

VIRGINIA

TOWN & CITY

The magazine of the Virginia Municipal League

VOL. 52 NO. 2
MARCH 2017

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Inside:
Local view of the
2017 General Assembly



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On the cover

The Franklin Business Center is a rural business incubator that's succeeding – launching new businesses, creating jobs, and infusing cash into the local economy. See story on page 14.

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A growing number of employers are using social media in the hiring process. But new research shows it may not be a good predictor of performance and it raises questions about discrimination.

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Virginia Town & City (ISSN0042-6784) is the official magazine of the Virginia Municipal League. Published 10 times a year at 13 E. Franklin St., P.O. Box 12164, Richmond, VA 23241; 804/649-8471. E-mail: e-mail@vml.org. Reproduction or use of contents requires prior approval of the Virginia Municipal League and if granted must be accompanied by credit to *Virginia Town & City* and the Virginia Municipal League. Periodicals Postage paid at Richmond, VA. (USPS 661040) Subscription rates: members - \$8 per year, non-members - \$16 per year. Single copies - \$2 each. **Postmaster:** Send address changes to *Virginia Town & City*, P.O. Box 12164, Richmond, 23241-0164.

Virginia Town & City is printed on recycled paper.

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Finding commitment and community in Farmville

I RECENTLY HAD the pleasure of sitting down with the Town Manager of Farmville, Gerald “Gerry” Spates. I have to tell you upfront that Mr. Spates is a dedicated individual who is a terrific spokesperson for his community. He has served Farmville for an incredible 42 years! He came to Farmville after serving in the United States Army where he was awarded the Army Commendation Medal, the Vietnam Service Medal, the Vietnam Commendation Medal, the Bronze Star Medal and the Vietnam Cross of Gallantry with Star. Mr. Spates exemplifies commitment to country and community and it was truly my honor to spend time with him.

Farmville is America’s first two-college town and that history has been critical to the success of this community. Whether it is working with Longwood to bring in restaurants and facilities that appeal to the students or working with Hampden-Sydney on joint research projects, it is clear that the presence of these two colleges has shaped the history of Farmville. What’s more important is that the colleges are working together with the Town on shaping the future as well. Many communities in Virginia have colleges and universities and you all know the valuable role that they play.

Farmville’s downtown is vibrant. Anchored on one end by Green Front furniture and Longwood on the other, the Town and Downtown Partnership groups have worked together to enhance and expand the business community. Of particular interest is the recent development of three hotel projects. In the next year, there will be a Hilton and a Holiday Inn Express opening. In ad-



Farmville’s Main Street is full of thriving businesses, including art galleries and studios, antique shops, retail stores and restaurants.

dition, Governor McAuliffe has just announced a \$12.2 million investment in the Hotel Weyanoke. This will bring 76 jobs, four unique food and beverage venues, and an anticipated \$7 million in annual traveler spending. For more on the announcement, see page 6.

Farmville is also looking ahead to the recreational opportunities in their community. They have undertaken a comprehensive recreation planning process that will assess current facilities and programs and develop recommendations for future growth. It is a great reminder that the built environment must always be a factor in successful development. Look for the results of this process in the fall.

Finally, Farmville is represented on the VML Executive Committee by Vice Mayor A.D. “Chuckie” Reid. Vice Mayor Reid is one of the first local officials whom I met upon my arrival at VML. He is as committed and generous an individual as you will ever meet. We are thrilled to have him on the Executive Committee and I am sure that his contributions will be significant.

Travelogue: On my way out of town, I stopped at Macado’s restaurant. They have a wide-ranging menu from sandwiches, to salads, to full entrees. I went all out and had a fantastic burger. I highly recommend making a stop here as part of your plans the next time you are in Farmville! (www.macados.net) 



Town Manager, Gerald Spates, is interviewed by a reporter in October 2016 in advance of the Vice Presidential Debates hosted at Longwood University in Farmville.

Harrisonburg Crossing Guard honored for saving child

EVERY MORNING AND AFTERNOON, **Anne Byrd** is one of the friendly and attentive school crossing guards at Spotswood Elementary School in Harrisonburg. She greets students, parents, and teachers as they arrive and depart school. Recently, Anne's attentiveness helped to keep a child safe.



- Byrd -

On December 5 of last year, Anne noticed when a student, a block away from Anne's post, was approached by a stranger who got out of his car. Anne quickly made contact with the student, then drove the student home and worked with the family to file a police report.

Anne Byrd was nominated and selected as one of Virginia's Most Outstanding Crossing Guards for her role in the December incident. The Harrisonburg Police Department would like to thank Anne for her hard work and dedication she provides to the citizens of Harrisonburg every day. The Spotswood Elementary School community is safer because of Anne!

Herndon hires Director of Finance



- Tripoli -

The town of Herndon has named **Jennie Tripoli** as Director of Finance. She replaces Mary Tuohy, who retired in December 2016 after 22 years as the department's director. Tripoli comes to the town following more than six years of service as the Assistant Director of Finance for the city of Fairfax, where she oversaw department operations, implemented a purchasing card program for the city, and served as Acting Budget Manager. Previously, she had worked in positions of increasing responsibility in the private sector, including tenures at Fannie Mae, Navigant Consulting and Arthur Andersen.

Alexandria names top HR officer



- Howard -

Shawnda Howard is the new Chief Human Resources Officer for the city of Alexandria. Howard brings more than 15 years of experience in human resources management, organizational development and employee relations. Previously, as Director of the Human Capital Business Partner Team for Vencore, Inc., Howard led a team of senior managers responsible for nearly 4,000 employees. Prior to Vencore, Howard held positions at companies including Raytheon; Booz Allen Hamilton; and Honeywell Technology Solutions, Inc.

Farmville names communications officer



- Eggleston -

Kate Eggleston has been named Communications Specialist, a new position within the Farmville Town Manager's office. Eggleston previously worked at Letterpress Communications, the

Fredericksburg names additional Assistant City Manager



- Fawcett -

Doug Fawcett is the newest Assistant City Manager of Fredericksburg. He joins the city's other Assistant City Manager Mark Whitley. Fawcett has been the city's Director of Public Works since 1997. In his new position, he will oversee Public Works, Public Facilities and Fredericksburg Regional Transit as well as all city capital and transportation projects. Fawcett's local government career includes service as a department director, City Manager and County Administrator in a total of five communities in West Virginia and Virginia over a 39-year period.

Leesburg appoints two key senior staff

Travis Davidson has joined the town of Leesburg as Manager of Operations and Inspections for the Department



- Davidson -

of Public Works and Capital Projects. Davidson came to Leesburg from the Washington Metropolitan Area Transit Authority (WMATA) where he was a Senior Program Manager. He has over 20 years of public sector experience in engineering and transportation management, operations and infrastructure construction. His previous employers include the State of Georgia; Charlotte, North Carolina; Memphis, Tennessee; and the District of Columbia.



- Moore -

Patrick Moore is the new Deputy Director of Utilities for Leesburg. He was previously the Assistant Public Works Director for the city of Manassas. Prior positions include Engineering Services Manager and GIS Analyst with the city of Manassas and Project Team Lead for the Virginia Department of Transportation.

local business that developed and designed the new town website. Eggleston grew up in Farmville and earned her Bachelor's degree and Master of Public Administration degree from Virginia Commonwealth University. She has previous experience working for Lieutenant Governor Ralph Northam and for non-profits in Richmond.

Woodstock selects Town Attorney

Paul "Jay" Neal, Jr. has been appointed Attorney for the town of Woodstock. Neal fills the vacant seat left behind after the death of Albert Mitchell, who served as Town Attorney for nearly 50 years. Neal has practiced law for more than 37 years representing municipal clients. He has maintained his law office in Woodstock since 1984 and also serves as the Town Attorney for Edinburg and Toms Brook.

Winchester appoints new Development Services Director

The city of Winchester has selected **Shawn Hershberger** of Cumberland, Maryland as the new Development Services Director. Hershberger previously served as the Executive Director of the Cumberland Economic Development Corporation. Prior to that, he was Economic Development Coordinator for the town of West Point, Va.

Chesapeake communications leader retires

Chesapeake Director of Public Communications **Mark Cox** closed out a distinguished 27-year career with the City in February. Cox plans to continue teaching communications and public relations courses at Old Dominion University following his retirement. Heath Covey has been named Acting Director, while a search for a permanent replacement for Cox gets underway.

Herndon welcomes three new council members

Bill McKenna represents the town of Herndon on the Phase II Dulles Rail Transportation Improvement District

Commission Board. McKenna is a former Councilman in the Borough of Dunellen, NJ. McKenna has 20 years' experience in the financial and IT sectors and currently works for W.W. Grainger, Inc. as director of sales.

Signe Friedrichs serves on the town's Interview Committee. Friedrichs is Executive Director of Arts Herndon. Previously, she worked as member relations manager for the Dulles Regional Chamber of Commerce.

Jeffrey Davidson represents the town on the Inter-Jurisdictional Committee and on the Northern Virginia Transportation Authority's Planning Coordination and Advisory Committee. In 2016, Davidson retired from the Defense Technical Information Center where he held technical, managerial, and program leadership positions over a 30-year career.

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Roanoke's Art by Bus program spotlights local art, music and literature

FOR THE THIRD YEAR in a row, selected works from the city of Roanoke's public arts collection will be displayed on the exterior of four Valley Metro buses. Art by Bus promotes the value of public transportation by bringing visual arts, musical performances, and inspired writing onto the Valley's bus network.

The Roanoke Arts Commission chose four works of art from its collection of 130 works, nearly 100 of which are by artists currently or previously living in the region.

Also returning is the Writer by Bus program. Shari Dragovich of Roanoke County was selected through a competitive process by a panel of arts commission and community

members. She will ride various buses throughout March and April to produce literary works about her experiences, the people she meets, and the neighborhoods she travels through. Her work can be followed at the Writer by Bus Facebook page, www.facebook.com/writerbybus.

RIDE Solutions will work with local musicians to sponsor the Star Line Series – a series of short concerts on the Star Line Trolley throughout the duration of the Art by Bus program.

Art by Bus is a joint project of RIDE Solutions, the Roanoke Arts Commission and the Greater Roanoke Transit Company.



