



Ralph S. Northam  
Governor

R. Brian Ball  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

Erik C. Johnston  
Director

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 2019

### MEMORANDUM

**TO:** Board of Housing and Community Development Members  
**FROM:** Kyle Flanders  
**SUBJECT:** May 13, 2019 Board of Housing and Community Development Meeting

Enclosed is the agenda and information package for the Board of Housing and Community Development meeting to be held on Monday, May 13, 2019. The Housing and Community Development committee will meet at 10:00 a.m., followed by the regular meeting of the Board.

The Board meeting will be held at the **Virginia Housing Center** located in Innsbrook at 4224 Cox Road in Glen Allen, Virginia. Lunch will be provided during the meeting.

If you will not be able to attend the Board meeting, please contact me as soon as possible. I can be reached by e-mail at [kyle.flanders@dhcd.virginia.gov](mailto:kyle.flanders@dhcd.virginia.gov) or by telephone at 804-786-6761.

Please let me know if you have any questions or if I can be of assistance. I look forward to seeing you at the meeting.

Enclosure

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**AGENDA**  
**BOARD OF HOUSING and COMMUNITY DEVELOPMENT**  
**Housing and Community Development Committee**  
**Monday, May 13, 2019**  
**Glen Allen, VA**  
**10:00 a.m.**

- |      |   |               |
|------|---|---------------|
| I.   | OPENING                                       |               |
|      | a. Call to Order                              | Chair         |
|      | b. Roll Call                                  | Kyle Flanders |
| II.  | CONSENT AGENDA                                | Chair         |
|      | o <i>Approval of Minutes</i> : March 18, 2019 |               |
| III. | 2019 ANNUAL ACTION PLAN                       | DHCD Staff    |
|      | o <i>Action Item</i>                          |               |
| IV.  | ENTERPRISE ZONE REGULATIONS                   | DHCD Staff    |
|      | o <i>Action Item</i>                          |               |
| V.   | UNFINISHED BUSINESS                           | Board members |
| VI.  | NEW BUSINESS                                  | Board members |
| VII. | ADJOURNMENT                                   | Chair         |

# AGENDA

## BOARD OF HOUSING and COMMUNITY DEVELOPMENT

Monday, May 13, 2019

Glen Allen, VA

To begin at the conclusion of the Housing and Community Development Committee

- I. OPENING
  - a. Call to Order Chairman
  - b. Roll Call Kyle Flanders
  - c. Public Comment Chairman
  
- II. CONSENT AGENDA Chairman
  - o *Approval of Minutes: March 18, 2019*
  
- III. REPORT OF THE HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE Helen Hardiman
  - Action Items*
    - o *Annual Action Plan*
    - o *Enterprise Zone Regulations*
  
- IV. PERIODIC REVIEWS OF REGULATIONS Kyle Flanders
  - Action Items*
    - o *Public Participation Guidelines*
    - o *Virginia Standards for Individual and Regional Code Academies*
    - o *Solar Energy Criteria for Tax Exemption*
  
- V. AMUSEMENT DEVICE TECHNICAL ADVISORY COMMITTEE APPOINTMENT DHCD Staff
  - Action Item*
  
- VI. CODE CYCLE UPDATE Cindy Davis
  
- VII. REPORTS AND INFORMATION
  - a. VHDA Report Susan Dewey
  - b. Report of the Virginia Fire Services Board Andrew Friedman
  - c. Report of the Director Erik Johnston
  
- VIII. UNFINISHED BUSINESS Board members
  
- IX. NEW BUSINESS Board members
  
- X. BOARD MATTERS Board members

XI. FUTURE BOARD MEETING DATES

Erik Johnston

- *Monday, July 22, 2019 (includes joint public hearing)*
- *Monday, September 16, 2019*
- *Monday, December 16, 2019*

XII. ADJOURNMENT

Chairman

**BOARD OF HOUSING AND COMMUNITY DEVELOPMENT**  
**Housing and Community Development Committee**  
**MEETING**  
**10:00 A.M., March 18, 2019**  
**Richmond, Virginia**

Members Present

Susan Dewey  
Andrew Friedman  
Helen Hardiman  
Abigail Johnson  
Keith Johnson  
Steve Semones  
Mimi Elrod

Members Absent

John Patrick “J.P.” Carr  
Sonny Abbasi  
Richard Gregory  
Earl Reynolds

Call to Order

Ms. Helen Hardiman, Chair of the Housing and Community Development Committee, called the meeting to order at 10:00 a.m.

Roll Call

The roll was called by Mr. Kyle Flanders of the Department of Housing and Community Development’s (DHCD) Policy Office. Mr. Flanders reported that a quorum was present.

Approval of Minutes

A motion was made and properly seconded to approve the minutes of the July 30, 2018, meeting of the Committee; the motion passed.

Annual Action Plan

Ms. Pam Kestner, Deputy Director of the Division of Housing at DHCD presented information regarding the U.S. Department of Housing and Urban Development (HUD) required Consolidated Plan and Annual Action Plan. Ms. Kestner noted the programs covered by the plan and that DHCD is in year two of five of their Consolidated Plan. The adoption of the Annual Action Plan is to come before the Board in May.

Mr. Jay Grant, Deputy Director of the Division of Community Development at DHCD presented projected funding amounts for the year for DHCD’s HUD funded programs. Staff noted changes for the plan include prioritization of Broadband and permanent supportive housing.

Discussion ensued among board members regarding specific programs covered by the plan. Ms. Hardiman asked how DHCD

complied with the plan after Board approval. Staff noted that there is a yearly reporting form (the Consolidated Annual Performance and Evaluation Report/CAPER) submitted to HUD. Plan priorities are also included in project scoring when determining funding awards. Staff noted that DHCD utilizes “method of distribution” funding where projects are selected from those submitted.

Unfinished Business

There was no unfinished business to be discussed.

New Business

There was no new business to be discussed.

Adjournment

Upon a motion duly made and seconded, the meeting was adjourned.

**BOARD OF HOUSING AND COMMUNITY DEVELOPMENT  
MEETING  
11:45 A.M., March 18, 2019  
Glen Allen, Virginia**

Members Present

Susan Dewey  
Sean Farrell  
Andrew Friedman  
Helen Hardiman (left early)  
Abigail Johnson  
Keith Johnson  
Jeff Sadler  
Steve Semones  
Mimi Elrod

Members Absent

John Patrick “J.P.” Carr  
Sonny Abbasi  
Richard Gregory  
Earl Reynolds  
Patricia Shields

Call to Order

Mr. Steve Semones, Vice-Chairman of the Board, called the meeting to order at 11:45 a.m.

