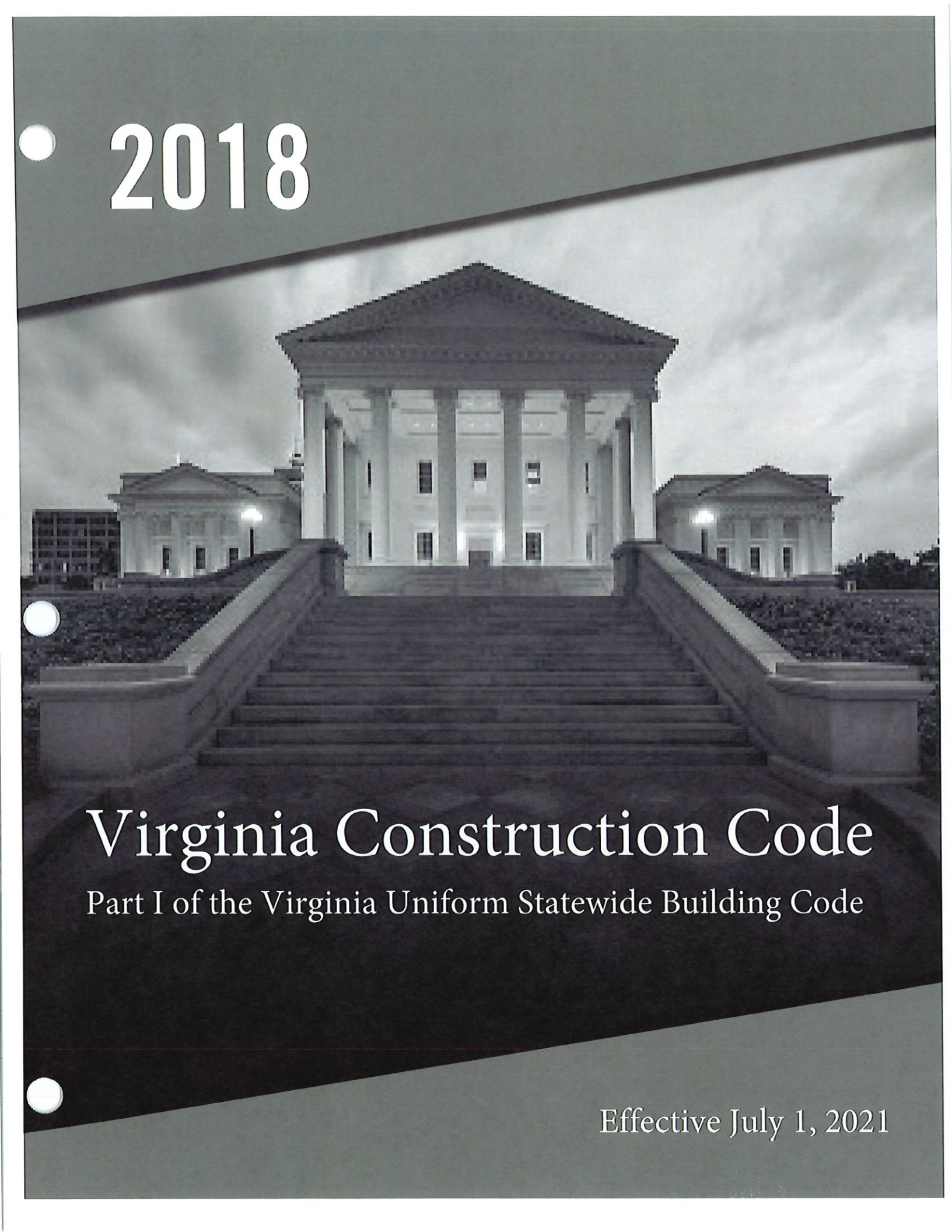
Date: _____

Signature _____
Chair of Local Board of Appeals

Note: Any person who was a party to the appeal my appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150, or <https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>.

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**TAB 3: 2018 VIRGINIA CONSTRUCTION
CODE SECTION 119**



2018

Virginia Construction Code

Part I of the Virginia Uniform Statewide Building Code

Effective July 1, 2021

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ADMINISTRATION

118.5 Posting of notice. If the notice is unable to be issued by personal service as required by Section 118.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

118.6 Posting of placard. In the case of an unsafe building or structure, if the notice is not complied with, a placard with the following wording shall be posted at the entrance to the building or structure:

"This Building (or Structure) is Unfit for Habitation and its Use or occupancy has been prohibited by the building official."

After an unsafe building or structure is placarded, entering the unsafe building or structure shall be prohibited except as authorized by the building official to make inspections, to perform required repairs, or to demolish the unsafe building or structure. In addition, the placard shall not be removed until the unsafe building or structure is determined by the building official to be safe to occupy. The placard shall not be defaced.

118.7 Emergency repairs and demolition. To the extent permitted by the *locality*, the building official may authorize emergency repairs to unsafe buildings or structures when it is determined that there is an immediate danger of any portion of the unsafe building or structure collapsing or falling and when life is endangered. Emergency repairs may also be authorized when there is a code violation resulting in a serious and imminent threat to the life and safety of the occupants or public. The building official shall be permitted to authorize the necessary work to make the unsafe building or structure temporarily safe whether or not legal action to compel compliance has been instituted.

