

2021 EDITION

# A Guide to Legal Research in Virginia

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Editor: Joyce Manna Janto



Continuing Legal Education  
by the Virginia Law Foundation



## A Guide to Legal Research in Virginia

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## CHAPTER 6

### LOCAL LAW

#### 6.1 INTRODUCTION

Local law is an important and frequent topic of research because so many activities are governed at the county or municipal level. Local law plays a prominent role in education, safety, housing, taxation, zoning, traffic, and environmental issues. This chapter describes local governments and local courts and provides information on primary and secondary sources of local law.

#### 6.2 FORMS AND FUNCTIONS OF LOCAL GOVERNMENTS

The Commonwealth of Virginia recognizes several types of local governments. Article VII of the Constitution of Virginia provides a framework for counties, cities, towns, and regional governments, which the General Assembly has fleshed out in general laws and special acts. General laws concerning local governments are in Title 15.2 of the Virginia Code.

Local governments are political subdivisions of the state created to carry out local governance.<sup>1</sup> The legislature determines the functions and powers of local governments, subject to constitutional guidelines.<sup>2</sup>

Virginia localities' powers are strictly interpreted in accordance with a rigid rule of construction known as Dillon's Rule.

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<sup>1</sup> See *Fry v. County of Albemarle*, 86 Va. 195, 197, 9 S.E. 1004, 1005 (1890) (describing counties); *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 417, 690 S.E.2d 84, 88 (2010) (analyzing General Assembly's grant of powers to municipal corporations).

<sup>2</sup> See Va. Const. art. VII, § 2.

Powers are limited to those that the General Assembly expressly grants, are necessarily or fairly implied from those powers, and are essential and indispensable.<sup>3</sup>

In general and absent a statutory waiver, counties share in the commonwealth's sovereign immunity from tort liability.<sup>4</sup> The immunity from tort liability of a municipal corporation such as a city or town involves a determination of in which of its dual capacities it was acting: governmental or proprietary. In their governmental capacity, municipal corporations act as agents of the state exercising certain powers and duties for the common public good, health, and safety. In general a municipal corporation is immune from tort liability in exercising governmental functions.<sup>5</sup> In their proprietary capacity, municipal corporations are acting for their private advantage, special corporate benefit, or pecuniary profit. A municipal corporation is not immune from tort liability in exercising proprietary functions.<sup>6</sup>

**6.201 Definitions.** The following are terms related to local government forms and functions, with references to some of the relevant Virginia Constitution and Code provisions:

**A. City.** A city is an "independent incorporated community which became a city as provided by law" before July 1, 1971,

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<sup>3</sup> See, e.g., *Marble Techs.*, 279 Va. at 417-18, 690 S.E.2d at 88-89 (addressing city's powers under Dillon's Rule); *Arlington Cnty. v. White*, 259 Va. 708, 712, 528 S.E. 2d 706, 708 (2000) (addressing county and its board of supervisors' powers under Dillon's Rule).

<sup>4</sup> See, e.g., *Seabolt v. County of Albemarle*, 283 Va. 717, 719-21, 724 S.E.2d 715, 716-17 (2012) (holding that county was immune from injury claim alleging negligent maintenance of public park); see also Va. Code § 8.01-195.3 (providing that the Virginia Tort Claims Act does not remove or diminish county, city, or town immunity).

<sup>5</sup> See, e.g., *City of Chesapeake v. Cunningham*, 268 Va. 624, 633-35, 604 S.E.2d 420, 426-27 (2004) (determining that city's design and planning related to its water supply system were governmental functions, and sovereign immunity protected it against a plaintiff's tort claims).

<sup>6</sup> See, e.g., *Woods v. Town of Marion*, 245 Va. 44, 47, 425 S.E.2d 487, 489 (1993) (holding that town was not immune from claim that it was negligent in routine operation of its waterworks and maintenance of its streets, which were proprietary functions).

“or which has within defined boundaries a population of 5,000 or more and which has become a city as provided by law.<sup>7</sup> Unlike cities in other states, Virginia’s cities are fully independent political subdivisions separate from their surrounding counties.

**B. Town.** A town is “any existing town or an incorporated community within one or more counties” that legally became a town before July 1, 1971, “or which has within defined boundaries a population of 1,000 or more and which has become a town as provided by law.”<sup>8</sup>

**C. County.** A county is a subdivision of the commonwealth that performs local governmental functions.<sup>9</sup>

**D. Regional Government.** A regional government is defined in the Virginia Constitution as a “unit of general government organized as provided by law within defined boundaries, as determined by the General Assembly.”<sup>10</sup> This type of entity is intended to address metropolitan issues that extend beyond the territorial limits of a single locality.<sup>11</sup>

**E. Service Authority.** A service authority is a single-purpose entity, such as a publicly controlled park, sewer, water, sanitation, or recreational facility authority.<sup>12</sup>

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<sup>7</sup> Va. Const. art. VII, § 1(2); *see also* Va. Code § 15.2-102 (defining terms as used in Title 15.2, including city, county, town, locality, municipal corporation, and governing body).

<sup>8</sup> Va. Const. art. VII, § 1(3); *see also* Va. Code § 15.2-102.