Roll Call

The roll was called by Mr. Kyle Flanders of the Department of Housing and Community Development’s (DHCD) Policy Office. Mr. Flanders reported that a quorum was present.

Public Comment

Mr. Brian McGraw, State Fire Marshal, provided follow-up information from the January Board meeting clarifying the difference between the rate of fire fatalities and the raw numbers in reporting fire fatalities. Chief Keith Johnson noted that fire fatality reporting in Virginia is not mandatory and there is a 93 or 94 percent reporting rate. Discussion ensued among Board members on how to best achieve full reporting.

Approval of Minutes

A motion was made and properly seconded to approve the minutes of the January 28, 2019, meeting of the Board; the motion passed.

Report of the Housing and Community Development Committee

Mr. Andrew Friedman, Vice-Chairman of the Housing and Community Development Committee reported that the committee had heard information regarding the U.S. Department of Housing and Urban Development (HUD) required Annual Action Plan. The Board will take action on the plan at their May meeting.

Report of the Codes and Standards Committee Mr. Semones reported that the Committee had taken action on Emergency Regulations and a related Notice of Intended Regulatory Action (NOIRA) and Notices of Intended Regulatory Action for the 2018 Code Update Cycle. He also reported that the Committee approved an updated 2018 Code Change Cycle Schedule.

On the recommendation of the Committee, the Board unanimously approved the Emergency Regulations and the related NOIRA in separate actions.

On the recommendation of the Committee, the Board unanimously approved NOIRAs for the Uniform Statewide Building Code (USBC), Statewide Fire Prevention Code (SFPC), Industrialized Building Safety Regulations (IBSR), Virginia Amusement Device Regulations (VADR), Manufactured Home Safety Regulations (MHSR), and the Virginia Certification Standards (VCS).

On the recommendation of the Committee, the Board unanimously approved the updated 2018 Code Change Cycle Schedule.

Legislative Update Mr. Erik Johnston, Director of DHCD, and Mr. Flanders provided information regarding budget and legislative items from the 2019 session of the General Assembly pertinent to DHCD and to the Board. It was noted that a number of items would be coming before the Board for action either as guidelines or regulations.

VHDA Report Ms. Susan Dewey, Executive Director of the Virginia Housing Development Authority (VHDA), reported that VHDA was maintaining a focus on innovation, supporting the Housing X conference in May and adding an innovation pool for the Low Income Housing Tax Credit (LIHTC) program.

VFSB Report Mr. Friedman reported that the Virginia Fire Services Board met in February. The Fire Services Board discussed legislative changes from the General Assembly as well the goals of preventing line of duty deaths and addressing mental health among fire services members.



Chief Johnson reported information regarding the 1031 fire inspector classes. Mr. Mike Reilly, Executive Director of the Department of Fire Programs, reported that legislation from the General Assembly would update the membership of the Fire Services Board.

Director's Report

Mr. Johnston shared grant announcements provided to the Board and discussed the Governor's Executive Order on Housing (EO 25) as related to the Annual Action Plan and legislation from the General Assembly. Specifically, he noted the focus on reducing evictions and affordable housing.

Unfinished Business

There was no unfinished business to be discussed.

New Business

There was no new business to be discussed.

Adjournment

Upon a motion duly made and seconded, the meeting was adjourned.



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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 2019

### **Memorandum**

**To:** Board of Housing and Community Development Members

**From:** Erik C. Johnston, Director

**RE:** Annual Action Plan

The Board of Housing and Community Development is responsible for the review/approval of the 2019 – 2020 Annual Action Plan (year two of the five-year Consolidated Plan). The plan is a HUD requirement that sets priorities and goals for the use of HUD program funds that include the Community Development Block Grant (CDBG), Emergency Solution Grant (ESG), HOME Investment Partnership, Housing Opportunities for Persons with AIDS (HOPWA), and the National Housing Trust Fund (NHTF).

For more information about the consolidated planning process, please see [DHCD Online](#). A presentation on the draft plan was made at the Board's March 18, 2019 meeting and final review/approval of the Annual Action Plan is included as an action item on the May 13, 2019 Board meeting agenda. A summary presentation regarding the final version of the plan will be sent in a separate email prior to the Board meeting.

Enclosures

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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 2019

### **Memorandum**

**To:** Board of Housing and Community Development Members

**From:** Erik C. Johnston, Director

**RE:** Enterprise Zone Regulations

During the 2019 General Assembly session legislation and budget language passed affecting the Enterprise Zone program. The changes alter zone renewal procedures and clarify procedures for inclusion of solar panel installation as an allowed activity within the Enterprise Zone program (Chapter 496, 2019 Acts of Assembly and 2019 Appropriations Act). As a result of these changes, the Enterprise Zone regulations (13VAC5-112, Enterprise Zone Grant Program Regulation) must be amended. As the amendments are required by the Code of Virginia, the regulations may follow the abbreviated, “exempt,” regulatory process. The “exempt” process requires that only final regulations be published and no comment period is necessary.

Chapter 496, Virginia Acts of Assembly 2019 and the 2019 Appropriations Act change zone renewal procedures and make an allowance for inclusion of solar panels within the real property investment grant program. The first change allows all zones an additional five year renewal period for a maximum zone duration of 25 years. The second change adds language clarifying that solar panel installation is a permitted activity under the Real Property Investment Grant (RPIG) program; this includes stand-alone solar installation or as part of new construction or rehabilitation project. The change also lowers the threshold at which solar projects are eligible to receive funding. This action includes two technical corrections. Staff recommends the Board approve the regulations as presented.

Enclosure

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**Project 5966 - none**

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**Amend to Conform to State Statute**

Part I

Definitions

**13VAC5-112-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.
2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the U.S. Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13VAC5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant-eligible positions.

"Health benefits" means that at a minimum medical insurance is offered to employees, and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"High unemployment area" means enterprise zone localities with unemployment rates one and one-half times or more than the state average based on the most recent annualized unemployment data published by the Virginia Employment Commission.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members over the age of 16 years from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);
2. Net self-employment income (gross receipts minus operating expenses);
3. Interest and dividend earnings; and
4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;
2. Public assistance payments;
3. Disability payments;
4. Unemployment and employment training benefits;
5. Capital gains and losses; and
6. One-time unearned income.