Martinsville and Henry County cut overdose incidents in half

STATISTICS RECENTLY RELEASED by the Virginia Department of Health show the number of overdose-related emergency room trips in Martinsville and Henry County dropped by half.

In the month of January, Martinsville and Henry County had the highest rate for emergency department trips involving unintentional opioid, heroin or “unknown substance”-related overdoses, coming in at 32 per 100,000 people. The average in Virginia was nine. By the end of February, that number dropped to 15.3 visits per 100,000 residents for this area.

Martinsville Police Chief Sean Dunn attributes the decline largely to increased public awareness of the issue

and especially involvement of the faith community in trying to combat the problem.

An Opioid Awareness Task Force was created involving representatives of the Martinsville Police Department, state and national organizations, and the faith community.

Dunn said he believes the most important part of the effort has been when faith leaders shared information about the issue with their congregations.

He said a door-to-door effort to distribute prevention hand-outs is also planned.

Another factor in the drop may be recent recent indictments of “very large opiate distributors,” said Dunn.



Farmville lands big deal with Hotel Weyanoke

THE GOVERNOR'S OFFICE announced that more than \$12.2 million will be invested in Farmville to establish the Hotel Weyanoke. The hotel will create 76 new jobs and spur more than \$7 million in annual traveler spending.

Officials say the hotel developers will convert an existing 27,000 square-foot building on High Street and build a 30,000 square-foot addition. The hotel is expected to open spring 2018.

Local officials say the hotel will fill a much-needed void for lodging, dining, entertainment and meeting space, and is itself, a historic attraction.

The Hotel Weyanoke, the Town of Farmville and the

Commonwealth will contribute an estimated \$916,700 over a ten-year period for the development of the hotel.

"The Hotel Weyanoke project will further fuel the re-development efforts and growth occurring in downtown Farmville by providing a high-end hotel option to downtown, not currently available," said Gerry Spates, Town Manager of Farmville. "The Hotel Weyanoke will also provide new jobs, increase our local tax base, and be a source of pride for the Town of Farmville to be enjoyed by the local community, the residents of the Commonwealth of Virginia, and interstate travelers."

Chincoteague gets grant for wildlife preserve



THE TOWN OF CHINCOTEAGUE has received a \$1.5 million grant from the Chincoteague National Wildlife Refuge to develop a multi-use trail along Maddox Boulevard and additional side streets in order to improve public safety and ease of access to the preserve.

The project, titled "Maddox Boulevard Multi-Modal Transportation Enhancement Project," is just the latest of many that the town, Refuge and county have joined forces to tackle. Past projects include the paving of Refuge bike trails, installation of an elevated bike path and the addition of bike lanes along Maddox Boulevard.

"The intent is to provide multi-modal transportation to the beach," said Harvey Spurlock, Public Works Director for the town of Chincoteague.

The grant promotes the goals of the town's 2010 Comprehensive Plan and 2020 Transportation Plan as well as Accomack County's 2014 Eastern Shore of Virginia Bicycle Plan.

The funds were obtained by the Refuge through the Paul S. Sarbanes Transit in the Parks Program whose mission is to address the challenge of increasing vehicle congestion in and around our national parks and other federal lands.



Wytheville's pretty plan

The task force is made of department heads from the town of Wytheville, along with representatives from the Town Council, Downtown Wytheville and the Wytheville-Wythe-Bland Chamber of Commerce.

One of the first projects will engage Wythe County High School horticulture students to grow and place plants in baskets that will hang from new downtown street lights. The flowers will provide a pop of color and coordinate nicely with the downtown Adopt-a-Pot program, which allows businesses and individuals to purchase flower pots in honor or memory of a person or business.

Other projects include placing inlaid stone markers downtown that commemorate special dates in town history. The markers will be placed by trees planted downtown as part of the town's revitalization effort.

"We are trying to make Wytheville a walking community," Hand said, noting that, in his research of successful towns, they all share characteristics including walkable streets, flowers, plants, art, music and opportunities for community members to serve.

As part of its mission, the task force plans to have occasional volunteer days, when people can show up and work on beautification projects.

"The town will fund the projects," said Hand. "People can just come out and serve."

THE TOWN OF WYTHEVILLE has formed a Beautification Task Force to enhance the town's appearance for both residents and tourists. The group's goal is not only to spruce up the town, but to get residents involved in the effort as well.

"This is a town-wide task force. We are not a downtown task force," said Councilman Joseph Hand, who organized the committee.

Danville puts power outages on the map

THE CITY OF DANVILLE has launched a new utility customer web portal with an interactive map that enables customers to view and report power outages in real time. Information about power outages is available 24 hours a day, seven days a week, without the need for customers to log into their accounts.

The power outage map is mobile-friendly and allows customers to zoom in to see power outages by street or neighborhood. Outages also are searchable by street.

The portal – danvilleutilities.com – allows customers to not only search for or report power outages online, but also to track their utility consumption, view their bills and make payments.

The new portal is one of two recent customer service upgrades. The other upgrade is a hosted interactive voice response (IVR) service that will eliminate busy signals when customers report power outages by telephone. The IVR service is bilingual. All calls are recorded and customers have the option of being called back by the system.

These automated services save time and allow Danville Utilities employees to focus on restoring outages.

Danville Utilities distributes electricity to approximately 42,000 customer locations in a 500-square-mile service territory covering Danville, and parts of Pittsylvania, Henry and Halifax Counties.

A Monumental Challenge

Governor's work group on monuments creates a framework for local conversations

ACROSS THE COMMONWEALTH and globe, monuments are focal points for localities and powerful sources of cultural identity. The events, ideals, and people we choose to memorialize are a reflection of our history and values. At their best, monuments educate viewers about the past and inspire a sense of shared purpose and history; at their worst, they can spread inaccurate information, appeal to our basest nature, and divide us.

Because of their physical and philosophical significance, monuments can be a source of considerable controversy. In some cases, information has been uncovered or reinterpreted in the collective consciousness, changing the connotations and perceptions surrounding a monument. With the passage of time, we often come to realize that memorials tell only part of a story, use language that has shifted, or are biased in their presentation.

Nowhere in the United States is a frank and constructive

dialogue more necessary or fraught with potential controversy than here in Virginia, home to two Confederate capitals and 136 monuments to the Confederate States of America (CSA). Because of our rich history and the prevalence of Confederate iconography, the Commonwealth is uniquely positioned to host robust local-level conversations regarding the appropriate treatment of memorials relating to the Civil War or other contentious conflicts. If carried out effectively, Virginia's approach will serve as a model and inspiration for other states.

With the passage of time, we often come to realize that memorials tell only part of a story.

A 2015 decision by Virginia's 22nd Judicial Circuit leaves open a legal avenue through which the Commonwealth's cities may remove or alter war memorials. Danville's City Council adopted a local ordinance restricting the types of flags flown on municipal property, including the Confederacy's last capital, Sutherlin Mansion. The resultant removal of the Third National Flag of the Confederacy was challenged under a state law that prohibits local authorities from disturbing or interfering with existing war memorials.

Judge James Reynolds upheld the Danville ordinance, finding that a 1998 amendment extending state-level legal protections to war monuments in all localities (rather than just counties, as was originally written) did not apply retroactively. This decision, which was not taken up by the Virginia Supreme Court, has implications for all existing Confederate monuments in Virginia cities as all Confederate monuments in the Commonwealth were erected before 1998.

Governor McAuliffe recognizes that decisions regarding the commemoration of historical events should take place at the local level. During the 2016 General Assembly session, he vetoed a bill that would have expanded state protections to all existing war memorials, regardless of the date of their erection.

I was directed to convene a diverse work group comprised of legislators, historians, scholars, and advocates to consider the issues that arose in the debate over the legislation and to present recommendations to guide local discussions regarding Confederate monuments.

The work group's report, available on the Secretary of Natural Resources' and the Virginia Department of Historic Resources' websites, includes recommendations and resources to help willing localities foster a constructive dialogue about their monuments. While not all work group members agreed unanimously or completely on every point, all expressed support for inclusive community discussions. What follows is a brief synopsis of the work group's key findings:

Recommendation 1: Start from the same page; include an educational component.

Finding consensus is easier after starting from a common jumping-off point. Local stakeholder processes should begin with an educational component to ensure a shared understanding of relevant history and the conversation's overarching objective. A number of universities throughout the Commonwealth have an abundance of experience and resources that may assist in providing the necessary educational information. In addition, the Virginia Department of Historic Resources may be consulted to provide historical and contextual information regarding the monument under discussion.

Recommendation 2: Ensure that all stakeholder groups are represented.

There is no one correct list of stakeholders, but there are models for ensuring the process reaches out to all relevant stakeholder groups. Particular effort should be made to bring in voices previously excluded from community decision-making, including racial minorities, women, and young people. Key individuals and groups should be contacted directly before engaging in broader outreach through public meetings. Having all interested people at the table is crucial for developing solutions that work for the community on the whole.

Recommendation 3: Ensure the process is conducive to conversation.

A worthwhile stakeholder process does more than bring the relevant groups into the same room; it sets the stage for a productive conversation. Considering a media strategy early in the process is a useful step for preventing unnecessary hostility among participants as the conversation develops. Forums, particularly those held in small community settings, are very effective at fostering a constructive dialogue. Icebreakers and other facilitated activities reinforce the shared humanity of participants and offer an important opportunity for seemingly opposed sides to get acquainted.

Recommendation 4: Reach out to other communities, professional facilitators, and other resources.

Many localities in Virginia have been grappling with issues surrounding their monuments, particularly Confederate monuments, for years. Some of these communities have created commissions, study groups, and other forms of engagement that produced recommendations on process and potential solutions. Localities should share information regarding the processes undertaken and lessons learned.

In addition, professional facilitation by neutral third parties is a potentially useful tool for localities. It may be helpful

to find a facilitator that is not from the particular community under discussion so that the person may be viewed as unbiased. It is also important to find facilitators with a background in issues of both history and race. Foundations and higher education institutions may be willing to provide such services to interested localities.

Recommendation 5: Monuments should be preserved – at least somewhere.

While the removal of monuments was a source of disagreement among work group members, all agreed that, should a locality opt to remove a monument, its long-term care and appropriate curation as a museum artifact at a qualified facility must be considered. The group was unified around a belief that, good or bad, these memorials represent an important part of our history worth remembering.