In addition, whenever an owner of an unsafe building or structure fails to comply with a notice to demolish issued under Section 118.4 in the time period stipulated, the building official shall be permitted to cause the unsafe building or structure to be demolished. In accordance with Sections 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the *locality* may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (Section 58.1-3940 et seq.) and 4 (Section 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Building officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing.

118.8 Closing of streets. When necessary for public safety, the building official shall be permitted to order the temporary closing of sidewalks, streets, public ways, or premises adjacent to unsafe buildings or structures and prohibit the use of such spaces.

SECTION 119 APPEALS

119.1 Establishment of appeals board. In accordance with Section 36-105 of the Code of Virginia, there shall be established within each *local building department* a *LBBCA*. Whenever a county or a municipality does not have such a *LBBCA*, the *local governing body* shall enter into an agreement with the *local governing body* of another county or municipality or with some other agency, or a state agency approved by *DHCD* for such appeals resulting therefrom. Fees may be levied by the *local governing body* in order to defray the cost of such appeals. In addition, as an authorization in this code, separate *LBBCAs* may be established to hear appeals of different enforcement areas such as electrical, plumbing or mechanical requirements. Each such *LBBCA* shall comply with the requirements of this section. The *locality* is responsible for maintaining a duly constituted *LBBCA* prepared to hear appeals within the time limits established in this section. The *LBBCA* shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the *locality*.

119.2 Membership of board. The *LBBCA* shall consist of at least five members appointed by the *locality* for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the *locality*. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

119.3 Officers and qualifications of members. The *LBBCA* shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The *locality* or the chief executive officer of the *locality* shall appoint a secretary to the *LBBCA* to maintain a detailed record of all proceedings. Members of the *LBBCA* shall be selected by the *locality* on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the *construction* industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the *locality* shall not serve as members of the *LBBCA*.

119.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (Section 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

119.5 Right of appeal; filing of appeal application. Any person aggrieved by the *local building department's* application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the *LBBCA*. The applicant shall submit a written request for appeal to the *LBBCA* within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the *LBBCA* to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Note: To the extent that a decision of a building official pertains to amusement devices there may be a right of appeal under the VADR.

119.6 Meetings and postponements. The *LBBCA* shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the *LBBCA* has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application if requested or by electronic means at least 14 calendar days prior to the date of the hearing, unless a lesser time period is agreed to by all the parties involved in the appeal. When a quorum of the *LBBCA* is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The *LBBCA* shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

119.7 Hearings and decision. All hearings before the *LBBCA* shall be open meetings and the appellant, the appellant's representative, the *locality's* representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The *LBBCA* shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the *LBBCA* shall be final if no further appeal is made. The decision of the *LBBCA* shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the *State Review Board* by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the *State Review Board*, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

119.8 Appeals to the State Review Board. After final determination by the *LBBCA* in an appeal, any person who was a party to the appeal may further appeal to the *State Review Board*. In accordance with Section 36-114 of the Code of Virginia, the *State Review Board* shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. In accordance with Section 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building official for state-owned buildings or structures shall be made directly to the *State Review Board*. The application for appeal shall be made to the *State Review Board* within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a *LBBCA*, a copy of the building official's decision and the written decision of the *LBBCA* shall be submitted with the application for appeal to the *State Review Board*. Upon request by the office of the *State Review Board*, the *LBBCA* shall submit a copy of all pertinent information from the record of the appeal. In the case of

ADMINISTRATION

appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the *State Review Board*. Procedures of the *State Review Board* are in accordance with Article 2 (Section 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

119.9 Hearings and decision. All hearings before the State Review Board shall be open meetings and the chair shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review Board shall have the power to uphold, reverse, or modify the decision of the LBBCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that an informal conference pursuant to § 2.2-4019 of the Code of Virginia shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chair and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording: "As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with the Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period."

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TAB 4: 2018 VIRGINIA MAINTENANCE
CODE SECTOIN 107



2018

Virginia Maintenance Code

Part III of the Virginia Uniform Statewide Building Code

Effective July 1, 2021

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at the entrance to the structure. After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure. In addition, the placard shall not be removed until the structure is determined by the code official to be safe to occupy, nor shall the placard be defaced.

106.6 Revocation of certificate of occupancy. If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the VCC.

106.7 Vacant and open structures. When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 106.5, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

106.8 Emergency repairs and demolition. To the extent permitted by the locality, the code official may authorize emergency repairs to unsafe structures or structures unfit for human habitation when it is determined that there is an imminent danger of any portion of the unsafe structure or structure unfit for human habitation collapsing or falling and when life is endangered. Emergency repairs may also be authorized where there is a code violation resulting in the immediate serious and imminent threat to the life and safety of the occupants. The code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, whenever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 106.3 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with §§ 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58, 1 of the Code of Virginia.

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing. In addition, historic building demolition may be prevented by authority granted to local historic review boards in accordance with § 15.2-2306 of the Code of Virginia unless determined necessary by the code official.

106.9 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

SECTION 107 APPEALS

107.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

ADMINISTRATION

107.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

107.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

107.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

107.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

107.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

107.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse, or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of the written decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

107.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

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TAB 5: RELATED SECTIONS OF THE CODE OF VIRGINIA

- a) §36-105 – Enforcement of the Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits
- b) §2.2-3100 – State and Local Government Conflict of Interests Act

Relative Sections
of the
Code of Virginia

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36-105

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§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom.