When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

"Jurisdiction" means the city or county that made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location or locations is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land of a nonresidential structure built on the site or parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or

transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; or pursuant to 13VAC5-112-110 the first

moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount expended for improvements to rehabilitate, expand, or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$500,000 with respect to a single building or a facility in the case of new construction. "Qualified real property investment" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Consistent with the provisions of § 59.1-548, Code of Virginia, beginning on January 1, 2019, the installation of solar panels shall be considered eligible investments for the purposes of the real property investment grants, provided that such solar installation investment is in an amount

of at least \$50,000 and the grant shall be calculated at a rate of 20 percent of the amount of qualified real property investments in excess of \$450,000 in the case of construction of a new building or facility. Grants shall be calculated a rate of 20 percent of the amount of qualified real property investment in excess of \$50,000 in the case of the rehabilitation or expansion of an existing building or facility. In the case where the grant is awarded based solely on solar investment, the grant shall be calculated at a rate of 20 percent of the amount of total qualified real property investments made in solar installation. For such properties eligible for real property investment grants made solely on the basis of solar installation investments of at least \$50,000 but not more than \$100,000, awards shall not exceed \$1,000,000 in aggregate in any fiscal year.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person

acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount expended for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. "Qualified zone expenditures" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control, as defined by Internal Revenue Code § 52(b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of



the building for which the owner holds title and not to common elements. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Reduced wage rate threshold" means 150% of the federal minimum wage pursuant to 13VAC5-112-270, 13VAC5-112-280, and 13VAC5-112-285 and high unemployment areas.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company or related companies or companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts, or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor.

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,820 hours. Bonuses, overtime and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

**13VAC5-112-290. Application submittal and processing.**

A. In order to claim the grant, an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for job

creation grants as provided for in § 59.1-547 of the Code of Virginia shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the department.

E. In order to request job creation grants, business firms shall submit the application form, final attestation report, if an attestation is required, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

G. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection ~~H~~ of this section.

H. The department shall notify the business in writing of any incomplete or missing required documentation or request written clarification from the business firm on information provided by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

I. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

J. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

K. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

L. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

**13VAC5-112-340. Computation of grant amount.**

A. For any qualified zone investor, the amount of the grant shall be equal to 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility. In the case of the rehabilitation or expansion of an existing building or facility grants shall be equal to 20% of the amount of qualified real property investment in excess of \$100,000. A qualified zone investor may receive a grant for the installation of solar panels provided that such solar installation investment is in an amount of at least \$50,000 and the grant shall be calculated at a rate of 20 percent of the amount of qualified real property investments in excess of \$450,000 in the case of construction of a new building or facility. Grants shall be calculated a rate of 20 percent of the amount of qualified real property investment in excess of \$50,000 in the case of the rehabilitation or expansion of an existing building or facility. In the case where the grant is awarded based solely on solar investment, the grant shall be calculated at a rate of 20 percent of the amount of total qualified real property investments made in solar installation. For such properties eligible for real property investment grants made solely on the basis of solar installation investments of at least \$50,000 but not more than \$100,000, awards shall not exceed \$1,000,000 in aggregate in any fiscal year. Qualified zone investments are defined as below:

1. Qualified zone investments include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (ii) excavations; (iii)

grading and paving; (iv) installing driveways; and (v) landscaping or land improvements. These can include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup-, and solar panels.

2. Qualified real property investments do not include:

- a. The cost of acquiring any real property or building.
- b. Other costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
- c. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined by § 52(b) of the Internal Revenue Code); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or § 1014(a) of the Internal Revenue Code.

B. For any qualified zone investor making less than \$5 million in qualified real property investment, the cumulative grant will not exceed \$100,000 within any five-year period for any building or facility.

1. In cases where subsequent qualified real property investment within the five-year period results in the total qualified real property investment equaling \$5 million or more then the qualified investor(s) shall be eligible to receive a grant(s) provided that the total of all grants received within the five-year period does not exceed a maximum of \$200,000 per building or facility.

2. In such cases the grant will be available to the qualified zone investor or investors whose qualified real property investment application(s) results in the total qualified real property investment for the building or facility to equal \$5 million or more for the calendar year in which the \$5 million threshold is met. The grant will be equal to 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000 notwithstanding the \$200,000 cap per building or facility pursuant to subsection D of this section.

C. For any qualified zone investor making \$5 million or more in qualified real property investments, the cumulative grant will not exceed \$200,000 within any five-year period for any building or facility.

D. Notwithstanding subsection E of this section, in the case of a building with multiple tenants and/or owners, the maximum amount of the real property investment grant to each tenant and/or owner shall relate to the proportion of the property for the tenant holds a valid lease or the owner has a deed of trust.



1. This maximum shall be determined by the cumulative level of qualified real property investment made within the five consecutive year period. The first five consecutive year period starts with the first real property investment grant issued pursuant to § 59.1-548 of the Code of Virginia.

2. If the total of all qualified real property investments up to and including those made in the current grant year are less than \$5 million then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal to the qualified zone investor's proportion of the building or facility's useable floor space times \$100,000 or 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

3. If the total of all qualified real property investments up to and including those made in the current grant year are \$5 million or more then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal the qualified zone investor's proportion of the building or facility's useable floor space times \$200,000 or 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

E. The total grant amount per building or facility within a five-year period shall not exceed \$200,000.

## Part VII

### Enterprise Zone Designation

#### **13VAC5-112-420. Status of enterprise zones designated prior to July 1, 2005.**

All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 of the Code of Virginia as those that were in effect prior to July 1, 2005, shall continue in effect until the end of their ~~20-year~~ designation period. Such zones shall be governed by the provisions of Chapter 49 (§ 59.1-438 et seq.) of Title 59.1, ~~exclusive of § 59.1-542 E of the Code of Virginia.~~

## Part VIII

### Procedures and Requirements for Zone Designations

#### **13VAC5-112-460. Procedures for zone application and designation.**

A. Upon recommendation of the Director of the Department of Housing and Community Development, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this section. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions or the termination of designations pursuant to 13VAC5-112-510, 13VAC5-112-520, and 13VAC5-112-530 D.

B. Applications for zone designation will be solicited by the department on a competitive basis in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia Department of Housing and Community Development, ~~501 North Second Street~~600 East Main Street, Suite 300, Richmond, Virginia 23219, on or before the submission deadline established by the department.
2. Each applicant jurisdiction(s) must hold at least one public hearing on the application for zone designation prior to submission of the application to the department. Notification of the public hearing is to be in accordance with § 15.2-2204 of the Code of Virginia relating

to advertising of public hearings. An actual copy of the advertisement must be included in the application.