Recommendation 6: Signage can provide context and reveal previously untold stories.

Significant people, perspectives, and events from the past are frequently misremembered or entirely omitted from the public consciousness and conversation. All breakout group members agreed that interpretive signage offers opportunities to educate the public while keeping historic resources intact and in place.

Many people envision Virginia's Confederate monuments as having sprung from the blood-soaked earth immediately following the Civil War. In actuality, the majority were erected between 1896 and 1914 in the period that followed the United States Supreme Court's decision in *Plessy v. Ferguson*. Information about the people and events memorialized, as well as the context of the monument's construction, may go a long way towards changing communal perceptions.

Recommendation 7: Reflect the diversity of Virginia through monuments.

Virginia has a rich history that includes heroes of all colors and creeds. Ensuring that our monuments reflect this diversity is crucial as we work to bridge historical divides between people and communities. While the costs of erecting monuments are often astronomical, an effort should be made to ensure that the people and ideas memorialized are broadly representative of our commonwealth, culture, and values.

Governor McAuliffe recognizes that decisions regarding the commemoration of historical events should take place at the local level.



Monuments

Given the many Confederate monuments and the disproportionate historical veneration of men, it will likely take decades if not generations to successfully diversify Virginia's monuments. Localities should also consider other ways to memorialize underrepresented groups, including naming opportunities for roads and schools.

Recommendation 8: Take advantage of existing resources and expertise.

The Commonwealth is home to a host of historians employed by governments, universities, and private institutions. The Virginia Department of Historic Resources has the legal authority to review historical signage on all public and, with the consent of the landowner, private property.

In addition, since its creation in 1872, the National Park Service has served as our nation's storyteller. By necessity, the agency has developed considerable expertise regarding the appropriate treatment of the more checkered elements of our country's past. These entities, as well as many others, are valuable resources for localities working to develop

a consensus regarding controversial monuments.

Governor McAuliffe supported the work and recommendations of this group with the goal of both preserving Virginia's historic resources and maintaining the local autonomy necessary for the legitimate conversations currently occurring in cities throughout our Commonwealth.

Though the above recommendations are not all encompassing, they serve as a useful jumping-off point for local officials working to build consensus in their communities.

While it was not the direct focus of deliberation, the work group's recommendations can easily be applied to forms of memorialization other than monuments.

The assembled experts felt strongly that their report should be considered as a living, breathing document and a mere starting point for discussions at the local level. 

About the author: *Molly Joseph Ward is the Secretary of Natural Resources for the Commonwealth of Virginia.*



Sign up now!

VML CONDUCTS REGIONAL SUPPERS around the state each spring and fall. Elected and appointed officials from member localities are encouraged to attend one of these informative get-togethers.

What happened in the General Assembly?

Each of the dinner meetings will include a review of the 2017 legislation session as well as presentations by other subject experts on issues of importance to the region.

All of the suppers will begin at 6 p.m. and cost \$35.

Dates	Locations	You will hear from experts on ...
Wednesday, April 5	Marion - Holston Hills Community Golf Course	The Importance of Collaborating with the U.S. Census
Thursday, April 6	Appomattox - Appomattox Inn and Suites	Downtown Promotion Planning
Wednesday, May 3	Culpeper - Germanna Community College	Regulating Short Term Rentals
Thursday, May 4	Onancock - Mallards at the Wharf	The Importance of Collaborating with the U.S. Census
Wednesday, May 10	Emporia - The Bank by Kahills	Business Incubators and Downtown Revitalization
Thursday, May 11	Williamsburg - The Stryker Center	Tourism as Economic Development

Register on-line at www.vml.org/regional-supperts



A good year for local government

By Mary Jo Fields and Michelle Gowdy

LOCAL GOVERNMENTS had a fairly successful year in the 2017 General Assembly. We were fortunate to have our local authority to control short-term rentals affirmed and efforts to gut local zoning for telecommunications facilities were diminished. The party ID bill was defeated during the session, which was quite different from the Governor vetoing it last year. A workgroup was also created to look at local fiscal stress. This article gives a quick overview of the budget and its impacts on localities along with several other notable bills.

Budget

The state budget for the 2016-2018 biennium contained good news for local governments in terms of state funding for salary increases for teachers and state-supported local employees, as well as no additional cuts in state assistance to local police departments.

An attempt by the House to reduce state funding for local police (HB 599) was unsuccessful. The annual appropriation remains at \$177.9 million, which was proposed in the Governor's introduced budget.

Funding is included for a two-percent salary increase, effective August 1, 2017. Unlike last year's budget requirements regarding salary increases, the local governing body does not have to "certify" its actions.

Funding is included for the state share of a two-percent increase for SOQ-covered positions effective February 15, 2018. School divisions will need to certify that they have provided or will provide an increase of at least two percent at some point during the 2016-18 biennium. In other words, at least two percent in fiscal year 2017 or 2018, or via two separate increases

in each fiscal year that together add to at least two percent.

Funding of \$7.0 million is included to partially restore Go Virginia. The amendments restore half of the cuts the Governor proposed for this economic development program.

Local fiscal stress

A language budget amendment establishes a joint subcommittee of legislators tasked with identifying issues and potential solutions related to local fiscal stress. Another language amendment establishes a system under the Auditor of Public Accounts to monitor potential fiscal distress among local governments. The provisions provide a mechanism for potential state and private sector assistance, including funding resources, to be coordinated by the legislative and executive branches and managed by the Office of the Governor.

Private day school placements

A workgroup is established to examine the costs and quality of private day school placements for special education students funded through the Children's Services Act (CSA). A previous group looking at this issue was convened by the Office of Children's Services; this time the workgroup will be facilitated by the staff of the House and Senate budget committees.

Key changes to Freedom of Information process

A plethora of bills, including two that implemented the recommendations of a three-year examination of FOIA, were enacted this year. The major takeaways from the enacted bills are:

1. FOIA Officer training is available online by the FOIA Council or training can be obtained from the local city, town or county attorney.
2. The FOIA Council is required to develop an online public comment form, and localities with populations greater than 250 are required post a link to that form.
3. Notice of a meeting shall be in the following manner: Posting on an official government website, if any; placing notice in a prominent public place; and placing such notice at the office of the clerk or administrator.

If a meeting is continued, notice to the public shall be given contemporaneously with the members. To see the detailed list of all FOIA bills affecting local government, go to vml.org/advocacy/general-assembly.

Final word yet to come

GOVERNOR TERRY MCAULIFFE has already vetoed several bills, most of which are considered by the media as "brochure bills." However, most of his vetoes and amendments won't be known until March 27 because so much of the legislation passed came late in the session. The General Assembly will reconvene for a one-day session on April 5 to consider those vetoes and amendments. VML will be asking you to weigh in on issues leading up to that April 5 reconvened session.



Conflict of Interests Act changes

The Conflict of Interest and Ethics Advisory Council recommended 28 changes to the COIA statute, embodied in HB 1854. Three key changes to note are:

1. The definition of “gift” was modified to exclude meals provided at official meetings (which includes charitable organizations that a person is appointed or elected to by virtue of their office or employment).
2. The definition of “gift” was also modified to exclude “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.”
3. The filing deadline was moved from January 15 to February 1 to allow filers four weeks to compile their information.

Land use

This year, both the cable and telecommunications industries attempted to take away local control and with the help of all localities, these bills became much more palatable. These were a team effort. Every letter or email sent by a locality made a difference!

The mobile home park bills were unexpected and we are told there will be a comprehensive look at mobile home parks next year.

Bills that are exciting and fun to support included the arts districts and working waterfront development districts. We look forward to watching these localities flourish.



Wireless Infrastructure

SB 1282 started out as a bill promoted by the telecommunications industry in an attempt to gut local zoning authority and restrict the ability of localities to regulate the location of telecommunications facilities. Thanks to successful advocacy from localities and VML, this bill was restricted to small cells and primarily co-location on existing structures. While the bill does restrict some local fees, it provides localities the ability to regulate publicly owned property and their rights-of-way.



Broadband

HB 2108 started out as a comprehensive bill put forth by the cable industry aimed at making it difficult for localities to offer broadband to its citizens. The final version of the bill was reduced to requiring an authority to maintain records that demonstrate compliance with the Virginia Wireless Services Authority Act. The bill also requires that documentation of fixing and revising rates, fees and charges be available under the Freedom of Information Act.



Short-term rental

SB 1578 is the short-term rental bill that affirms localities’ authority to regulate short-term rentals at the local level through a registration system, which should also make the collection of transient occupancy tax more efficient.

In essence, SB 1578 recognizes local authority to reasonably address this activity while protecting the property rights of all citizens and the character of local neighborhoods. To quote part of Section E of proposed §15.2-983, “Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority.”



Housing crisis

In 2009 in the aftermath of the housing crisis, legislation was adopted that extended local approval on various land use approvals to 2017 (see §15.2-2209.1). HB 1697 extends the time for approval of these permits through July 1, 2020.

Mobile home parks

Two pieces of legislation resulted from controversy regarding notices to residents of mobile home parks. HB 2203 directs the Department of Housing and Community Development to consider a revision to the USBC regarding notice to residents of manufactured home parks by the park owner.

SB 1123 also relates to notice to residents of manufactured home parks. The bill provides that if a landlord fails to remedy a violation within seven days of notice from the locality, the locality must notify the tenants either by posting or mail.

Finally, interested parties including the Legal Aid Society are going to be reviewing a variety of the bills governing mobile home parks prior to the 2018 session.

Zoning, proffers and permits

SB 1559 deals with Boards of Zoning Appeals and requires that an appeal period not begin until the zoning administrator’s final order is sent by registered mail to the last known address of the property owner or registered agent. It also allows for a rebuttable presumption that the last known address is that which is on file for real estate assessment purposes.

HB 1797 is the only proffer bill that was approved by the General Assembly this year. The current law states that if there is going to be an amendment of proffers, notice must be given to all landowners subject to those proffers. Under the new language, the notice only has to be given as required under Virginia §15.2-2204, which is the general planning notice provision.

SB 1173 applies to a structure that requires no permit and that an authorized local government official has ruled was in compliance. In this case, even if the structure was not in compliance and is non-conforming, it is not illegal or subject to removal solely due to the non-conformity.