For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event that such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries. Additionally, the local governing body of a county or municipality may enter into an agreement with the governing body of another county or municipality for the provision to such county or municipality's local building department of technical assistance with administration and enforcement of the Building Code.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that

there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to § 15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business

hours established by the locality. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

1972, c. 829; 1974, c. 433; 1977, cc. 423, 613; 1978, c. 578; 1981, c. 498; 1982, c. 267; 1992, c. 73; 1993, c. 328; 1994, cc. 214, 256, 574; 1995, cc. 95, 523, 702, 827; 1999, cc. 333, 341; 2001, c. 119; 2002, c. 720; 2003, c. 650; 2004, c. 851; 2006, c. 424; 2007, c. 291; 2009, cc. 181, 184, 551, 586; 2010, c. 63; 2012, cc. 494, 607; 2014, c. 354; 2018, c. 222.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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2.2-3100

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State and Local Government Conflict of Interests Act

§ 2.2-3100. Policy; application; construction

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § 18.2-438 et seq.) and 3 (Bribery of Public Servants and Party Officials, § 18.2-446 et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. 844; 2003, c. 694; 2008, c. 532; 2014, cc. 792, 804.

§ 2.2-3100.1. Copy of chapter; review by officers and employees

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

2004, cc. 134, 392.

§ 2.2-3101. Definitions

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the

private profession or occupation or volunteer service of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of, or any meal provided for attendance at such meeting by, the Commonwealth, its 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; (xiv) gifts with a value of less than \$20; (xv) 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; or (xvi) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse or the donee's son-in-law or daughter-in-law. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § [2.2-3114](#).

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. 74, 724; 1995, c. 495; 1996, c. 77; 1997, c. 641; 2001, c. 844; 2003, c. 694; 2004, cc. 134, 392; 2012, cc. 345, 771; 2013, c. 475; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774; 2017, cc. 829, 832.

§ 2.2-3102. Application

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.3; 2001, c. 844.

§ 2.2-3103. Prohibited conduct

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;
6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;
8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or

10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. 663, 815, 851; 2001, c. 844; 2006, cc. 787, 892; 2015, c. 574.

§ 2.2-3103.1. Certain gifts prohibited

A. For purposes of this section:

"Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who are members of a public, civic, charitable, or professional organization, (ii) who are from a particular industry or profession, or (iii) who represent persons interested in a particular issue.

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition.

D. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate

or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of \$100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

E. Notwithstanding the provisions of subsections B and C, such officer or employee or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding \$100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of \$100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship.

Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or 30-111.

G. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of \$100 that is paid for or provided by a person listed in subsection B or C when the officer, employee, or candidate has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

H. During the pendency of a civil action in any state or federal court to which the Commonwealth is a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General who is subject to the provisions of this chapter shall not solicit, accept, or receive any gift from any person that he knows or has reason to know is a person, organization, or business that is a party to such civil action. A person, organization, or business that is a party to such civil action shall not knowingly give any gift to the Governor or the Attorney General or any of their employees who are subject to the provisions of this chapter.

I. The \$100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

J. The provisions of this section shall not apply to any justice of the Supreme Court of Virginia,

judge of the Court of Appeals of Virginia, judge of any circuit court, or judge or substitute judge of any district court. However, nothing in this subsection shall be construed to authorize the acceptance of any gift if such acceptance would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

2014, cc. 792, 804;2015, cc. 763, 777;2017, cc. 829, 832.

§ 2.2-3103.2. Return of gifts

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of \$100 as provided in subsection B or C of § 2.2-3103.1.

2015, cc. 763, 777.

§ 2.2-3104. Prohibited conduct for certain officers and employees of state government

For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee. This prohibition shall be in addition to the prohibitions contained in § 2.2-3103.

For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

To the extent this prohibition applies to the Governor's Secretaries, "agency" means all agencies assigned to the Secretary by law or by executive order of the Governor.

Any person subject to the provisions of this section may apply to the Council or Attorney General, as provided in § 2.2-3121 or 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

1994, cc. 727, 776, § 2.1-639.4:1; 2001, c. 844;2013, c. 648;2014, cc. 792, 804;2015, cc. 763, 777.

§ 2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth's Development Opportunity Fund

A. Neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the

matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than \$50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)(i) during the period between the submission of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii) following the submission of a proposal under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive agreement thereunder.

B. The provisions of this section shall apply only for public contracts, proposals, or comprehensive agreements where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as set forth in § 2.2-4302.1.

C. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater, and the contribution, gift, or other item shall be returned to the donor. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

2010, c. 732; 2011, c. 624; 2013, c. 583; 2015, cc. 763, 777; 2016, c. 641.

§ 2.2-3104.02. Prohibited conduct for constitutional officers

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

2011, c. 591.

§ 2.2-3104.1. Exclusion of certain awards from scope of chapter

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.

2001, c. 48, § 2.1-639.4:2; 2008, cc. 478, 497.

§ 2.2-3104.2. Ordinance regulating receipt of gifts

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit

on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

2003, c. 694.

§ 2.2-3105. Application

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title.

1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. 844; 2003, c. 694.