3. In order to be considered in the competitive zone designation process an application from a jurisdiction(s) must include all the requested information, be accompanied by a resolution(s) of the local governing body(s) and be signed by the chief administrator(s) or the clerk(s) to county board of supervisors where there is no chief administrator. The chief administrator(s) or clerk(s), in signing the application, must certify that the applicant jurisdiction(s) held the public hearing required in subdivision 2 of this subsection.

C. Within 60 days following the application submission deadline, the department shall review and the Director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. Enterprise zones designated pursuant to § 59.1-542 of the Code of Virginia will be designated for an initial 10-year period except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Upon recommendation of the director of the department, the Governor may renew zones for up to two five-year renewal periods.

E. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

## Part XII

### Procedures for Enterprise Zone Renewal

#### **13VAC5-112-530. Procedures for zone renewal.**

A. Enterprise zones designated pursuant to 13VAC5-112-460 are in effect for an initial 10-year period with up to ~~two~~ three five-year renewal periods, except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Enterprise zones designated prior to July 1, 2005 are eligible for one

five year renewal. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment. The following procedures shall be used in considering such an enterprise zone for renewal.

B. In anticipation of the tenth ~~and fifteen~~ fifteenth, and twentieth anniversaries of an enterprise zone's designation, the locality(s) shall submit to the department on the prescribed form information regarding, but not limited to, (i) the area conditions; (ii) the continued need for the enterprise zone; (iii) its long-term effectiveness in creating jobs and capital investment. The department shall also consider the locality(s) long-term performance of enterprise zone responsibilities.

C. A jurisdiction that has shown satisfactory performance and effectiveness, or that is making steady improvement in performance and effectiveness or has a continued need for an enterprise zone will be recommended to the Governor by the department for an additional five-year designation period. No enterprise zone designation shall be in effect more than ~~20~~25 years.

D. A jurisdiction that has shown consistently poor performance and effectiveness or that no longer needs an enterprise zone will not be recommended for renewal and will be notified of such in writing by the department.



Ralph S. Northam  
Governor

R. Brian Ball  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

Erik C. Johnston  
Director

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 2019

**To:** Board of Housing and Community Development Members

**From:** Erik C. Johnston, Director

**RE:** Periodic Reviews of Regulations

Executive Order 14 (2018) and Sections 2.2-4007.1 and 2.2-4017 of the Code of Virginia require that existing regulations are “periodically” reviewed at least every four years to determine if they should be continued without change, amended, or repealed. This review must allow for the following: a public comment period, consideration of alternatives to the existing regulation, and consideration of the impact of the regulation on small business.

At the January meeting, the Board approved the periodic reviews of three regulations. The regulations were open for public comment from March 4, 2019 until April 3, 2019 and there were no comments submitted for any of the regulations. Staff recommends *retaining* the Standards Governing Operation of Individual and Regional Code Academies and the Solar Energy Criteria for Tax Exemption in their current form.

13 VAC 5-80	Standards Governing Operation of Individual and Regional Code Academies
13 VAC 5-200	Solar Energy Criteria for Tax Exemption

Staff recommends *amending* the Public Participation Guidelines for the primary purpose of including model language provided by the Department of Planning and Budget as a result of Chapter 795 of the 2012 Acts of Assembly. This language clarifies that persons providing public comment may be represented by counsel or another representative. The amended regulatory language will be brought before the Board at a future meeting for deliberation and action.

13 VAC 5-11	Public Participation Guidelines
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# 13VAC5-11 Public Participation Guidelines

Virginia Administrative Code  
Title 13. Housing  
Agency 5. Department of Housing and Community Development  
Chapter 11. Public Participation Guidelines

Part I  
Purpose and Definitions

13VAC5-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board of Housing and Community Development. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

**Statutory Authority**

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

**Historical Notes**

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board of Housing and Community Development, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov), which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

## Part II

### Notification of Interested Persons

13VAC5-11-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal



carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 13VAC5-11-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).
2. A notice of the comment period on a proposed, a repropoed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.
3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

Part III

Public Participation Procedures

13VAC5-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.
2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a repropoed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-60. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;
2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and
3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or
3. The agency determines that resolution of a controversy is unlikely.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;
2. The Governor directs the agency to hold a public hearing; or
3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory

action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-11-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and
2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

Statutory Authority

§§ 2.2-4007.02 and 36-137 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 25, Issue 4, eff. November 26, 2008.

13VAC5-80 Standards Governing  
Operation of Individual and  
Regional Code Academies

Virginia Administrative Code  
Title 13. Housing  
Agency 5. Department of Housing and Community Development  
Chapter 80.

13VAC5-80-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate of Accreditation" means the certificate issued to an individual or regional code academy that accredits that code academy to conduct educational programs for persons seeking to become BHCD-certified for enforcement of Virginia's building-related and fire-related regulations.

"Code academy" means an educational institution established in accordance with § 36-137 of the Code of Virginia that is accredited by DHCD to conduct classes to prepare an individual to pursue an occupation in the inspection profession relating to enforcement of the USBC, VADR, and SFPC, or to upgrade an individual in technical phases of the USBC, VADR, and SFPC.

"DHCD" means the Virginia Department of Housing and Community Development.

"Operator" means the person designated as the executive official in charge of the code academy.

"SFPC" means the Virginia Statewide Fire Prevention Code (13VAC5-51).

"Train the Trainer" means the DHCD training provided for code academy instructors.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

"VADR" means the Virginia Amusement Device Regulations (13VAC5-31).

**Statutory Authority**

§ 36-137 of the Code of Virginia.

**Historical Notes**

Derived from VR394-01-23 § 1, eff. March 1, 1991.

Amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; amended, Virginia Register Volume 30, Issue 25, eff. September 10, 2014.

13VAC5-80-20 to 13VAC5-80-30. [Repealed]

**Historical Notes**

Derived from VR394-01-23 §§ 2, 3, eff. March 1, 1991; repealed, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

### 13VAC5-80-40. Appeals.

Decisions of DHCD under this regulation are case decisions under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and are subject to judicial review in accordance with that law.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 4, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

### 13VAC5-80-50. Listing of certified academies.

DHCD shall maintain a list of code academies that hold valid Certificates of Accreditation, which shall be available for public review.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 5, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

### 13VAC5-80-60. Application for accreditation.

A. Any code academy seeking a Certificate of Accreditation shall submit the information required by these standards, on forms provided by DHCD, 120 calendar days prior to the date for which approval is requested.