New ventures: Arts districts, waterfront development and flood resiliency

SB 1225/HB 1486 allow localities to work together in creating arts districts. Each locality must enact an ordinance.



SB 1203 allows localities to create working waterfront development districts by ordinance and allow incentives and regulatory flexibility to private entities.

HB 1774 creates a Commonwealth Center for Recurrent Flooding Resiliency workgroup, to include VML, that will consider alternative methods of stormwater management in rural Tidewater localities. A report is due by January 1, 2018. In addition, the bill defers enactment of any new stormwater laws passed in the 2016 session until July 1, 2018.

Taxes

Among the highlights of tax legislation this year, town treasurers may now enter into agreements with the county treasurer to collect some types of delinquent local taxes and fees. There were two constitutional amendments passed this year that will have to be considered for one more year – one dealt with surviving spouses and the second with flooded areas.

Both the Senate and House passed identical measures authorizing county treasurers to enter into reciprocal agreements with town treasurers to allow a town treasurer to collect *delinquent* local vehicle license fees or taxes owed to a county or a county treasurer to collect such fees or taxes owed to a town. (HB 1595 and SB 1211)

HB 1565 authorizes localities to create green development zones that provide certain tax incentives and regulatory flexibility for up to 10 years to a business operating in an energy-efficient building or to a business that produces products used to reduce negative impact on the environment.

HJR 562 is a constitutional amendment that would allow surviving spouses of those killed in action to keep their exemption for their principal place of residence even if they move.

SJR 331 is a constitutional amendment allowing the General Assembly to grant localities the authority to partially exempt real property in areas subject to recurring flooding in which flooding abatement, mitigation, or resiliency efforts have been undertaken.

For both constitutional amendments, the next step is for them to be passed again in the 2018 session before being voted on in a referendum at the November 2018 general election. Implementation legislation also must be adopted, probably at the 2019 session.

Transportation

Washington Metrorail

The House and Senate authorized Virginia to become a signatory to the Washington Metrorail Safety Commission

Interstate Compact (SB 1251 and HB 2136). The compact establishes a state safety oversight authority for the Washington Metropolitan Area Transit Authority (WMATA) Rail System, pursuant to the mandate of federal law, to review, approve, oversee, and enforce the safety of the WMATA Rail System.

The bills require the Secretary of Transportation to negotiate, on the Commonwealth's behalf, the terms for revision of the WMATA Compact with the other signatories to the Compact. The bills contain an emergency clause and will become effective upon signature of the Governor.

Highway maintenance and bike lanes

HB 2023 provides that cities and towns that receive highway maintenance payments from the Commonwealth based on moving-lane-miles of highway will not have the payments reduced if moving-lane-miles of highway are converted to bicycle-only lanes. This is provided that the number of moving-lane-miles is not more than 50 moving-lane-miles or three percent of the municipality's total number of moving-lane-miles, whichever is less.



Prior to the conversion, the city or town has to certify that the conversion design has been assessed by a professional engineer.

Municipalities will not receive additional funds and cannot reduce their funding of road and street maintenance after a conversion.

Transportation trust fund

HJR 693 is a constitutional amendment creating a transportation trust fund and prohibiting diversions from the fund except by a supermajority vote. The next step is for identical language to be passed again in the 2018 session before the proposed constitutional amendment can be voted on in a referendum at the November 2018 general election. Implementation legislation also must be adopted. This can be done at either the 2018 or 2019 sessions.

Mental health and public safety

Death in local and regional jails

A bill originally aimed at clarifying the responsibility of the State Board of Corrections to review deaths in local and regional jails volleyed back and forth throughout the session. The final version rewrote the bill to set out membership categories for members of the State Board of Corrections. These include a former sheriff or superintendent of a jail or prison, employees of public mental health services agencies and the state inspector general.



SB 1063 also outlines procedures for death investigations, makes it clear that the State Inspector General's office can be

Continues on page 26

Business incubator thrives in rural region

Franklin Business Center launches new companies, creates jobs and kick starts local economy

By Amanda Jarratt



Working in a business incubator: (L to R) Wanda Porter is the Administrative Coordinator for Providence Psychological Services; Scott Culpepper is Systems Administrator of Parallax Information Technology; Amanda Jarratt is President and CEO of Franklin Southampton Economic Development (managing the Franklin Business Center); Amber Balance is COO of FMS International; and Abe Applewhite is Owner of KC Applewhite.

IN 1999, HURRICANE FLOYD slammed the eastern coast of Virginia, devastating the downtown commercial corridor of the city of Franklin. For 50 years, Franklin had maintained a population of 8,500 people engaged in regional industries like agriculture, logging and heavy manufacturing.

As part of the recovery effort, a group of business and civic leaders began toying with the idea of starting a business incubator to help the town rebuild and diversify. After a lengthy due diligence process and numerous grant applications – which secured funds from the Economic Development Administration, USDA, and Community Development Block Grants – the Franklin Business Center opened its doors in May of 2005.

This four-story, 40,000-square-foot renovated industrial building in historic downtown has become a powerful business incubator where aspiring local entrepreneurs are getting help to launch their dream companies.

How it works

The Franklin Business Center is designed to assist businesses during their first few years of operation, when their needs usually outpace their resources and they are most vulnerable to failure. The building houses office space, support staff, and programs that nurture young firms and expanding businesses. The center provides hands-on management assistance, access to equipment, and exposure to critical support services under one roof.

The Franklin Business Center staff and advisory board evaluates each applicant with a heavy focus on job creation, growth potential and ability to add to economic diversification. Clients accepted into the program can participate for a maxi-

mum of seven years. Rent steadily increases on an annual basis, preparing clients to lease space from the private sector when the time to graduate approaches. Virtual office spaces also are offered for those who have limited physical space needs.

The make-up of the Franklin Business Center advisory board has been critical to its success. The board is comprised of 13 business professionals who offer various perspectives on the startup process. These professionals include an accountant, an attorney, a banker, and an insurance agent, as well as staff from the Chamber of Commerce, the local community college, and an entrepreneur already located in the incubator.

Measuring impact

The Franklin Business Center has proven to be an economic engine for the Franklin Southampton community. Average wages of employees working for tenant companies are significantly higher than the community's prevailing average wage. Upon admission into the program, clients understand that they are required to provide an economic impact report on an annual basis. The information helps the advisory board demonstrate the program's value to city council.

Highground: A success story

We've enjoyed many successes over the years. To date, our program has had 18 graduations, 11 of which located within Franklin or Southampton County. The most significant to date is Highground Services, an engineering corporation that specializes in process control, system automation, and instrumentation projects for industrial and municipal markets. Highground Services joined the business center in 2007 with

Evaluation Criteria

The Franklin Business Center staff and Advisory Board evaluate applications based on the following criteria:

- The potential for growth and job creation.
- The need for and willingness to accept the services of the Franklin Business Center.
- If the applicant's company will add to the local economic diversification.
- The viability of the business and its potential for success.
- The compatibility of the business to the Franklin Business Center program and facility.

Support Services

What sets the Franklin Business Center apart from other incubation programs are the various support services offered as a part of the client's rental agreement. These services included within the rent cost are:

- Internet service
- Shared office equipment
- Access to conference rooms with AV equipment

- Business planning assistance
- On-Site receptionist
- Central mail handling
- On-Site mentor
- On-Site training programs and networking opportunities

Virtual Office Program

Virtual offices are offered at the Franklin Business Center for those businesses with a need for limited office space use. Virtual clients are provided access to common areas and workroom equipment and can use office space with a desk and internet for either two half days or one whole day each week. The virtual office program offers a physical address. Virtual clients go through the standard application process and pay a flat monthly rate.





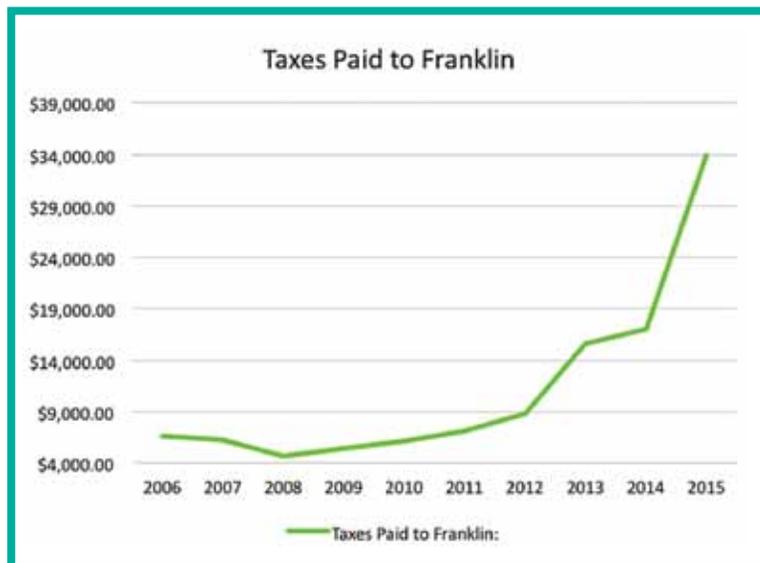
Amanda Jarratt, President and CEO of Franklin Southampton Economic Development, meets with Franklin Business Center client Tiffany Butler (right) to discuss her future goals for her business LandWerks Contracting, LLC.

of office space to lease, which requires us to constantly focus on out-of-the-box approaches to stay relevant to entrepreneurs in the region. Incubators in smaller markets must not be so narrowly focused as to exclude anyone with a viable business idea.

Finding stable sources of funding is another critical piece of the puzzle, as resources are scarce in most communities these days (rural areas particularly). Lack of angel investors and other sources of capital is another significant challenge, and there's always the danger that high-growth-potential startups will relocate to a larger metropolitan area where these resources are abundant. In addition, rural communities must emphasize their unique assets and services to differentiate themselves from urban competitors.

A lack of talented workers can be another hindrance for companies, as well as fewer institutions of higher education. We have found it useful to partner with our local community college and to expand our reach to university partners throughout the region, not just our immediate vicinity.

Patience is key. The success of an incubator cannot be judged by a short-term investment, and it can take many years to show results.