<sup>9</sup> *See, e.g., Mann v. County Bd. of Arlington Cnty.*, 199 Va. 169, 173, 98 S.E.2d 515, 518 (1957). *See also* Va. Const. art. VII, § 1(1).

<sup>10</sup> Va. Const. art. VII, § 1(4); *see also* Va. Const. art. VII, § 2 (regarding voter approval of regional government organization).

<sup>11</sup> *See* 2 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 799-801 (1974).

<sup>12</sup> *See, e.g.,* Va. Code tit. 15.2, chs. 51, 56, 57.

**F. Governing Bodies.** In general, the powers granted to counties, cities, and towns are vested in their governing bodies.<sup>13</sup> A city's or town's council and a county's board of supervisors<sup>14</sup> have authority to pass ordinances, levy taxes, appropriate funds, and generally administer the locality's government.<sup>15</sup>

**G. Charter.** A charter is a locality's organic law, analogous to a federal or state constitution.<sup>16</sup>

**H. Ordinance.** An ordinance is a legislative act passed by a locality's governing body and is the local counterpart of a federal or state statute.<sup>17</sup> Just as federal and state governments codify their statutes, many cities and counties organize and publish their ordinances as codes.

## 6.202 Sources of Local Government Law.

**A. Constitution and Statutes.** For provisions of the state constitution and statutes governing counties, cities, and towns, see generally Article VII of the Constitution of Virginia and Title 15.2 of the Virginia Code.<sup>18</sup>

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<sup>13</sup> Va. Code § 15.2-1401.

<sup>14</sup> See also Va. Code tit. 15.2, subtit. I (provisions regarding optional forms of county government).

<sup>15</sup> See generally Va. Code tit. 15.2, including ch. 9 (general powers of local governments), ch. 11 (powers of cities and towns), ch. 12 (powers and procedures of counties), ch. 14 (governing bodies of localities), ch. 22 (planning, subdivision of land and zoning).

<sup>16</sup> Links to the texts of the charters of Virginia cities and towns, and of the few Virginia counties that have charters, are available on Virginia's Legislative Information Service website at [law.lis.virginia.gov/charters](http://law.lis.virginia.gov/charters). See generally Va. Code tit. 15.2, ch. 2 (local government charters); Va. Code tit. 15.2, subtit. III (regarding changes in status of localities).

<sup>17</sup> See generally Va. Code tit. 15.2, ch. 14 (regarding ordinances and other actions by local governing bodies).

<sup>18</sup> Note that other parts of the Virginia Code also have provisions related to localities, such as Title 2.2 on freedom of information and conflicts of interest, Title 22.1 on education, and Title 58.1 on taxation. For background information about the local government provisions in the Virginia Constitution, see 2 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 781-876 (1974).

**B. Multijurisdictional Treatises and Hornbooks.**

The following sources broadly discuss local government law with references to cases and statutes from jurisdictions nationwide, including Virginia.

- Juergensmeyer, Julian Conrad, and Roberts, Thomas E. *Land Use Planning and Development Regulation Law*, 3d ed. Thomson Reuters, 2012, supplemented annually. Available on Westlaw. Also published in an abridged hornbook version by West Academic. One-volume practitioner treatise covering basic zoning concepts, process, growth management, preservation, nuisance, and eminent domain.
- Martinez, John. *Local Government Law*, 2d ed. Thomson Reuters, 2012-present. Available on Westlaw. Multivolume treatise with broad coverage explaining types, powers, and liabilities of local government units.
- Matthews, Thomas A. and Byron S. et al. *Municipal Ordinances: Text and Forms*, 2d-4th eds. Thomson Reuters, 1972-present. Available on Westlaw. Multivolume guide to understanding and drafting local laws, with descriptions of types of local laws and powers to enact them as well as templates for various types of ordinances.
- McQuillin, Eugene et al. *The Law of Municipal Corporations*, 3d ed. Thomson Reuters, 1949-present. Available on Westlaw. Multivolume treatise with broad coverage explaining types, powers, and liabilities of local government units.

- Reynolds, Osborne M., Jr. *Local Government Law*, 5th ed. West Academic Publishing, 2019. Hornbook covering types, powers, activities, and liabilities of local governments.
- Stevenson, Sandra M. *Antieau on Local Government Law*, 2d ed. LexisNexis, 1997-present. Available on Lexis. Multivolume treatise with broad coverage explaining types, powers, activities, interrelationships, and liabilities of local governments.

**C. Virginia Encyclopedia and Handbooks.** The following sources have information about Virginia local government law and operations:

- *Michie's Jurisprudence of Virginia & West Virginia*, LexisNexis, 1948-present. Available on Lexis. Legal encyclopedia covering both Virginia and West Virginia, with detailed discussions on Virginia local government law. Entries on counties in volume 5A and municipal corporations in volume 13B.
- Custer, Susan Warriner (ed.). *Handbook of Virginia Local Government Law*, Local Government Attorneys of Virginia, Inc., 2018, with next edition planned for 2021.<sup>19</sup> Detailed coverage of local government issues by public and private practice attorneys, including land use, finance, governmental boundary and status changes, and schools. Also discusses local government aspects of areas of law such as bankruptcy and environmental law.

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<sup>19</sup> <https://www.lgava.org/handbook-0>.