B. The operator shall reimburse DHCD for the cost of processing and monitoring the accreditation.

C. The following information shall be submitted as part of the application:

1. A budget documenting the financial resources available to equip, maintain, and operate the code academy and proposed expenditures;
2. The educational and teaching qualifications of the operator and instructors;
3. The individual courses of instruction that will be offered, the purpose of such instructions, and an instruction schedule including proposed dates, times, and instructors. The course listing shall include state code academy courses required for certification and continuing education programs;
4. A listing of any equipment available to aid instruction in each field;
5. The maximum anticipated enrollment to be accommodated with the equipment available in each specified field, and the ratio of students to instructors, which shall not exceed 50 to



1 for lecture format courses and 20 to 1 for interactive courses;

6. The locations where such instruction will take place; and

7. Any additional information that DHCD may deem necessary to carry out the provisions of this chapter.

D. Each application for a Certificate of Accreditation shall also include the following commitments:

1. Conduct the code academy in accordance with all standards and regulations promulgated by DHCD and BHCD;

2. Permit DHCD to inspect the code academy at any time and provide all information pertaining to the activities of the code academy or its financial condition as requested by DHCD;

3. Use the levy retained under § 36-137 of the Code of Virginia only for purposes directly relating to the operation of the code academy;

4. Conduct all state certification courses in accordance with DHCD content and delivery requirements;

5. In the event that the code academy should close, a list of enrolled students who have not completed their program of study and the amount of the course that they have completed shall be submitted to DHCD;

6. Maintain current, complete and accurate student records, including a record of all hours of work completed by each student;

7. Submit quarterly activity reports on forms provided by DHCD. The reports shall include:

a. Training activities conducted during a quarter;

b. Expenditures for conducted training activities;

c. Expenditures for related activities; and

d. Anticipated adjustments to approved activities at the time of accreditation; and

8. Submit final activity and budget reports on forms provided by DHCD within 90 days prior to the end of the accreditation period. The reports shall include:

a. A training and activity report, including courses, programs, instructors, and student statistics;

b. A report detailing related activities;

c. A report on expenditures on all activities and purchases including revenue collected and any carryover balance; and

d. Summary of the accreditation year.

§ 36-137 of the Code of Virginia.

#### Historical Notes

Derived from VR394-01-23 § 6, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; Volume 30, Issue 25, eff. September 10, 2014.

#### 13VAC5-80-70. Certificate display.

The Certificate of Accreditation shall be displayed on the premises of the Code Academy in an area which is readily accessible to the public.

#### Statutory Authority

§ 36-137 of the Code of Virginia.

#### Historical Notes

Derived from VR394-01-23 § 7, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

#### 13VAC5-80-80. Renewal of certificate.

A. Every code academy shall apply for renewal of its Certificate of Accreditation no later than April 15 of each year, on forms provided by DHCD. The following information shall be submitted as part of the renewal application:

1. Proposed state certification course and continuing education training schedule for accreditation for the renewal period, including a delivery schedule, instructors, target participants, site logistics, and proposed budget;
2. Proposed related activities such as, but not limited to, equipment and related training purchases, conferences, and outside training events;
3. Anticipated revenue for the operation of the academy; budget for all training activities, academy staffing, and related purchases; and anticipated carryover funds;
4. Any changes to the initially approved instructor list; and
5. The following commitments:
  - a. Conduct the code academy in accordance with all standards and regulations promulgated by DHCD and BHCD;
  - b. Permit DHCD to inspect the code academy at any time and provide all information pertaining to the activities of the code academy or its financial condition as requested by DHCD;
  - c. Use the levy retained under § 36-137 of the Code of Virginia only for purposes directly relating to the operation of the code academy;
  - d. Conduct all state certification courses in accordance with DHCD content and delivery requirements;

e. In the event that the code academy should close, submit to DHCD a list of enrolled students who have not completed their program of study and the amount of the course that they have completed; and

f. Maintain current, complete, and accurate student records, including a record of all hours of work completed by each student.

B. Every Certificate of Accreditation shall expire upon failure to obtain renewal by June 30 of each year.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 8, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; Volume 30, Issue 25, eff. September 10, 2014.

13VAC5-80-90. Personnel qualifications.

A. Any director of the code academy shall demonstrate a working knowledge of USBC, VADR, and SFPC training-related technology and shall possess a minimum of two years of supervisory experience. Managerial experience and a college degree from an accredited college or university are preferred.

B. All instructors shall have knowledge and experience in the trade or profession in which the instructor teaches. Instructors teaching the state-required certification courses shall have DHCD-approved experience as an instructor or shall have successfully completed a Train the Trainer or DHCD-approved equivalent course and hold active DHCD instructor certification and active certifications in the discipline in which they are teaching.

C. DHCD shall be notified of any staff or instructor changes within the code academy subsequent to receiving accreditation. Staff changes forwarded to DHCD shall include qualifications of the instructors.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 9, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; Volume 30, Issue 25, eff. September 10, 2014.

13VAC5-80-100. Instructional program.

The instructional program shall consist of those courses and subjects, related to the technical provisions of the national model codes and referenced standards, which the Code Academy has been accredited to offer, and be consistent with the instructional programs offered by DHCD. DHCD reserves the sole right to provide programs based on Chapter 1 of the USBC, VADR and SFPC. Attendance at any local or regional Code Academy shall not satisfy

mandatory attendance at programs administered by DHCD on any changes to the USBC, VADR or SFPC.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 10, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

13VAC5-80-110. Application for additional courses.

The operator shall present a supplementary application to DHCD for approval of additional courses of instruction.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 11, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

13VAC5-80-120. Approval of initial application, withdrawal of course approval, and revocation, suspension, or refusal to renew a certificate of accreditation.

A. DHCD may deny an initial application; withdraw course approval; or revoke, suspend, or refuse to renew any code academy's Certificate of Accreditation for any of the following:

1. Violating any provision of this chapter;
2. Furnishing false, misleading, or incomplete information to DHCD, or failure to furnish information requested by DHCD within a reasonable time;
3. Presenting to a student any information that is false, misleading, or fraudulent;
4. Failing to maintain the premises in a safe and sanitary condition as required by law, state regulation, or local ordinance;
5. Failing to maintain adequate financial resources to satisfactorily conduct the courses of instruction offered, or to retain an adequate, qualified staff.