Take these six lessons to heart

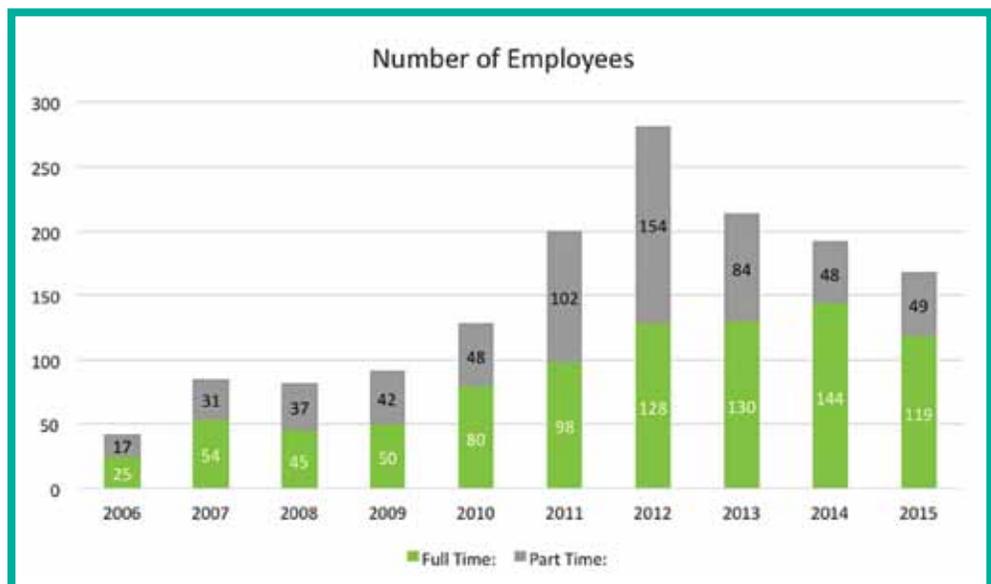
Incubators come in all forms, and should be structured based on the unique needs of the communities they serve. However, several lessons we've learned over the years can be applied to just about any program.

- Maintain an engaged advisory board with a strong presence from the private sector. Staggered terms are key to maintaining a fresh perspective.
- Evolve the marketing strategies and tactics annually, based on the greatest return on investment. It is critical to stay top-of-mind in your service region.
- Word-of-mouth is the best marketing. One entrepreneur touting your services to another can generate significant interest in your incubator program.

just four employees and now has a staff of 64. The company is graduating this month and has purchased a historic building in downtown Franklin, retaining all 64 jobs and putting a formerly dilapidated building back on the tax rolls.

Overcoming rural challenges

Managing any business incubation program is not easy, whether you are in an urban or rural location. However, being in a small community presents its own unique challenges. In our case, we have 19,315 square feet





By the Numbers

18

Number of businesses graduated from FBC to date

168

Number of jobs created by FBC in 2015

\$22,000

the average per capita salary in Franklin in 2015

\$49,000

The average salary for employees at FBC in 2015

- The graduation process is exactly that – a process. Clients have a tendency to get comfortable and resist when it is time to move out of the facility. Stay ahead of this by consistently communicating with clients and reminding them they are expected to graduate. It is important to help them find new space and start the search a minimum of one year before graduation is required. Have clients keep a running list of buildings and offices that are on their graduation “wish list.”
- Make economic impact reporting mandatory. This clearly justifies the existence of your incubator program to all stakeholders, including elected officials, business leaders, and the public.
- Look at incubators as regional assets. Don’t get bogged down with counting as a “win” only those businesses that graduate and stay in the local community. Your mission is to set these businesses up for success no matter where they locate.

Road trip! See an incubator up close

If your community is interested in starting an incubator, I also recommend gathering a group of business and community leaders, loading up the van and taking a field trip. Reading about incubator programs and best-practice guidelines is definitely important, but that cannot replace the lessons learned from touring a facility and meeting with those doing the day-to-day work.

From my experience, no incubator program will look exactly like the next, and that is for a good reason. Take the time to develop a strategic plan tailored to your community and the enterprising folks in your region. 

About the author:

Amanda C. Jarratt is President & CEO of Franklin Southampton Economic Development, Inc. A version of this article originally appeared in the International Economic Development Council's Economic Development Now newsletter.



How 'bout them apples?

Municipalities adopt healthy vending and food procurement policies to support employees' health goals

MUNICIPAL WORKERS who want to eat healthier need wholesome food choices where they work. Municipalities can create healthier food environments for their residents and government employees through their food procurement policies and practices. The city's or town's "purchasing power" provides an opportunity for local government leaders to adopt purchasing policies and practices that are in line with nutrition standards set by national health organizations.

Municipalities may be purchasing snacks and beverages offered in vending machines on government property, purchasing the meals served in the employee cafeteria or at senior centers, or they may be providing meals or snacks at employee or community meetings – these are all opportunities to provide healthy food options to support those residents and employees who are trying to eat healthfully.

Adopting healthy vending and healthy meeting policies can be feasible, effective, easy-to-implement strategies for busy government staff. The HEAL

Cities and Towns Campaign, a project of the Institute for Public Health Innovation in partnership with the Virginia Municipal League, offers free technical assistance to help municipal leaders adopt healthy eating and active living (HEAL) policies and practices. Funded by Kaiser Permanente, HEAL Cities and Towns provides model healthy vending and healthy meeting policies and practices as well as toolkits to get communities started.

Healthy Vending

Some municipalities provide vending machines in municipal buildings for the convenience of their workers and residents. The vending machines may be located in workplace settings as well as at recreation centers, community centers, and libraries frequented by community residents of all ages. In nego-

tiating the municipality's contract with the vendor, municipal staff can require that a certain percentage of the snacks and beverages offered meet nutritional standards.



An Arlington County Board Member realized that the county's vending machines were lacking healthy snack and beverage options. To change that, the County's Department of Parks and Recreation (DPR) implemented a policy in 2010 requiring all beverages and snacks offered countywide to meet specific nutrition standards. The DPR nutrition standards were integrated into the vending contract so that all of the county's 110+ vending sites – including community centers, parks, libraries, employee workplaces and schools – are covered by the vending machine nutrition standards.

Strong sales data, children's testimonials and parent expressions of appreciation are indicators of success. "Whether you are a parent picking up your kid from extended day and need a quick energy boost before soccer practice or an older adult who just completed their workout or a teen hanging out in one of our afterschool programs, we wanted to make the healthy choice the easy choice," said Michele Gregory, Section Leader, Office of Community Health, Arlington County Department of Parks and Recreation.

In 2014, Leesburg's Parks and Recreation Department adopted nutritional guidelines for its parks and recreation vending machines. The Parks and Recreation Department viewed its healthy vending as consistent with its goal of combating childhood obesity. Leesburg, a Silver Level HEAL town, received technical assistance from HEAL through a webinar, fact sheets and in-person meetings.

As with any new initiative, they faced some resistance that they were able to overcome. "The town incorporated a gradual

Put your money where your mouth is

80%

of adults are trying to lose weight or maintain their weight.

2/3

say that the healthfulness of food has a great impact on their food decisions.

Sales ↑

A 2011 analysis reported that sales of healthier snacks are outpacing traditional snack foods and contribute to increased sales growth and profits for food companies.

Source: International Food Information Council Foundation

increase to the percentage of healthy options over a period of time, as opposed to an immediate drastic change,” explained Rich Williams, Director of Parks and Recreation. “This was acceptable to our vendor and they were able to see over a period of time that their bottom line was not being impacted.”

Healthy Meetings

Taking the opportunity to provide healthy food options at employee meetings and trainings and community events sponsored by your city or town is another practical way to help employees and residents eat well and make healthy choices. Model “healthy meeting” policies and toolkits are available to provide guidance on defining healthy food and putting recommendations into practice. For example, the National Alliance for Nutrition and Activity provides these general recommendations to follow when providing food at meetings and events:

- Offer recommended servings of fruits, vegetables, and whole grains, especially for all-day meetings.
- Place healthier foods and beverages in prominent positions, where they are most likely to be seen and more likely to be chosen.
- Post calories at conferences and meetings when appropriate and/or possible.
- Provide reasonable portions of foods and beverages (i.e., avoid large portions).
- Consider not serving food at breaks that are not meal-times; instead provide physical activity.

Similarly, the Centers for Disease Control and Prevention (CDC) offers healthy meeting recommendations. To limit sweet treats at meetings, the CDC recommends:

- Offering a selection of apples, bananas, pears, and other fruit individually, as a fruit salad, or added in desserts to reduce or replace added sugar.
- Providing frozen 100% juice bars or sorbets instead of high-calorie desserts.
- Offering whole grain and low-sugar baked products.
- Providing low-fat or non-fat yogurt, either plain or with fruit or healthful additions, minimizing added sugar.
- Serving smaller size or “mini” desserts to limit calories..

These and other recommendations and guidance materials can provide language for policies, memoranda, or department procedures. The language and guidance can also be negotiated into contracts with food vendors and be helpful when working with caterers.

Bluefield, a Bronze Level HEAL town, adopted a policy in 2015 stating that the town will provide all employees with access to clean, safe, palatable drinking water free of charge at every facility in the cafeteria and eating areas.

In practice, this requires that all facilities, and also work vehicles, are kept well-stocked with bottled water, water jugs and hydration stations to make drinking water an accessible alternative to soda and sugar-sweetened beverages. “We know that dehydration can cause headaches, tiredness, nausea and difficulty concentrating. It can also lead to long-term health

problems. We wanted to make sure our workforce remains healthy by giving them access to clean and fresh drinking water,” said Billie Roberts, Bluefield Community Development Coordinator.

Warrenton, a Gold Level HEAL town, passed several healthy eating active living policies in 2016, spearheaded by its Parks and Recreation Department. These included a healthy vending policy and healthy meeting policy. It includes directives such as: providing access to water at all work meetings as well as other healthier drink options; making unsweetened fruit or vegetables available whenever food is served at a meeting; ensuring that 50% of foods provided come from the categories of whole grain, low-fat or fat-free dairy products, and lean protein; and that an effort is made to minimize fat, sugar and sodium in the food offerings. The stated goal of the policy is “to improve the health of employees (and guests) by offering healthy alternatives to the traditional donuts and coffee style meetings.”