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;
2. The personal interest of an officer or employee of a public institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;
3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;
4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;
6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;
7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in the Commonwealth that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;
8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or
9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in the Commonwealth or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the Eastern Virginia

Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

1987, Sp. Sess., c. 1, § 2.1-639.6; 1989, c. 74; 1991, c. 470; 1993, c. 876; 1995, c. 403; 1998, c. 838; 2001, c. 844; 2002, cc. 87, 478; 2003, c. 646; 2006, c. 839; 2013, c. 583; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils

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 (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1987, Sp. Sess., c. 1, § 2.1-639.7; 2001, c. 844.

§ 2.2-3108. Prohibited contracts by members of school boards

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1996, c. 548, § 2.1-639.7:1; 2001, c. 844.

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies

A. No other officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that

competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;
4. Members of local governing bodies who are subject to § 2.2-3107;
5. Members of local school boards who are subject to § 2.2-3108; or
6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

1987, Sp. Sess., c. 1, § 2.1-639.8; 1996, c. 548; 2001, c. 844; 2004, c. 530; 2009, c. 862; 2013, c. 583; 2015, c. 699.

§ 2.2-3109.1. Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities

A. As used in this section, "hospital authority" means a hospital authority established pursuant to Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 or an Act of Assembly.

B. The provisions of § 2.2-3109 shall not apply to:

1. The personal interest of an officer or employee of a hospital authority in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are licensed members of the medical profession or hold administrative support positions at the hospital authority, (ii) the governing board of the hospital authority finds that it is in the best interests of the hospital authority and the county, city, or town for such dual employment to exist, and (iii) after such finding, the governing board of the hospital authority ensures that neither the officer or employee, nor the immediate family member, has sole authority to supervise, evaluate, or make personnel decisions regarding the other;
2. Subject to approval by the governing board of the hospital authority, an officer or employee's personal interest in a contract between his hospital authority and a professional entity that operates a clinical practice at any medical facilities of such other hospital authority and of which such officer or employee is a member or employee;
3. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract for research and development or commercialization of intellectual property

between the hospital authority and a business in which the employee has a personal interest, provided (i) the officer or employee's personal interest has been disclosed to and approved by the hospital authority prior to the time at which the contract is entered into; (ii) the officer or employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the local hospital authority has established a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its governing body; and (iv) no later than December 31 of each year, the local hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of such hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council; or

4. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract between the hospital authority and a business in which the officer or employee has a personal interest, provided (i) the personal interest has been disclosed to the hospital authority prior to the time the contract is entered into; (ii) the officer or employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the officer or employee does not participate in the hospital authority's decision to contract; (iv) the president or chief executive officer of the hospital authority finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by any of the hospital authority's medical facilities or any of its affiliated organizations, or is otherwise necessary for the fulfillment of its mission, including but not limited to the acquisition of drugs, therapies, and medical technologies; and (v) no later than December 31 of each year, the hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council.

C. Notwithstanding the provisions of subdivisions B 3 and B 4, if the research and development or commercialization of intellectual property or the officer or employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interest, the policies established by the hospital authority pursuant to such federal requirements shall constitute compliance with subdivisions B 3 and B 4, upon notification by the hospital authority to the Virginia Conflict of Interest and Ethics Advisory Council by January 31 of each year of evidence of its compliance with such federal policies and regulations.

D. The governing body may delegate the authority granted under subdivision B 2 to the president or chief executive officer of hospital authority. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision B 3. In those instances where the board has delegated such authority, on or before December 1 of each year, the president or chief executive officer of the hospital authority shall

file a report with the relevant governing body disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the governing body.

2015, c. 699; 2016, cc. 773, 774.

§ 2.2-3110. Further exceptions

A. The provisions of Article 3 (§ 2.2-3106 et seq.) shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;
2. The publication of official notices;
3. Contracts between the government or school board of a county, city, or town with a population of less than 10,000 and an officer or employee of that county, city, or town government or school board when the total of such contracts between the government or school board and the officer or employee of that government or school board or a business controlled by him does not exceed \$5,000 per year or such amount exceeds \$5,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.2-3115;
4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$5,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of three percent of the contracting firm's equity or such ownership interest and income from the contracting firm is in excess of \$5,000 per year, provided that (i) the officer or employee's ownership interest, or ownership and income interest, and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) the officer or employee does not participate on behalf of the institution in negotiating the contract or approving the

contract;

6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

7. Contracts for the purchase of goods or services when the contract does not exceed \$500;

8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;

9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee;

10. Contracts entered into by an officer or employee or immediate family member of an officer or employee of a soil and water conservation district created pursuant to Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 to participate in the Virginia Agricultural Best Management Practices Cost-Share Program (the Program) established in accordance with § 10.1-546.1 or to participate in other cost-share programs for the installation of best management practices to improve water quality. This subdivision shall not apply to subcontracts or other agreements entered into by an officer or employee of a soil and water conservation district to provide services for implementation of a cost-share contract established under the Program or such other cost-share programs; or

11. Contracts entered into by an officer or immediate family member of an officer of the Marine Resources Commission for goods or services for shellfish replenishment, provided that such officer or immediate family member does not participate in (i) awarding the contract, (ii) authorizing the procurement, or (iii) authorizing the use of alternate procurement methods pursuant to § 28.2-550.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f)(4) of former § 2.1-348 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is \$35,000 or more.