B. DHCD shall notify the operator by certified mail 30 calendar days prior to the effective date of any withdrawal of course approval, or revocation of, suspension of, or refusal to renew a Certificate of Accreditation.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 12, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; Volume 30, Issue 25, eff. September 10, 2014.

13VAC5-80-130. Return of certificate.

Any Certificate of Accreditation issued to a Code Academy shall be returned to DHCD immediately, by registered mail, for the following:

1. Revocation; or
2. Voluntary closure of institution; or
3. Any other cause deemed sufficient by DHCD.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 13, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

13VAC5-80-140. Records.

DHCD shall maintain records on all actions, findings, and recommendations concerning the initial application approval or denial, or approval of, revocation of, suspension of, or refusal to renew any Certificate of Accreditation. All records shall be available to the public, upon request.

Statutory Authority

§ 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-23 § 14, eff. March 1, 1991; amended, Virginia Register Volume 19, Issue 25, eff. October 1, 2003; Volume 30, Issue 25, eff. September 10, 2014.

13VAC5-80-150. [Repealed]

Historical Notes

Derived from VR394-01-23 § 15, eff. March 1, 1991; repealed, Virginia Register Volume 19, Issue 25, eff. October 1, 2003.

Forms (13VAC5-80)

[DHCD Regional and Local Code Academy Accreditation Application Budget Detail \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Accreditation Application Course/Conference Detail \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Expense Summary Report \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Annual Report Cover Sheet \(undated\)](#)

[DHCD Regional and Local Code Academy Annual Report \(undated\)](#)

[DHCD Regional and Local Code Academy Administrative Expense Report \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Course Report \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Monthly Expense Report \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Revenue Report \(eff. 9/13\)](#)

[DHCD Regional and Local Code Academy Accreditation Projected Expense Summary \(eff. 9/13\)](#)

# 13VAC5-200 Solar Energy Criteria for Tax Exemption

Virginia Administrative Code  
Title 13. Housing  
Agency 5. Department of Housing and Community Development  
Chapter 200. Solar Energy Criteria for Tax Exemption

Part I  
Administration

13VAC5-200-10. Application.

Application for solar equipment tax exemption must be made to the local building department.

**Statutory Authority**

§ 58.1-3661 of the Code of Virginia.

**Historical Notes**

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

13VAC5-200-20. Plans and Specifications.

Complete plans and specifications of the solar energy equipment, facilities or devices must be submitted to the local building department for review.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 100.2, eff. October 10, 1978.

13VAC5-200-30. Conformance.

The solar energy system must conform to the provisions of the Virginia Uniform Statewide Building Code.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 100.3, eff. October 10, 1978.

13VAC5-200-40. Approval.

The applicant for tax exemption must demonstrate to the local building official that the proposed or existing solar system performs its intended function.

Statutory Authority

§ 58.1-3661 of the Code of Virginia.



#### Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

#### 13VAC5-200-50. Certification.

If, after examination of such equipment, facility or device the local building department determines that the unit is designed and used primarily for the purpose of providing for the collection and use of incident solar energy for water heating, space heating or cooling or other application which would otherwise require a conventional source of energy, and conforms to the criteria set forth in this document, the local building department shall approve and certify such application. The local department shall forthwith transmit to the local assessing officer those applications properly approved and certified by the local building department as meeting all requirements qualifying such equipment, facility or device for exemption from taxation.

#### Statutory Authority

§ 58.1-3661 of the Code of Virginia.

#### Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

#### 13VAC5-200-60. Appeals.

Any person aggrieved by a decision of the local building department may appeal such decision to the local board of building code appeals, which may affirm or reverse such decision.

#### Statutory Authority

§ 58.1-3661 of the Code of Virginia.

#### Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

#### 13VAC5-200-70. Assessment.

Upon receipt of the certificate from the local building department the local assessing officer shall, if such local ordinance be in effect, proceed to determine the value of such qualifying solar energy equipment, facilities or devices. The value of such qualifying solar energy equipment, facilities or devices shall not be less than the normal cost of purchasing and installing such equipment, facilities or devices.

#### Statutory Authority

§ 58.1-3661 of the Code of Virginia.

## Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

13VAC5-200-80. Exemption.

The tax exemption shall be determined in accordance with § 58.1-3661 D of the Code of Virginia.

## Statutory Authority

§ 58.1-3661 of the Code of Virginia.

## Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff. October 1, 2008.

## Part II

### Definition

13VAC5-200-90. Solar energy equipment.

The purpose of this section is to define solar energy equipment in terms of its function, operation and components for the purpose of determining eligibility for personal or real property tax exemption. This section describes the majority of solar energy systems that are widely used today. This definition is not meant to be all inclusive and some solar energy systems may not be represented. Photovoltaic solar cells are not included in this section but do qualify as solar energy equipment. Any solar energy system submitted for tax exemption that is not covered in this document will be considered on an individual basis for certification by the State Office of Housing.

## Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

## Historical Notes

Derived from VR394-01-8 § 200.1, eff. October 10, 1978.

13VAC5-200-100. Functional description.

Solar heating and hot water system functional description is contained in HUD Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems, NBSIR #77-1226.

## Statutory Authority

§ 58.1-3661 of the Code of Virginia.

## Historical Notes

Derived from VR394-01-8 § 100.1, eff. October 10, 1978; amended, Virginia Register Volume 24, Issue 26, eff.

October 1, 2008.

### Part III

#### Passive Solar Energy System

13VAC5-200-110. Passive solar energy system defined.

An assembly of natural and architectural components including collectors, thermal storage device or devices and transfer medium which converts solar energy into thermal energy in a controlled manner and in which no fans or pumps are necessary to accomplish the transfer of thermal energy. Fans may be used to assist the natural convective air flow in a passive air heating system. The prime element in a passive solar system is usually some form of thermal capacitance.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.1, eff. October 10, 1978.

13VAC5-200-120. South facing windows used as solar collectors.

Glazing material used in windows on the designated solar surface of south facing walls when it is part of a sun tempered design for the purpose of collecting direct solar heat in the cold season shall be considered solar equipment eligible for tax exemption. The area of south facing glazing considered to be solar energy equipment eligible for tax exemption shall be calculated as follows:

$$X - Y = Z$$

"X" - Percentage of glazing contained within the designated solar surface of the south facing wall in respect to the area of that wall.

