



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Department of Housing and Community Development/Commission on Local Government
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 50-20
VAC Chapter title(s)	Organization and Regulation of Procedure
Action title	Amendments to accomplish regulatory reduction
Date this document prepared	6/4/24

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This change amends existing regulations to accomplish the goal of Executive Directive 1 (2022)-- a 25% reduction in discretionary requirements on regulated parties that appear before the Commission and the public. The reductions specifically focus on reducing 1) the amount of information that must be provided in a filing before the Commission, 2) the number of parties who must be notified of a filing before the Commission, 3) the length of notifications to the Commission and other parties, and 4) the process for requesting filings and other documents from the Commission.

Throughout these amendments, the Commission seeks to reduce the requirements of filings and notifications to the minimum required by law for each type of case that may be filed.

In conjunction with focus number 4 above, the changes also clarify the Commission’s Freedom of Information Act responsibilities and make minor updates to better comply with recent changes to the Freedom of Information Act.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

CLG: Commission on Local Government
FOIA: The Virginia Freedom of Information Act

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory change was prompted by Executive Directive 1 (2022), Executive Order 19 (2022), and Commission decision.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The promulgating agency is the Commission on Local Government. Section 15.2 – 2903 (1) of the Code of Virginia enables the Commission to promulgate regulations regarding its proceedings.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The underlying rationale of this regulatory change is the same rationale that underpins Executive Directive 1 (2022) and Executive Order 19 (2022)—while regulations are essential to the functioning of the Commission, the existing requirements require time, money, and energy on the part of both the Commission and local governments to comply with, and should be revisited to determine whether the burdens are still furthering the work of the Commission and cost effective.

While this regulatory change is not essential to protect the health, safety or welfare of the citizens of the Commonwealth, the regulations are essential to the functioning of the Commission. The Commission has noticed that filings and notices for cases before it are filled with information that is not relevant to its

review, and that its regulations require many filings that are not required by Virginia Law. This places a cost and time burden on the local governments preparing these documents. Therefore, the goals of this regulatory change are primarily to reduce the cost and time spent by local governments preparing filings for cases before the Commission and secondarily reduce the cost and time spent by citizens, localities, and other parties reading the documents and preparing their own responses.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The reductions specifically focus on reducing 1) the amount of information that must be provided in a filing before the Commission, 2) the number of parties who must be notified of a filing before the Commission, 3) the length and timing of notifications to the Commission and other parties, and 4) the process for requesting filings and other documents from the Commission.

Other substantive changes to existing sections are related to how the Commission interacts with the public. There include updates to special meeting and closed meeting policies, clarifying that records for all cases can be requested through Commission staff, and updating regulations that pertain to FOIA to reflect current practices.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This change will provide numerous advantages to any party filing before the Commission by reducing both the amount of information needed in a filing and the length of notifications to other parties. This reduction will result in cost and time savings for the local governments and other private parties. It may cause disadvantages in instances where a statute does not currently require a party to be notified of a filing, but the regulation does, as these extraneous notifications have been reduced to the statutory minimums.

The regulation will result in some disadvantages for the Commission because the changes explicitly encourage members of the public and other parties that receive notices to contact the Commission’s staff for documents and additional information instead of requesting it from the local government who filed the notice or requiring the local government to send the information to other parties. However, these disadvantages are not any more onerous than what is already required under FOIA, and it may lead to no change in work for the Commission, as members of the public already ask the Commission for documents with some regularity.

There are no other pertinent matters of interest to the local government officials or the public.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale

for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are affected.

Localities Particularly Affected

All localities that have business before the Commission will be affected. This is potentially every locality, though most of the Commission's work involves Counties and Towns.

Other Entities Particularly Affected

Law firms, who are potentially small businesses, are particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	No significant change in Commission/DHCD costs, savings, fees, or revenues anticipated. Minor changes in expenses and/or revenues from increased FOIA requests may occur, but there will be no change in staffing.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	n/a
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	This regulatory change will result in time savings for the Commissioners and staff by reducing the

	length of filings. This will not result in changes to staffing, and as such, cannot be monetized.
--	---

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	Provided on ORM form, table 1a
Benefits the regulatory change is designed to produce.	The change is designed to decrease compliance costs associated with filing a case before the Commission and meeting the accompanying notification requirements. This will reduce legal representation bills for localities.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Local governments and the law firms that represent them before the Commission will be affected by these changes. Rarely, specific citizens with discrete property interests will be involved in proceedings before the Commission.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	All localities will be affected. However, most of the Commission’s cases involve Counties and Towns. The number of small businesses affected is unknown, as most, but not all, law firms that represent localities before the Commission are not small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Provided on ORM form, table 1a
Benefits the regulatory change is designed to produce.	The change is designed to decrease compliance costs associated with filing a case before the Commission and meeting the accompanying notification requirements. This will result in a decrease in overhead for the law firms.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Because the changes reduce filings to the minimum required by statute and due to the need for standardized procedures for filings and hearings before the Commission, the alternative to the regulatory change is to maintain the regulations in their current form without efforts to remove unnecessary and duplicative filing and notification requirements. The Commission concluded, therefore, that there is no viable alternative to this change that would also comply with the requirements of Executive Directive 1.