1987, Sp. Sess., c. 1, § 2.1-639.9; 1990, c. 51; 1993, c. 303; 1994, cc. 450, 713; 1997, c. 641; 2001, c. 844; 2006, c. 839; 2010, cc. 301, 304; 2016, cc. 351, 531; 2017, cc. 150, 546, 829, 832; 2018, c. 742.

§ 2.2-3111. Application

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

1987, Sp. Sess., c. 1, § 2.1-639.10; 2001, c. 844.

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision B 1, 2, or 3. Any disqualification under the provisions of this subsection shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by subsection E of § 2.2-3114 or subsection F of § 2.2-3115 and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time.

B. An officer or employee of any state or local government or advisory agency who has a personal interest in a transaction may participate in the transaction:

1. If he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § 2.2-3114 or subsection H of § 2.2-3115;
2. When a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § 2.2-3114 or subsection I of § 2.2-3115; or
3. If it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

C. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

D. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members.

Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale,

exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

E. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

F. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

G. The provisions of this section shall not prevent any justice of the Supreme Court of Virginia, judge of the Court of Appeals of Virginia, judge of any circuit court, judge or substitute judge of any district court, member of the State Corporation Commission, or member of the Virginia Workers' Compensation Commission from participating in a transaction where such individual's participation involves the performance of adjudicative responsibilities as set forth in Canon 3 of the Canons of Judicial Conduct for the State of Virginia. However, nothing in this subsection shall be construed to authorize such individual's participation in a transaction if such participation would constitute a violation of the Canons of Judicial Conduct for the State of Virginia.

1987, Sp. Sess., c. 1, § 2.1-639.11; 2001, c. 844; 2003, c. 694; 2007, c. 613; 2012, c. 429; 2017, cc. 829, 832.

§ 2.2-3113. Application

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.12; 2001, c. 844.

§ 2.2-3114. Disclosure by state officers and employees

A. In accordance with the requirements set forth in § 2.2-3118.2, the Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Board of Directors of the Virginia Alcoholic Beverage Control Authority, members of the Board of the Virginia College Savings Plan, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is required on the form prescribed by the

Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Board of the Virginia College Savings Plan, and the Virginia Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that prescribed by the Council pursuant to § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be made available by the Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. All forms shall be maintained as public records for five years in the office of the Council. Such forms shall be made public no later than six weeks after the filing deadline.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 1 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or

provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

H. Notwithstanding any other provision of law, chairs of departments at a public institution of higher education in the Commonwealth shall not be required to file the disclosure form prescribed by the Council pursuant to § 2.2-3117 or 2.2-3118.

1987, Sp. Sess., c. 1, § 2.1-639.13; 1988, cc. 767, 849; 1992, c. 710; 1993, c. 303; 1997, c. 641; 2001, cc. 217, 844; 2003, c. 694; 2005, c. 169; 2006, c. 779; 2014, cc. 225, 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774; 2017, cc. 829, 832; 2018, c. 528.

§ 2.2-3114.1. Filings of statements of economic interests by General Assembly members

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ 30-110 and 30-111 of the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) shall suffice for the purposes of this chapter. The Secretary of the Commonwealth may obtain from the Council a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § 2.2-3114. No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § 2.2-3114.

2002, c. 36; 2015, cc. 763, 777.

§ 2.2-3114.2. Report of gifts by certain officers and employees of state government

The Governor, Lieutenant Governor, Attorney General, and each member of the Governor's Cabinet shall file, on or before May 1, a report of gifts accepted or received by him or a member of his immediate family during the period beginning on January 1 complete through adjournment sine die of the regular session of the General Assembly. The gift report shall be on a form prescribed by the Council and shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. For purposes of this section, "adjournment sine die" means adjournment on the last legislative day of the regular session and does not include the ensuing reconvened session. Any gifts reported pursuant to this section shall not be listed on the annual disclosure form prescribed by the Council pursuant to § 2.2-3117.

2016, cc. 773, 774.

§ 2.2-3115. Disclosure by local government officers and employees

A. In accordance with the requirements set forth in § 2.2-3118.2, the members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, the members of the governing

body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such a statement annually on or before February 1, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

In accordance with the requirements set forth in § 2.2-3118.2, persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before February 1.

B. In accordance with the requirements set forth in § 2.2-3118.2, nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before February 1.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after the filing deadline.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subsection A of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head

of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. In accordance with the requirements set forth in § 2.2-3118.2, such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before February 1. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after the filing deadline. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 1 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

J. The clerk of the governing body or school board that releases any form to the public pursuant to this section shall redact from the form any residential address, personal telephone number, or signature contained on such form; however, any form filed pursuant to subsection G shall not have any residential addresses redacted.

1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. 495; 1996, c. 526; 2000, c. 317; 2001, cc. 217, 844; 2003, c. 694; 2012, c. 429; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774; 2017, cc. 829, 832.

§ 2.2-3116. Disclosure by certain constitutional officers

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests prescribed by the Council pursuant to § 2.2-3117. These officers shall file statements annually on or before February 1. Candidates shall file statements as required by § 24.2-502. Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

1988, c. 469, § 2.1-639.14:1; 2001, c. 844; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774; 2017, cc. 829, 832.