"Y" - Percentage of glazing on nonsolar surfaces (north, east, west walls, and non-solar south walls) in respect to the area of those walls.

"Z" - Percentage of glazing considered to be solar equipment

The percentage of glazing considered to be solar equipment (Z), is then multiplied by the total invoice cost of the glazing used on only the designated solar surfaces of the south facing walls. The product of these calculations will be the dollar value of glass to be considered as "equipment" in calculating the solar exemption.

Wall heights used in the above calculations shall be considered the distance parallel to the wall from finished floor level to finished ceiling level.

EXAMPLE: A residence is constructed with fifteen percent (15%) of the north, east and west walls consisting of glass. The south wall, however, is eighty-five percent (85%) glass. The total cost of the glass used on the south wall was one thousand (1,000) dollars. To determine the percentage of that cost which is eligible for solar tax exemption, you would perform the

following calculations:

$$85\% - 15\% = 70\%$$

$$.70 \times \$1,000 = \$700$$

$$(70\% \text{ of } \$1,000 = \$700)$$

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.2.1, eff. October 10, 1978.

13VAC5-200-130. Trombe walls.

The Trombe Wall is a south facing wall of the building envelope composed of a mass wall and exterior glazing. The mass wall functions as a combination heat sink and exterior wall, while the glazing creates a "heat trap" for penetrating solar radiation.

Trombe walls shall be considered solar equipment and all equipment used in the Trombe Wall, such as but not limited to vents, fans, movable insulation, controls, mass wall, glazing, shading devices and any other equipment peculiar to the solar system shall be eligible for tax exemption.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.3.1, eff. October 10, 1978.

13VAC5-200-140. Greenhouses.

Glass, fiberglass, or other glazing materials, framing members, and foundations used to enclose south facing areas such as patios, atriums, or greenhouses for purposes of entrapping solar heated air shall be considered solar energy equipment, provided that the warm air be circulated through the principal structure by use of a permanently installed air movement system (forced or convective) and that adequate provisions have been made to prevent nocturnal heat losses and cold weather heat losses through use of insulating devices. Fifty percent (50%) of the invoice cost of labor and materials used in constructing a greenhouse or similar type structure, are to be considered solar heating equipment. The greenhouse is serving two purposes: (1) that of a solar collector, and (2) as a means of growing flowers or other plants. Equipment such as ductwork and fans used in circulating solar heated air accumulated within enclosed south facing areas such as patios, atriums, or greenhouses shall be considered solar energy equipment up to the point where such a system is integrated with a conventional heating system. Full credit will be allowed for movable insulation used to reduce nocturnal and cold weather heat losses.

EXAMPLE: Mr. Jones enclosed his south facing patio with fiberglass panels and movable insulation for the purpose of entrapping warm air which accumulates beneath the glazing. The warm air is then circulated through the residence using permanently installed ductwork and fans independent of his conventional heating and cooling system. The fiberglass, movable insulation, fans and ductwork Mr. Jones used in his solar heating system are considered solar equipment and eligible for tax exemption.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.4.1, eff. October 10, 1978.

13VAC5-200-150. Thermal storage.

Devices constructed for the primary purpose of storing thermal energy collected and converted by a solar heating system shall be considered solar energy equipment. In passive solar heating systems the thermal storage is often incorporated into the building envelope in the form of thick concrete slab floors or masonry walls insulated on the exterior of the structure. If the thermal storage is serving a dual function as floor or wall of the structure, fifty percent (50%) of the cost of the floor or wall shall be considered solar energy equipment and eligible for tax exemption.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.5.1, eff. October 10, 1978.

13VAC5-200-160. Movable insulation.

Movable insulation used to minimize heat loss largely caused by nocturnal radiation through areas used for direct solar heat gain during the daylight hours shall be considered solar energy equipment.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.6.1, eff. October 10, 1978.

13VAC5-200-170. Shading device.

Any device designed primarily for shading a window or solar collector to prevent solar heat gain during the summer season shall be considered solar energy equipment.

Statutory Authority

§§ 36-97 et seq. and 36-137 of the Code of Virginia.

Historical Notes

Derived from VR394-01-8 § 300.7.1, eff. October 10, 1978.



Ralph S. Northam  
Governor

R. Brian Ball  
Secretary of  
Commerce and Trade

# COMMONWEALTH of VIRGINIA

Erik C. Johnston  
Director

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

May 3, 2019

### **Memorandum**

**To:** Board of Housing and Community Development Members

**From:** Erik C. Johnston, Director

**RE:** ADTAC Appointment

The Amusement Device Technical Advisory Committee (ADTAC) is a board-appointed committee created under §36-98.3 of the Code of Virginia. Currently, there is a vacancy for an operator position on the committee. The vacancy is due to the resignation of the representative from King's Dominion. The BHCD's policy (attached) directs staff to seek advisory members, as guided by stakeholder organizations, for the applicable category. The policy outlines that two of the five positions on ADTAC are to represent amusement parks or private operators of amusement devices. The committee has historically had one park operator and one small event operator. Currently, there are no park operators on the committee so it would be appropriate to appoint a park operator.

DHCD staff, in coordination with the ADTAC, solicited applications from park operators who have been participating in the Virginia Amusement Device Regulations (VADR) update process. Two park operators submitted resumes; these resumes are attached for the Board's consideration. DHCD staff has advised each applicant of the May 13, 2019 Board of Housing and Community Development meeting where the appointment will be considered. Staff has also advised the applicants that they are welcome to attend and express their interest in serving as an ADTAC member.

The ADTAC has made a recommendation to the Board to appoint Wayne Fuqua.

Enclosures

Partners for Better Communities



[www.dhcd.virginia.gov](http://www.dhcd.virginia.gov)

## APPENDIX

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT STANDING ADVISORY COMMITTEES BOARD POLICY FOR COMMITTEES

The Board of Housing and Community Development (the "Board") currently has two permanent advisory committees established by statute to advise the Board. These are the Building Code Academy Advisory Committee and the Amusement Device Technical Advisory Committee. This document provides the Board policy governing the appointments and terms of service for these Boards. These advisory committees have different statutory requirements and therefore have different requirements.

**I. Amusement Device Technical Advisory Committee (ADTAC)** is established by section 36-98.3 of the Code of Virginia, which provides that "To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require." The purpose of the ADTAC is to advise the Board of Housing and Community Development (the "Board") and the Director of the Department of Housing and Community Development on matters related to amusement devices and the Virginia Amusement Device Regulations (13 V AC 5-31).