Margaret Rice, Director of Parks and Recreation in Warrenton says, “Since adopting our HEAL resolution, we have allowed the donuts, but have required that a bowl of fruit also be available right next to the donuts. I am very pleased to say that after about two weeks, we started noticing that the fruit disappeared much faster than the donuts. It is now very common to see all the fruit disappear, but not all the donuts.” 

About the author: *Susan DeFrancesco is the HEAL Cities and Towns Campaign Manager, Institute for Public Health Innovation.*

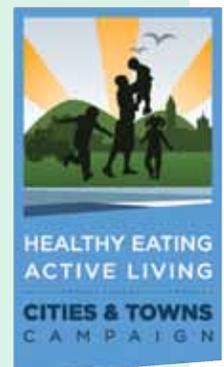
Resources on healthy vending and healthy meetings

MORE INFORMATION on healthy vending and healthy meetings can be found on HEAL’s Workplace Wellness page at www.healcitiesmidatlantic.org.

HEAL also collaborates with the American Heart Association on providing assistance to local government leaders regarding healthy vending. For further information about healthy vending, contact AHA’s Regional Campaign Manager Tarah Ranke at Tarah.Ranke@heart.org or 517.896.4527.

Become a HEAL certified community

FOR MODEL POLICIES and practices and more information about becoming a HEAL city or town, contact Susan DeFrancesco, HEAL Cities and Towns Campaign Manager, at sdefrancesco@institutephi.org or 240-252-2016. HEAL Cities & Towns is a project of the Institute for Public Health Innovation funded by Kaiser Permanente.



From blight to bright

Norfolk's derelict structure ordinance gets results

BOARDED UP PROPERTIES that stood dormant and decaying over the last decade are now seeing new life in the city of Norfolk. Acting as a catalyst for positive change in several Norfolk neighborhoods is the Derelict Structure Program coordinated by the Department of Neighborhood Development's Division of Neighborhood Quality.

"In 2016, only two were tear downs. All the others were beautifully renovated retaining the original structure."

president of the Fairmount Park Civic League. "In 2016, only two were tear downs. All the others were beautifully renovated retaining the original structure."

A derelict structure per the Code of Virginia and the Code of the city of Norfolk is a residential or non-residential property that has been vacant, boarded, and not lawfully connected to a utility service provider for a continuous period in excess of six months.

Getting owners to take action

Neighborhood Quality has created a unique program to activate the code and the results are re-energizing neighborhoods. The program includes:

- Developing a simplified message to explain why a property has been designated as a derelict structure and what steps the property

"We are hopeful as the community continues to revitalize, that the homes that become derelict structures will drop in numbers and be retained for renovation," said Taylor Gould,

owner must follow to remove the designation of a derelict structure from the property.

- Setting a timeframe for completing rehabilitation or a demolition to a property. A property owner has no more than six months to rehab a property or three months to demolish a property. Requiring property owners to submit a letter from a financial institution stating that they have the funding available to either rehab or demolish their property.
- Requiring once the property has either been demolished or rehabilitated that the property owner pay all fines that have been incurred on the property during the time the property has served as a nuisance to the city.

With these new parameters, Neighborhood Quality has seen a 98% response rate from property owners in FY 16, and 61% of the designated 51 properties have either been rehabbed or demolished and rebuilt by owners.

When the city intervenes

Property owners who have not responded go through the legal process. In these cases, the court has either ordered the property owner to rehab or demolish or has granted the city the right to demolish the property and have the property own-





Before

After

This renovated home is a great example of the city's continuing efforts to revitalize the Ballantine Place neighborhood.

er pay the fees associated with the demolition. Even financial institutions that hold property are responding and rehabilitating the structures.

“I am encouraged by what I have seen this program do for neighborhoods,” said Christina Jackson, Codes Team Leader for Neighborhood Quality and Lead Inspector of the Derelict Structure Program. “Working closely with homeowners, the city of Norfolk has been successful in encouraging renovation instead of demolition to produce the desired outcomes for neighborhoods served by the city.”

Making this process even more successful are the internal controls that are set-up to ensure the process is objective and efficient. These internal controls include:

- Designating one code enforcement officer to be responsible for implementing and overseeing the derelict structure process.
- Designating only 50 to 60 of the most troublesome properties per year. From June to August, Neighborhood Quality collects prospective derelict structures from each inspector. Derelict structures found throughout the year that have not been submitted during the recommendation period are added to the upcoming fiscal year list.
- Utilizing a designation rubric to classify properties as a derelict structure based on the criteria: ordinance requirement, code enforcement, and property impact. In addition, to be officially designated, the property must receive a score of 70 or higher and must have three levels of approvals.
- Working with the City Attorney’s Office, the Treasurer’s Office, and City Planning Department to efficiently and effectively implement this program.

“This is a wonderfully effective program. It provides a framework to establish clear and achievable benchmarks for property owners,” said Cynthia Hall, Deputy City Attorney. “It is truly amazing what can be achieved through cooperative

partnerships with stakeholders.”

Now in FY 2017, Neighborhood Quality is continuing the momentum from last year and utilizing the program to assist the Department of Neighborhood Development with its multi-faceted, place-based strategy for making neighborhoods in the city of Norfolk safe, healthy and inclusive. 

About the author: *Lauren A. Lowery is a Management Analyst for the City of Norfolk Department of Neighborhood Development.*

May is Building Safety Month

BUILDING OFFICIALS from across Virginia will be celebrating Building Safety Month. This year’s theme is “Code Officials – Partners in Community Safety and Economic Growth.” The weekly focus topics are:



- May 1-7**
Mentoring the Next Generation of Building Professionals
- May 8-14**
Building Design Solutions for All Ages
- May 15-21**
Manage the Damage – Preparing for Natural Disasters
- May 22-28**
Investing in Technology for Safety, Energy & Water Efficiency

Liquid Assets

The hidden policies and pitfalls behind your water utility rates

MOST OF US PURCHASE gasoline, milk and municipal water with some regularity, counting on government oversight to ensure that the processing and delivery of these liquids are safe. The price we pay for the first two commodities is largely a function of market forces. However, the price of potable water is usually controlled by a monopoly. If you are an elected official in local government, you may be personally participating in the pricing of potable water sold

Nationally, the most common rate structure used to price potable water starts with a flat fee for the first 2,000 gallons consumed in a month.

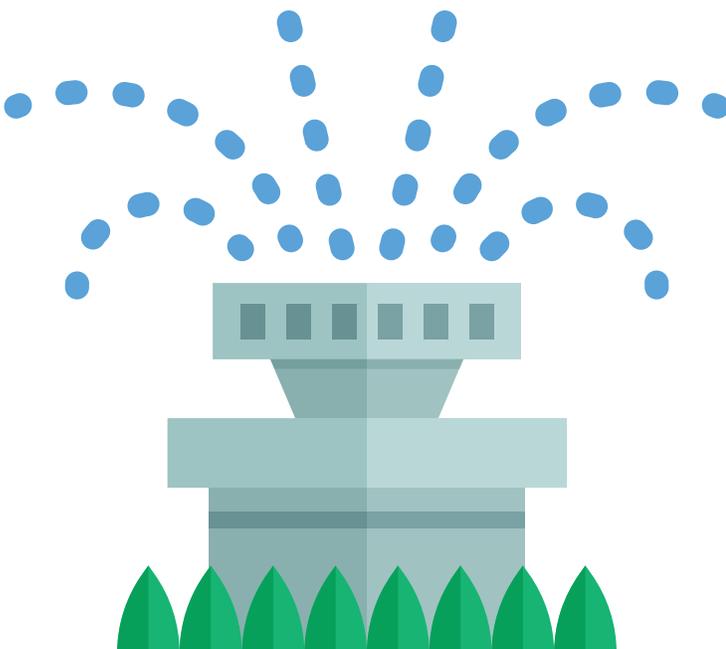
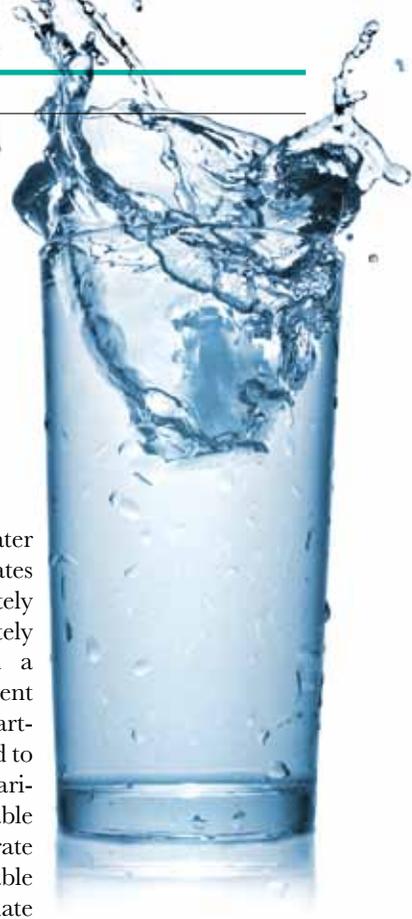
to your constituents. So, understanding your locality's water utility rates could be a wise investment of your time. You may get change back from three dollars if buying a gallon of milk, and currently, you should be able to find gas for \$2.50 or less per gallon. By contrast, "per thousand gallons" is the unit of measure most commonly used for pricing potable water delivered to the tap in our homes. If the water system serving your community posts a price of \$5 per 1,000 gallons, the "per gallon" price is one half of one cent!

The patchwork quilt of water systems serving the United States includes both publicly and privately owned operators. Even privately owned systems operate within a government regulated environment (such as the State Health Department) in which they are permitted to charge prices that allow for a variable business model. They are able to charge for their product at a rate that allows them to cover reasonable operating cost, make appropriate improvements in infrastructure to ensure safe and reliable service to the public and still earn a sufficient "return of investment." This is essentially the same model of regulatory oversight in which the Virginia State Corporation Commission regulates rates charged by private electric supply companies.

When the city of Detroit, Michigan declared bankruptcy in 2013, news media coverage disclosed that one of its problems was a significant number of severely delinquent water customers. Many of those had not been disconnected, thereby depriving the city of utility revenue. Some community leaders spoke out publicly, stating that access to drinking water was a "basic human right." While this statement is certainly humane, the U.S. Constitution does not seem to address this alleged right. Perhaps if it could be shown that one class of people were receiving free water that same privilege could then be extended to delinquent customers under the "equal protection clause." Nonetheless, it is difficult to keep a water system afloat if customers are allowed to withhold payment without consequence.