§ 2.2-3117. Disclosure form

The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections A and E of § 2.2-3115 shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

1987, Sp. Sess., c. 1, § 2.1-639.15; 1988, c. 849; 1994, cc. 724, 733, 777, 793; 1995, c. 763; 1996, c. 77; 1997, cc. 577, 844; 1998, c. 732; 2001, c. 844; 2006, cc. 310, 779, 787, 892; 2008, c. 239; 2010, c. 670; 2012, c. 429; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3118. Disclosure form; certain citizen members

The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356.

1988, c. 849, § 2.1-639.15:1; 1996, c. 77; 2001, c. 844; 2006, c. 779; 2011, cc. 123, 177; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees

A. The filing of a single current statement of economic interests by an individual required to file the form prescribed in § 2.2-3117 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual during the course of a calendar year. The filing of a single current financial disclosure statement by an individual required to file the form prescribed in § 2.2-3118 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual and requiring the filing of the § 2.2-3118 form during the course of a calendar year.

B. Any individual who has met the requirement for annually filing a statement provided in § 2.2-

3117 or 2.2-3118 shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within 12 months after filing such annual statement.

2005, c. 397; 2014, cc. 792, 804; 2016, cc. 773, 774; 2018, c. 529.

§ 2.2-3118.2. Disclosure form; filing requirements

A. An officer or employee required to file an annual disclosure on or before February 1 pursuant to this article shall disclose his personal interests and other information as required on the form prescribed by the Council for the preceding calendar year complete through December 31. An officer or employee required to file a disclosure as a condition to assuming office or employment shall file such disclosure on or before the day such office or position of employment is assumed and disclose his personal interests and other information as required on the form prescribed by the Council for the preceding 12-month period complete through the last day of the month immediately preceding the month in which the office or position of employment is assumed; however, any officer or employee who assumes office or a position of employment in January shall be required to only file an annual disclosure on or before February 1 for the preceding calendar year complete through December 31.

B. When the deadline for filing any disclosure pursuant to this article falls on a Saturday, Sunday, or legal holiday, the deadline for filing shall be the next day that is not a Saturday, Sunday, or legal holiday.

2017, cc. 829, 832.

§ 2.2-3119. Additional provisions applicable to school boards and employees of school boards; exceptions

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or
2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or

3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B 1, B 2, and B 3 shall apply only if the prior employment has been in the same school divisions where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

E. The provisions of this section shall not apply to employment by any school district of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board, provided that (i) the member certifies that he had no involvement with the hiring decision and (ii) the superintendent certifies to the remaining members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board had any involvement with the hiring decision.

F. The provisions of this section shall not apply to the employment by any school district of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any division superintendent, provided that (i) the superintendent certifies that he had no involvement with the hiring decision and (ii) the assistant superintendent certifies to the members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that the superintendent of the division had no involvement with the hiring decision.

1987, Sp. Sess., c. 1, § 2.1-639.16; 1994, c. 758; 1995, c. 186; 1997, c. 84; 2001, c. 844; 2010, cc. 676, 759; 2011, c. 517; 2017, cc. 146, 515; 2018, cc. 483, 520; 2019, c. 641.

§ 2.2-3120. Knowing violation of chapter a misdemeanor

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ 2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § 2.2-3112 or subsection D or F of § 2.2-3115 shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.17; 2001, c. 844; 2012, c. 429.

§ 2.2-3121. Advisory opinions

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General or a formal opinion or written informal advice of the Council made in response to his

written request for such opinion or advice and the opinion or advice was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion or advice.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth or a formal opinion or written informal advice of the Council made in response to his written request for such opinion or advice and the opinion or advice was made after a full disclosure of the facts regardless of whether such opinion or advice is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion or advice. The written opinion of the attorney for the Commonwealth shall be a public record and shall be released upon request.

C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his county, city, or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.18; 2001, c. 844; 2003, c. 694; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, c. 665; 2017, cc. 829, 832.

§ 2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

1987, Sp. Sess., c. 1, § 2.1-639.19; 2001, c. 844.

§ 2.2-3123. Invalidation of contract; rescision of sales

A. Any contract made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

1987, Sp. Sess., c. 1, § 2.1-639.20; 2001, c. 844.

§ 2.2-3124. Civil penalty from violation of this chapter

A. In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of §§ 2.2-3103 through 2.2-3112 shall be subject to a civil penalty in an amount equal to the amount of money or thing of value received as a result of such violation. If the thing of value received by the officer or employee in violation of §§ 2.2-3103 through 2.2-

3112 increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty. Further, all money or other things of value received as a result of such violation shall be forfeited in accordance with the provisions of § 19.2-386.33.

B. An officer or employee required to file the disclosure form prescribed by § 2.2-3117 who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to \$250. The Council shall notify the Attorney General of any state officer's or employee's failure to file the required form and the Attorney General shall assess and collect the civil penalty. The clerk of the school board or the clerk of the governing body of the county, city, or town shall notify the attorney for the Commonwealth for the locality in which the officer or employee was elected or is employed of any local officer's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The Council shall notify the Attorney General and the clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

1987, Sp. Sess., c. 1, § 2.1-639.21; 1994, cc. 727, 776; 2001, c. 844; 2012, cc. 283, 756; 2015, cc. 763, 777.

§ 2.2-3125. Limitation of actions

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.22; 2001, c. 844.

§ 2.2-3126. Enforcement

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;
2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;
3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this

chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.23; 2001, c. 844; 2003, c. 694.