#### ***Composition of ADTAC:***

The ADTAC shall be comprised of five (5) representatives of code enforcement personnel and amusement device industry professions affected by the provisions of the amusement device regulations. The committee shall consist of:

- a. two (2) members representing the code enforcement community,
- b. two (2) members representing amusement parks or private operators of amusement devices, and
- c. one (1) member representing third-party amusement device inspectors.

#### ***Terms of ADTAC Service:***

- a. Representatives will be appointed as members of the ADTAC for four-year terms. There is no limit to the number of terms that a member may serve. The Board may replace any member appointed for the balance of the appointee's term.
- b. The ADTAC members may continue to serve after the expiration of their term until new appointments or reappointments are made.

#### ***Appointment of ADTAC:***

- a. The Department of Housing and Community Development shall notify appropriate organizations of any vacancies on the ADTAC. The Department also shall contact organizations that may have representation or an interest in membership participation on the advisory committee. Applications shall be directed to and coordinated by the Department. Staff will present



the names and background information of all applicants to the Board for consideration. The Board will consider appointment after a review of information presented.

b. The Board may ask Department staff for additional names for consideration. The Department may request an organization to submit nominations to replace a current ADTAC member for any reason, including but not limited to lack of attendance at Committee meetings.

c. The Board will fill vacancies occurring for the balance of any vacating committee member's term using the same procedure by which the original appointment was made (see above).

## Wayne C. Fuqua

### Kings Dominion Rides Maintenance Manager

Wayne Fuqua has worked for Kings Dominion since 1977, beginning as a seasonal employee eventually being promoted to his current role as the Rides Maintenance Manager, overseeing forty-five people in various trades. In addition to this role, Wayne has served as a project manager for multi-million-dollar projects, such as the Winterfest Christmas event and Twisted Timbers rollercoaster.

Wayne has participated in corporate internal audits of Cedar Fair parks throughout the country for over twenty years and more recently has served as a team leader for these audits. For the past 5 years he has partnered with the Hanover Technical Center to give input on trades training in the high school environment. Wayne's certifications include Level 2 maintenance for the National Association of Amusement Ride Safety Officials (NAARSO) for twenty years and a NAARSO Level 1 operations certification for five years.

# Derek R. Bowie

## EXPERIENCE

### **Busch Gardens/Water Country USA - Director of Environmental, Health, and Safety (Jan 2015 – present)**

- Direct efforts of the Environmental, Health, and Safety department to ensure compliance with Federal, State, and Local regulations regarding Environmental, Safety, Worker's Compensation, Emergency Medical Services and company best practices and policies
- Provide leadership and oversight of the EHS department for Busch Gardens, Water Country, and the International Housing Village, minimizing losses through prevention efforts including educational programs, liability reductions, and Leadership awareness.
- Lead effort in loss prevention, worker's compensation for over 5,000 employees as well as lead efforts in general/guest liability with over 3 million guests to ensure handling is in accordance with acceptable state and company practices.
- Create and lead strategic safety strategies for multiple departments resulting in reducing Injury rates for Team Members and Guests.
- Conduct Monthly Safety Meetings with Department Leadership as well as Quarterly Strategic Safety Plan reviews.
- Represent Busch Gardens Williamsburg and Water Country USA for legal matters involving guest liability claims, working with local and SEA counsel and insurance representatives.
- Direct the Accident Investigation process for guest and team member incidents. Assist departments by analyzing injury data to determine trends and root causes of incidents and injuries to develop corrective actions and injury goals.
- Participate in SEA Safety audits, verifying compliance with OSHA, ASTM, and SEA policies.
- Served as an Operations / Safety representative on the ASTM F24 Operations Committee for Sea World Parks and Entertainment. F24committee works to develop standards that will improve the safety operations of the industry.

### **Busch Gardens - Director of Operations (July 2006– Jan 2015)**

- Provided leadership and coordination for multiple areas of park operations including Ride Operations, Guest Arrival, Grounds Maintenance and Operations Administration.
- Oversee budgets for labor and expense in excess of \$4,500,000.
- Direct the efforts of the Park Operations Revenue team in the establishment and operation of In Park spending programs with revenues exceed \$2,000,000 in revenue
- Ensured that standards of Safety, Service, Quality, and Cleanliness were achieved.
- Developed and lead the Guest Satisfaction Team working to promote excellent guest service to over 3 Million guests
- Led a staff consisting of 1000 Seasonal Leaders and Team Members. Directly responsible for development and leadership of five full time managers and one full time supervisor
- Served as the Operations Representative on the ASTM F24 Operations Committee for Sea World Parks and Entertainment. F24committee works to develop standards that will improve the safety operations of the industry.
- Supervised and led the Ride Safety Committee to evaluate, investigate, and resolve safety issues in the Ride Operation areas.
- Led and participated in SEA Operations Audited sister parks, verifying compliance with SEA, ASTM, and OSHA standards.
- Coordinated the operational efforts for the launch of new attractions in 2007 (Griffon) and 2009 (Forest of Fun and Christmas Town), 2011 Mach Tower, and 2012 Verbolten, Worked with Design, Engineering, and Maintenance to ensure a safe and smooth opening of new attractions. Lead special event execution teams to launch new company initiatives/events
- Led the Company Directors Group serving as Rides Chair, participating in monthly calls, and led the effort to develop, execute, and ensure compliance of Standards of Operation.
- Lead special event execution teams to launch new company initiatives/events including the Christmas Town Planning and Execution teams and the park Planning team for the Food and Wine event.

**Ride Operations Manager (2003-2006)**

**Manager of Operations, Busch Gardens Williamsburg (2001-2003)**

**Admission's Manager, Busch Gardens Williamsburg (1999 - 2001)**

**Ride Operations Area Manager, Busch Gardens Williamsburg (1994 -99)**

**Supervisor, Hospitality Center (1992 – 1994)**

**Seasonal supervisor, Busch Gardens (1989-1992)**

#### **EDUCATION**

University of Virginia, Bachelor of Arts Degree, May '92

**Derek R. Bowie**

#### **Additional Training**

**RECRA certification – 2018 Lion Technology**

**OSHA Fall Protection – 2019 Chesapeake Regional Safety Council (Train the Trainer)**

**OSHA Respiratory Protection– 2018 Chesapeake Regional Safety Council (Train the Trainer)**

**Scaffolding Inspection Certification – 2016**

**OSHA 30 Hour General Industry – 2015**