By definition, monopolies are insulated from free market forces. But the people who control them can be responsive to other influences or motivations. Nationally, the most common rate structure used to price potable water starts with a flat fee for the first 2,000 gallons consumed in a month. Above 2,000 gallons, rate structures convert to a "per 1,000 gallons" fee. Why?

When divided by two, the price "per 1,000 gallons," within the first 2,000 gallons used, will typically be the most expensive water for the customer at any level of usage in the rate structure. A common explanation given for this is that all customers need to share in a meaningful way in the basic fixed cost of building and maintaining a community water system. However, some Virginia jurisdictions have departed from this concept.



Water utility rates

Some jurisdictions have established an additional rate tier below the “first 2,000 gallons used” to shield customers using very small volumes of water from the fixed minimum fee that the majority of users are paying. For example, one jurisdiction located in an economically distressed part of the state has set 500 gallons as its first rate tier. Customers using less than 500 gallons per month pay only a portion of the fixed minimum that a majority of the system’s customers pay.

Five hundred gallons may seem an extraordinarily low volume of water consumption in a month. Yet, in one jurisdiction, customers consuming at this level represent about 10% of the customer base. An elderly person living alone, and whose only income is Social Security, can learn to be a champion conservationist. Of course, this is the type of customer an elected official may feel motivated to accommodate in pricing the water rate schedule. (Admittedly, this strategy provides little relief for the family of seven living at or below the poverty level.)

A cross subsidy or redistribution?

An affluent family of five with teenagers living in an opulent house with multiple bathrooms but without a lawn sprinkler system may use 10,000 to 12,000 gallons of water per month. Only when they fill the pool will they notice a spike in the water bill.

Few businesses will exceed 25,000 gallons per month. However, there are certain industrial customers that will use copious amounts of water. One of these is electrical generation plants.

Some jurisdictions have established an additional rate tier below the “first 2,000 gallons used” to shield customers using very small volumes of water from the fixed minimum fee that the majority of users are paying.

One rural PSA (Public Service Authority) in Virginia uses a fairly blatant strategy to minimize the financial burden on one category of customer at the expense of another. The “per thousand gallon” price for purchasing its water doubles for any volume in excess of 50,000 gallons per month and one of its customers – an electric power generation plant – routinely exceeds this level of usage. In fact, this single customer generates 10% of the PSA’s annual budget.

As an electrical utility regulated by the State Corporation Commission, the power company is able to pass such costs as the PSA water bill along to its larger customer base while the PSA is able to hold the bills to its smallest volume customers at a comfortable level. This scenario is reminiscent of the days before the breakup of



Ma Bell when AT&T operated as a monopoly in a regulated environment, subsidizing local telephone service with exorbitant charges for long distance calls.

Tinkering with the top of the schedule

A classical micro-economist might suggest that as the “economies of scale” reduce the “per unit cost” of producing a product such as potable water, a discount for volume should be extended to large customers. The water rate schedules of many utilities reflect this principle. Some jurisdictions may even regard this type of discount for volume as part of their industrial recruitment effort.

A new mindset now competes for attention. As the world shifts from viewing water as an unlimited resource to seeing it as a valuable commodity of limited availability, the concept of conservation comes into play. Rather than giving a discount for volume, a jurisdiction may decide to penalize large volume users, thereby incentivizing them to reduce their use of water. Examples of this type rate structure can be found in the Southwestern part of the United States where water is an endangered resource.

In certain Virginia jurisdictions, a dominant issue may be limitations of the raw water supply. Your jurisdiction may participate in a regional utility arrangement. If, however, it has its own dedicated raw water source, the Virginia State Department Health’s Office of Drinking Water will have rated that source specifying a “safe yield” limit for withdrawal. If your utility consistently exceeds 80% of its limit, it is expected to make plans for securing access to an additional water supply.

“Soda water” - a cautionary tale on volume discounts

A soft drink bottling plant was the largest water user in one Virginia town with a population of about 5,000. The water needs of that plant had grown to a point that the town’s draw on its raw water source grew close to exceeding the 80% threshold monitored by the Health Department. The town dealt with this by contracting with a neighboring utility for the importation of potable water through a physical connection. However, the price paid by the town to the neighboring utility,





per unit, was higher than the severely discounted price the bottling plant was paying the town as a high-volume user.

The town council was pro-business in sentiment, but it did not want to subsidize the soft drink product being produced at the bottling plant. An analysis determined that the bottling plant's cost for potable water used in each one dollar bottle of product (retail price) was less than a penny, so the town acted to reduce the discount given to volume customers. (This is a convenient euphemism for rate increase.)

Raising rates right

Raising rates doesn't have to be complicated. If your utility budget has a 5% hole (a 5% gap between projected revenues and expenditures), you could simply raise rates 5%. If you do decide to implement a straightforward percentage rate increase, there are other wrinkles in the process to remember.

- The time cycles for meter reading, billing and the payment habits of customers can all influence the timing of when the ramp-up in revenue is received by a locality. If an increase is declared as effective on July 1, it may be September or October before the full effect of the newly anticipated revenue flow is reflected in receipts. This needs to be remembered when financial statements are reviewed at the end of the fiscal year.
- A large percentage increase in rates can provoke a recoiling by customers, leading to the use of less water. Generally, this type of reaction will pass in weeks or months

Small increases on an annual basis are more palatable for all involved parties than waiting multiple years without any increase and then slamming the public with an increase that critics might describe as confiscatory.

Do you know how much water you're using?

Typical water consumption

- Older Toilets: 3.5 - 7 gallons per flush
- Newer Toilets: 1.6 gallons per flush
- Water Taps: 5 gallons per minute
- Dishwasher: 12 gallons per load
- Washing Machine: 40 gallons per load
- Garden Hose: 300 gallons per hour

Conservation tips your customers may not know

- **Insulate your water pipes. You'll get hot water faster and avoid wasting water while it heats up. You'll save energy too.**
- **The average household does about 400 loads of laundry per year, each using about 13,500 gallons of water in a regular top-loading washing machine. By switching to a front-loading washer, you can cut your water usage in half.**
- **Don't use the toilet as a wastebasket. Tissues and other small items belong in the wastebasket.**
- **Lawns only need to be watered every five to seven days in the summer and 10 to 14 days in the winter. But do deep soak your lawn when you water. To prevent water loss from evaporation, don't water your lawn during the hottest part of the day or when it's windy.**
- **Avoid over-fertilizing the lawn. The application of fertilizers increases the need for water. Apply fertilizers that contain slow-release, water-insoluble forms of nitrogen.**
- **Add hydrogels to plants that dry out quickly; these water-absorbing polymer crystals swell to several times their original size and slowly release water into the surrounding soil. Hydrogels can be found at your local garden center.**

as customers return to old habits. Again, this is to be remembered when reviewing end of fiscal year financial reports.

- As new water-efficient appliances find their way into homes, a gradual downward drift in revenue from the sale of potable water may be noticed.
- Small increases on an annual basis are more palatable for all involved parties than waiting multiple years without any increase and then slamming the public with an increase that critics might describe as “confiscatory.” For example, a 10% increase at the end of five years will result in a lower revenue stream than if annual increases of 2% had been implemented each year over five years. (The latter approach has the advantage of compounding.) The lack of any new revenue during this five-year period will also contribute to a backlog of needed expenditures such as maintenance and equipment upgrades.

Know your customer base

Are you familiar with the demographics of your customers? Is the age bracket that includes teenagers declining? When teenagers leave home to attend college, their parents’ water bill drops significantly. Some parents have speculated they have saved enough to pay for text books.

Does your customer base include a large percentage of renters? If so, you should ensure that your jurisdiction’s procedures for recovering delinquent bills minimizes, to the extent possible, the loss of revenue suffered by your utility fund. Of course, landlords will weigh in on this topic.

Nationally, the average household uses nearly 4,000 gallons of water per month. But, this is not true in all communities. Do you know the average, per customer, water usage in your jurisdiction? This is important information when discussing a potential rate increase.

Avoid leaky policy

Your utility department probably has a policy that provides for some type of partial refund to customers who have experienced a leak. Usually it is required that the customer demonstrate that the leak has been fixed before any refund is considered. Does your jurisdiction have such a policy? If so, does it incentivize some of your customers to avail themselves of its benefit habitually? One Virginia jurisdiction is currently refunding about 6% of its water and sewer revenues through its policy to provide relief to customers experiencing leaks. (Needless to say, that policy procedure is now under review.)

Too-clever rate tiers

Many years ago, a regional sewer authority attempted to shield its small usage customers from the effect of a pending rate increase. The first tier of its rate schedule was 2,000 gallons per month. Its average customer used about 4,000 gallons per month. About 20% of its customers rarely ever used over 2,000 gallons per month. Without any exemptions, the rate increase was projected to generate about \$500,000 in new revenue annually.

The Board Chair declared that the flat fee charged at the

first 2,000-gallon rate tier could be left unchanged. He reasoned that since only 20% of the authority’s customers used under 2,000 gallons per month, the rate increase would still generate \$400,000 of new revenue per year. This was considered adequate to provide for the authority’s revenue needs.

He overlooked the fact that the other 80% of customers would use their way through the first 2,000-gallon tier on their way to their 4,000 gallon monthly average. The rate increase was implemented without changing the price of the first 2,000 gallons and about \$250,000 in new revenue was generated in the following year, resulting in a \$150,000 short-fall. This required a second round of adjustments.

Do you know the average, per customer, water usage in your jurisdiction? This is important information when discussing a potential rate increase.

Don’t set it and forget it

Utility fund operations are the lifeblood of many local governments. Like a successful garden they require regular attention. Planting and then ignoring them yields disappointing results. Attentive care on an ongoing basis produces much better harvests. 

About the Author: *Art Mead is the Assistant Director of the Southwest Virginia Office of UVA’s Weldon Cooper Center for Public Service. Edited by Travis Perry, Weldon Cooper Center.*



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called upon for assistance, and requires that final reports be submitted to the Governor, as well as General Assembly leadership.