§ 2.2-3127. Venue

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

1987, Sp. Sess., c. 1, § 2.1-639.24; 2001, c. 844.

§ 2.2-3128. Semiannual orientation course

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

2004, cc. 134, 392.

§ 2.2-3129. Records of attendance

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § 2.2-3128 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § 2.2-3704.

2004, cc. 134, 392.

§ 2.2-3130. Attendance requirements

Except as set forth in § 2.2-3131, each state filer shall attend the orientation course required in § 2.2-3128, as follows:

1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.
2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

2004, cc. 134, 392.

§ 2.2-3131. Exemptions

A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General and the Virginia Conflict of Interest and Ethics Advisory Council regarding appropriate course content.

2004, cc. 134, 392; 2014, cc. 792, 804.



Local Board of Building Code Appeals April 6, 2023

ADJOURNMENT

Mr. Gornowich moved, seconded by Ms. Aders to adjourn the meeting.

VOTE: Yes – Aders, Gornowich, Cline, Stankiewicz
 No – N/A
 Absent – Gillespie
 Abstain – N/A

VOICE VOTE

The meeting was adjourned at 8:43 p.m.

Approved by the Local Board of Building Code Appeals
Date: _____

LBBCA MEMBER TOWN EMAILS

FRONT ROYAL LOCAL BOARD OF BUILDING CODE APPEALS (LBBCA)

George E. Cline, Jr.

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LBBCA BY-LAWS

Town of Front Royal Local Building Code Appeals Board

Bylaws

Article 1: Officers

- 1.1 The local board of building code appeals shall organize and annually elect a chairman and a vice-chairman in the month of February.
- 1.2 The Town's Planning and Zoning Department will provide a member from its staff to serve the Board as its recording secretary.
- 1.3 The chairman shall preside at the meeting and hearings, shall decide points of order or procedure, and shall appoint any committees that are found to be necessary.
- 1.4 The vice-chairman shall assume the duties of the chairman in the chairman's absence, disability, or disqualification.
- 1.5 The secretary shall handle correspondence subject to these rules at the direction of the Board; shall send out notices required by these rules; shall keep the minutes of the Board's proceedings; and shall keep a file on each appeal that comes before the Board.

Article 2. Meetings:

- 2.1 Regular meetings of the Board for hearings of appeals shall be held on the first Thursday of each month at 6:00 p.m., except as may be canceled by a majority of the Board if no appeals are pending, in which instance no meeting shall be held.
- 2.2 Special meetings may be called by the chairman, provided at least five (5) days written notice of such meeting is given each member.
- 2.3 A majority of the full membership of the Board shall constitute a quorum.
- 2.4 Business conducted at meetings of the Board shall follow Robert's Rules of Order in all matters in which they are applicable.
- 2.5 The Board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals:

- 3.1 Appeals to the Board shall be filed with the Property Maintenance Official on a form provided by the Town's Planning and Zoning Department.
- 3.2 The Property Maintenance Official shall transmit the appeal to the secretary of the Board along with all papers constituting the record of action upon which the appeal is based.
- 3.3 The applicant shall provide the secretary with all information requested on the form provided by the Board, and with any such additional information and data as may be required by the Board to advise the Board fully with the reference to the application for appeal.
- 3.4 Applications for appeal must be on the proper form.
- 3.5 Failure by the applicant to furnish all required information to the Board may be grounds for the Board to dismiss the appeal.
- 3.6 An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days.
- 3.7 Applications for appeal will be heard in the order in which they are received.
- 3.8 The secretary of the Board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such info action.
- 3.9 The applicant may appear in his own behalf at the hearing or may be represented by counsel or an agent.
- 3.10 Both the applicant and the Property Maintenance Official may speak and present evidence to the appeal and any person whose interests are affected may speak and present evidence for or against the issue. Speakers will be limited to a thirty (30) minute time frame.
- 3.11 The applicant shall be given opportunity for a final rebuttal, not to exceed fifteen (15) minutes.
- 3.12 The final decision on any appeal to the Board shall be in the form of a resolution approved by a majority of the Board members present and voting.
- 3.13 The Board shall notify the interested parties and the code official of the decision within seven (7) days after signing of the resolution by the

chairman, and in any event, within fourteen (14) days after the meeting in which the application for appeal was filed.

Article 4. Records:

- 4.1 A complete file on each appeal shall be kept by the secretary as part of the records of the local Board.
- 4.2 All records of the Board shall be public records.

REVIEW OF CODE UPDATE CHANGES



2021 Code Change Training Series

Companion Guide

1st Edition



2021

2021 Code Change Training: Virginia Maintenance Code

101.1 – Change to “VPMC”



- Historically, Virginia has shortened the name to “Virginia Maintenance Code” or “VMC”
- This has been changed to "Virginia Property Maintenance Code" and "VPMC" to eliminate confusion with the VA Mechanical Code (VMC).

101.1 Short title.

The Virginia Uniform Statewide Building Code, Part III, the Virginia Maintenance Code, may be cited as the “Virginia Property Maintenance Code”, or as the “VMC” the short title of “VPMC”

Significant Definition Change: *Unsafe Structure* revised; *Structure Unfit for Human Occupancy* deleted



Overall intent of this code change (Proposal PM103.2-21): simplify the unsafe building provisions of the VPMC and eliminate the two versions of “unsafe” (unsafe structure and structure unfit for human occupancy) and **combine them into one definition and process.**

UNSAFE STRUCTURE. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because of, but not limited to, any of the following conditions:

1. The structure contains unsafe equipment;
2. The structure is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely;
3. The structure is unsecured or open; *-vacant*
4. The degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment;
5. The required plumbing and sanitary facilities are inoperable.