For impact on small businesses, see ORM form table 4.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The only alternatives to regulation that will provide the amount of uniformity and effectiveness needed to govern the process by which the Commission considers cases and proceedings would have to be accomplished by statute.

The changes to this regulation benefit all businesses (i.e. law firms) equally. If a law firm is a small business (less than 500 employees, which is not common with firms that represent local governments), the benefit will be similar to a larger firm because the regulations reduce costs that are fixed across the economy—administrative billable hours, paper, and postage.

The purpose of the regulation is to establish less stringent compliance requirements, reporting requirements, schedules, and deadlines, along with consolidating notifications where possible for the local governments and other parties that file before the Commission.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This change is not being conducted in response to a periodic review/small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Virginia Coalition for Open Government	Consider clarifying the meaning of “executive session” and its related exemptions within the Commission’s regulations or choose a different term to differentiate them from closed proceedings.	Remove references to “executive session” and replace it with “Closed statutorily mandated proceedings”.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Commission on Local Government is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

LeGrand Northcutt
 600 E Main Street, suite 300
 Richmond, VA 23219
Legrand.northcutt@dhcd.virginia.gov
 804-371-7090

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
1VAC50-20-40	Elect officers at the beginning of the calendar year	Elect officers at the end of each calendar year (standard practice for other government agencies) to streamline transition when new appointees are being added and reduce confusion with parties in cases that bridge calendar years.
1VAC50-20-142	The regulation appears to require both physical and electronic notification	Clarifies that only electronic notification is necessary, reducing compliance costs on the Commission.
1VAC50-20-150	Documents can be requested at a price sufficient to cover expenses	Documents may be requested in accordance with DHCD’s FOIA policy, which allows for up to 5 hours of staff time at no charge. This also creates uniformity with agency practice.
1VAC50-20-160	The Commission may meet in “executive session”, which is exempt from FOIA	Change executive session to “closed statutorily mandated proceedings” to align the meetings with the statute that creates the FOIA exemption and reduce confusion about their purpose.

		Codifies current commission practice with respect to these proceedings for transparency.
1VAC50-20-170	Refers to "executive session"	Updates language in accordance with previous section and adds explicit references to applicable code to reduce confusion about the Commission's FOIA exemption.
1VAC50-20-180 Through 1VAC50-20-382	Notices to the Commission of various cases must include specified contact information, be sent to a variety of other parties, and contain certification that notices were sent to various parties.	Removes unnecessary information required in filings (e.g., fax number) and reduces notification requirements to the minimum required by statute to reduce burden on filing parties and the length of documents filed with the Commission. The intent is that local governments filing notices with the Commission will see significant reductions in overhead costs on paper, printing, and postage. Requests for documents will run through the Commission or the locality's FOIA process to eliminate the burden of supplying records to other entities, reduce compliance costs, and make better use of a pre-existing framework for requesting documents and information related to cases.
1VAC50-30-390	Language only identifies the Commission as being able to meet with parties to establish review schedules for cases. Documents can be requested at a price sufficient to cover expenses	Add staff to reduce compliance costs and codify current practice of directing staff to meet with parties on the Commission's behalf. Documents may be requested in accordance with DHCD's FOIA policy, which allows for up to 5 hours of staff time at no charge. This also creates uniformity with agency practice. Additional unnecessary filing requirement removed.
1VAC50-20-540 Through 1VAC50-20-612 1VAC50-20-616	Previous language could be interpreted to require evidence to be submitted for all factors of analysis	Adding the word "relevant" before the factors clarifies the existence of discretion and harmonizes the regulations, which, in earlier sections, direct parties to file evidence on "all relevant elements" listed in these sections.
1VAC50-20-620	Documents can be requested at a price sufficient to cover expenses	Documents may be requested in accordance with DHCD's FOIA policy, which allows for up to 5 hours of staff time at no charge. This also creates uniformity with agency practice.

		Removed additional document sharing requirements and directs they be handled by the Commission through FOIA.
1VAC50-20-630	<p>Language specifies where documents must be made available</p> <p>Documents can be requested at a price sufficient to cover expenses</p>	<p>Places where documents must be available are suggestive.</p> <p>Documents may be requested in accordance with DHCD's FOIA policy, which allows for up to 5 hours of staff time at no charge. This also creates uniformity with agency practice.</p>
1VAC50-20-640	<p>Requires the Commission to create an official record of proceedings</p> <p>Documents can be requested at a price sufficient to cover expenses</p>	<p>Removes this requirement due to the presence of other requirements that achieve this same purpose, such as minutes of meetings and reports.</p> <p>Documents may be requested in accordance with DHCD's FOIA policy, which allows for up to 5 hours of staff time at no charge. This also creates uniformity with agency practice.</p>
1VAC50-20-650	Language for requesting formal mediation, especially the timelines, is ambiguous and does not align with the language of the statute.	Language updated to codify current commission interpretations and better reflect the wording of the statute to reduce confusion among parties filing before the Commission.