Discharge planning in jails

HB 1784 and SB 941 require that the Department of Behavioral Health and Developmental Services review the availability of forensic discharge planning services in local and regional jails and then work with stakeholders to develop a comprehensive plan for the provision of forensic discharge planning services for inmates with serious mental illness at local and regional jails. The plan is due by December, 2017.

Jail construction projects

SB 1313 specifies that the Commonwealth shall reimburse each locality its pro rata share up to one-fourth of the capital costs, for any construction, enlargement or renovation project at a regional jail if such project is approved by the Governor on or after July 1, 2017, and has been specifically authorized in the General Appropriation Act. This codifies language previously added to the Appropriations Act.

More mandated services for community services boards

HB 1549 and SB 1005 add new services to the list of those mandated services to be provided by community services boards. First, same-day mental health screening services will be required by July 1, 2019. By July 1, 2021, the list of mandated services will be again be expanded to include crisis services for individuals with mental health or substance use disorders, outpatient mental health and substance abuse services, psychiatric rehabilitation services, and other programs.

Local authority – noise and pets

HB 1477 gives localities the option to provide for a lifetime dog or cat license. The bill also sets the maximum fee at \$50. A provision that would have required microchipping in order to obtain the license was taken out of the final version.



SB 926 allows a locality to authorize the chief law enforcement officer to enforce civil noise ordinance penalties.

Timing of local elections: a word of caution



SB 1304 should put to rest for good any question as to whether municipalities can move their elections from May to November through adoption of an ordinance as opposed to requesting a charter change. The bill simply holds that the statutory authority allowing a city or town to move its local elections to the November general election date by ordinance – notwithstanding a charter

provision to the contrary – is retroactively effective beginning on July 1, 2000.

As VML monitored many charter changes during this session, it is recommended that a locality not ask for a charter change solely for this issue. During both the subcommittee and committee hearings, there was discussion from the members about the usefulness of such a change when an ordinance is already in place. Further, legislators questioned whether the elections should be held in either the odd or the even years.

Education bills likely to be vetoed

A batch of education bills are likely prospects for Gov. McAuliffe's veto pen, including bills on:

- **Virtual schools** – HB 1400 and SB 1240 would create a statewide virtual school as a state agency. The bills require the average state share of Standards of Quality per pupil funding for each enrolled student to be transferred to the school.
- **Regional charter schools** – HB 2342 and SB 1283 would allow the State Board of Education to establish regional charter school divisions that would then operate regional charter schools.
- **Voucher-like bill** – HB 1605 would establish a parental choice educational savings account program whereby parents could receive 90 percent of the state Standards of Quality funding allocated for students in the resident school division. The bill is aimed at families with incomes under 300% of federal poverty guidelines and students who have IEPs. The bill places administrative burdens on school divisions. 

About the Authors: *Michelle Gowdy is VML's General Counsel and Mary Jo Fields is VML's Director of Research.*

Victory in Defeat!

THANK YOU FOR RESPONDING to our legislative e-alerts and weighing in on several bills. Your voices helped to DEFEAT these bills:

SB 836 – BPOL

SB 795 – the checkbook bill

HB 2104 – changing assessment appeals process for machinery & tool taxes

SB 1585 – party ID bill

SB 1569 – changing standards for water & sewer connection fees

SJR 284 – expansion of property tax exemption

Supreme Court midterm review for local governments



THE SUPREME COURT'S 2016-2017 docket is now set. The Court is still down a Justice but has accepted as many cases as usual (about 75). In theory all the cases discussed below will be decided by June 30, 2017. The Court may decide to rehear tied (4-4) cases next term, when a new Justice will presumably join the bench.

This article covers cases of interest to local governments which the Court agreed to hear this term accepted after September 15, 2016. A summary of cases of interest to local governments which the Court agreed to hear before September 15, 2016 can be found at www.statelocalc.org.

The Supreme Court's decision from this term most likely to receive significant media attention involves a transgender student who wants to use the bathroom consistent with his gender identity. *Gloucester County School Board v. G.G.* will not directly affect local governments.

Federal agency defense

In the case of *Los Angeles County v. Mendez**, it is undisputed that police officers used reasonable force when they shot Angel Mendez. As officers entered unannounced the shack where Mendez was living, they saw a silhouette of Mendez pointing what looked like a rifle at them. Yet the Ninth Circuit awarded him and his wife damages because the officers didn't have a warrant to search the shack thereby "provoking" Mendez.

The Supreme Court must decide whether to accept or reject the Ninth Circuit's "provocation" rule. Per this rule, "Where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation, he may be held liable for his otherwise defensive use of deadly force."

The Mendezes also argue that putting the provocation theory aside, the officers are liable in this case because their unconstitutional entry "proximately caused" them to shoot Mendez. Many Americans own guns. So, it is reasonably foreseeable that if officers barge into a shack unannounced, the person in the shack may be holding a gun, the court reasoned.

Police and qualified immunity

United States Border Patrol Agent Jesus Mesa, Jr., shot and killed Sergio Adrian Hernandez Guereca, a fifteen-year-old Mexican national, who was standing on the Mexico side of the U.S./Mexico border. At the time of the shooting, Agent Mesa didn't know that Hernandez was a Mexican citizen.

One question in *Mesa v. Hernandez* is whether qualified immunity may be granted or denied based on facts – such as the victim's legal status – unknown to the officer at the time of the incident. The Fifth Circuit granted Agent Mesa qualified im-

munity based on the fact that Hernandez was a Mexican citizen even though Agent Mesa didn't know that at the time of the shooting.

Given the rapid pace of police work, it is not unusual for officers to learn a variety of information after they have used force, which supports their qualified immunity claim (i.e. the person they shot had a gun, had threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be favorable to officers.

But the question in this case is whether qualified immunity may be granted or denied based on facts discovered later. In some cases, officers may learn after-the-fact information that undermines their claim for qualified immunity (i.e. the person they shot stated he had a weapon but did not, had been mistakenly perceived to have threatened another officer or citizen, etc.). Considering this kind of after-the-fact information in the qualified immunity analysis would be unfavorable to officers.

First Amendment free speech

The Supreme Court accepted three First Amendment free speech cases last Fall. This is not good news for local governments as the Supreme Court routinely and sometimes unanimously votes against states and local governments in First Amendment free speech cases.

*Packingham v. North Carolina** is probably the First Amendment case of most interest to local governments as the Supreme Court is likely to discuss whether the statute at issue in the case is content-based or content-neutral.

The issue in this case is whether a North Carolina law prohibiting registered sex offenders from accessing commercial social networking websites where the registered sex offender knows minors can create or maintain a profile, violates the First Amendment.

Lester Packingham was charged with violating the North Carolina statute because he accessed Facebook. In the posting that got him in trouble, Packingham thanked God for the dismissal of a ticket.

If a statute limits speech based on content it is subject to strict (nearly always fatal) scrutiny. In *Reed v. Town of Gilbert, Arizona* (2015), the Supreme Court held that the definition of content-based is very broad.

The North Carolina Supreme Court concluded that the statute is a "content-neutral" regulation because it "imposed a ban on accessing certain defined commercial social networking

Supreme Court Midterm Review

websites without regard to any content or message conveyed on those sites.”

Waters of the United States

The Supreme Court has agreed to decide whether federal courts of appeals versus federal district courts have the authority to rule whether the “waters of the United States” (WOTUS) regulations are lawful in *National Association of Manufacturers v. Department of Defense*.

Per the Clean Water Act, a number of decisions by the Environmental Protection Agency Administrator must be heard directly in federal courts of appeals, including agency actions “in issuing or denying any permit.”

A definitional regulation like the WOTUS regulation does not involve the issuing or denying of a permit. Nevertheless, the Sixth Circuit Court of Appeals concluded that it has jurisdiction to decide whether the WOTUS regulations are lawful.

Judge McKeague, writing for the court, relied on a 2009

Sixth Circuit decision, *National Cotton Council v. EPA* holding that this provision encompasses “not only . . . actions issuing or denying particular permits, but also . . . regulations governing the issuance of permits.” The definition of WOTUS impacts permitting requirements.

The work of the Supreme Court never ends. The Court has already accepted one case for next term involving a local government. In *District of Columbia v. Wesby*, the Supreme Court will decide whether, when the owner of a vacant house informs police he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects’ claims of an innocent mental state. 

About the author: *Lisa Soronen is the Executive Director of The State and Local Legal Center, based in Washington, D.C.*

**Indicates a case where the SLLC has filed or will file an amicus brief. The State and Local Legal Center (SLLC) files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments.*

Using social media in the hiring process

Is it useful? Is it fair?

By Andrea Shindlebower Main

WHEN HIRING A NEW EMPLOYEE, do you use social media as a tool to learn more about the candidate? If so, you are in a growing number of employers that use social media. A recent CareerBuilder survey found that 39 percent of the companies polled used social media as a tool in the hiring process.

In another recent report by Florida State University, researchers picked a number of Facebook users who were college graduates and asked recruiters to review their Facebook pages and try to predict the potential employees’ job performance. The researchers then followed up with these people in their new jobs.

Researchers found that the recruiter predictions based on the applicants’ Facebook information was unrelated to the actual supervisor ratings of job performance. Not only that, but they found that when using this tool in hiring, those considered to be in a protected class were often overlooked.

The big question then becomes: are employers using this tool appropriately? Going behind the scenes to review a job candidate’s social media site does not relieve

the employer from employment law liabilities. Online profiles almost always expose a person’s protected status. Employers need to be careful not to use this information as a way to weed out employees based on race, gender, age, disability, national origin, or status as a smoker.

As you can see, the information that should be obtained can be very limited. If an applicant discovers that you reviewed his or her social media site, the city

could end up spending valuable time and resources disputing a discrimination claim. In many cases, cities may decide it’s simply best not to review a social media site before hiring.

If you do decide to use this tool, put protections in place to avoid claims. Consider the reasons for the tool: What are you looking for? At what point will you use this tool? Will you use it before

or after the interview process? Who will be reviewing the information? And lastly, work with your city attorney to be certain that you are not violating the law.

Whether or not you decide to use social media in the hiring process, the most important factors to consider are whether the candidates can perform the essential functions of the job and whether they have the necessary qualifications.

About the author: *Andrea Shindlebower Main is the Personnel Services Specialist with the Kentucky League of Cities (KLC). This article is reprinted from Kentucky City magazine, January/February 2017 issue.*



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