- There are numerous VPMC Code sections impacted – summary of changes shown below:
 - **103.2 Maintenance requirements** – Removes reference to *structure unfit for human occupancy*.
 - **105.2 Notices reports and orders** – *unsafe structure* notice is added to the list of notices detailed in this section
 - **105.4 Notice of violation** – deletes exception #1, now addressed in 106
 - **105.6 Further action when violation not corrected** – adds notice of *unsafe structure*
 - **105.6.1 Further action for corrected violations** – adds notice of *unsafe structure*

○ **SECTION 106 - UNSAFE STRUCTURES OR
STRUCTURES UNFIT FOR HUMAN OCCUPANCY –**

Section title updated

- **106.1 General** – Removes reference to *structure unfit for human occupancy* and. “razed or removed” was replaced with the term “demolished” for consistency as the term is used in other sections within Section 106.
- ~~**106.2 inspection of unsafe or unfit structures**~~ – section deleted
- ~~**106.3 notice of unsafe structure or structure unfit for human occupancy**~~ – Removes reference to *structure unfit for human occupancy*.
- **106.4 vacating unsafe structure** – Code language clarified
- **106.5 posting of placard** – Removes references to *structure unfit for human occupancy* and added the reference to *unsafe structures*.
- **106.6 revocation of certificate of occupancy** – Removes references to *structure unfit for human occupancy*
- **106.7 vacant and open structures** – Removes references to *structure unfit for human occupancy*
- **106.8 emergency repairs and demolition** – Removes references to *structure unfit for human occupancy*
- **106.9 closing of streets** – Removes references to *structure unfit for human occupancy*

103.2.3 Responsibility



103.2.3 Responsibility.

The owner of a structure shall provide and maintain all buildings, structures, systems, facilities and associated equipment in compliance with this code unless it is specifically expressed or implied that it is the responsibility of the tenant or occupant.

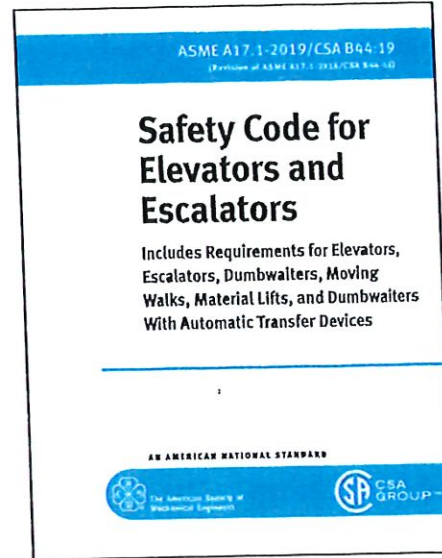
Note: Where an owner states that a tenant is responsible for performing any of the owner's duties under this code, the code official may request information needed to verify the owner's statement, as allowed by § 55-11209 A 5 of the Code of Virginia. A tenant's responsibility is limited and protected under the Virginia Residential Landlord and Tenant Act.

- Added to note to make code official aware that the landlord and tenant act may limit these responsibilities.

606.1 Elevators, Escalators and Dumbwaiters

- Makes the requirements of ASME A17.1 (Safety Code for Elevators and Escalators, 2019 ed.) Appendix N (Recommended inspection and test intervals) mandatory and enforceable

Additional details from the proponent: "This proposal (PM606.1-21) is an effort to correct the unintended consequence of deleting reference to Appendix N from the International Property Maintenance Code. These periodic tests are essential to maintaining operational safety of the equipment. The section is re-ordered so that inspection types follow the inspection requirement and display of the certificate of inspection follows inspection types. Since dumbwaiters have historically been omitted from the annual inspection requirement they are also deleted from testing and display of certificate of inspection while maintenance in compliance with ASME A17.1 remains."



Cleanup of inspection and constructions provisions

This section includes several changes designed to remove invalid construction provisions for installation and repairs, and construction related inspection provisions. (Items already addressed in the VCC, VRC, VEBC or other adopted codes)

505.3 ~~Inspection and testing of~~ Backflow prevention systems

505.3.1 ~~Inspections~~ Maintenance

505.3.2 Testing

- Language updated to “maintenance and testing” because these provisions are outside the scope of a maintenance code. Inspection and testing for new installations or repairs are already addressed in the VCC, VEBC, VRC or VPC. (Proposal PM505.3-21)

703 Fire-resistance Ratings

704 Fire Protection Systems

705 Carbon Monoxide Alarms and Detection

- Invalid construction and retrofit provisions were removed from these sections because new installations or repairs are already addressed in the VCC, VEBC, VRC or VPC. (Proposals PM703.2-21, PM704.1.1-21, and PM705.1-21)

704.3 Systems out of service

704.4 Removal or tampering with equipment

704.5 Fire department connection access

- Removes code provisions that are the responsibility of the Fire Official and already enforced under the SFPC. (PM704.3-21, PM704.4-21, and PM704.5-21)