



## VIRGINIA

### I. Summary of Home Rule in Virginia

- Virginia does not have a constitutional home rule provision.
- Virginia operates as a Dillon's Rule state,<sup>1</sup> although state statute has granted municipal corporations and counties some general powers. *See* Va. Code Ann. § 15.2-1102 (West 2019); Va. Code Ann. § 15.2-1200 (West 2019).
- There are no limitations on Virginia's state authority to preempt local regulations.

### II. Source of Municipal Home Rule Authority

Virginia is a Dillon's Rule state. There are no constitutional provisions granting home rule powers. Va. Code Ann. § 15.2-1102 of the Virginia Uniform Charter Powers Act, however, does delegate some general police/general welfare powers to municipal corporations. Va. Code Ann. § 15.2-1102 (West 2019).

### III. Scope of Municipal Home Rule Authority

As noted above, Virginia does not grant local governments home rule authority. However, Va. Code Ann. § 15.2-1102 of the Virginia Uniform Charter Powers Act delegates various general powers to municipal corporations in Virginia. It states:

A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this

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<sup>1</sup> Dillon's Rule was first recognized in 1986 by the Supreme Court of Virginia in *City of Winchester v. Redmond*, 93 Va. 711, 714 (Va. 1896). *Commonwealth v. Rivera*, 442 S.E.2d 410, 412 (Va. Ct. App. 1994).

section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth.

Va. Code Ann. § 15.2-1102 (West 2019). (Note: In 1997, this statute superseded and re-codified what was previously Va. Code § 15.1-839.<sup>2</sup>)

Courts have relied upon the grant of power in Va. Code Ann. § 15.2-1102 (as well as its previous iteration in Va. Code § 15.1-839 and similar, earlier grants of general welfare/police powers) to uphold at least some local ordinances.

- **Examples of local laws upheld as valid based on Va. Code Ann. § 15.2-1102:**
  - a local trespassing law<sup>3</sup>
  - a local law requiring persons wishing to acquire a pistol or revolver from a licensed firearms dealer to first obtain a city permit<sup>4</sup>
  - a local law prohibiting pawnbrokers from dealing in certain weapons<sup>5</sup>

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<sup>2</sup> *Holland v. Commonwealth*, 502 S.E.2d 145, 148 n.2 (Va. Ct. App. 1998). Va. Code § 15.1-839 provided: "A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power." *Stallings v. Wall*, 235 Va. 313, 316 (Va. 1988) (internal quotations and citation omitted); *Holland*, 502 S.E.2d at 148 n.2. The Code of Virginia notes that this provision originated in Va. Code § 15-77.3. See Virginia's Legislative Information System, Code of Virginia, § 15.2-1102. General grant of power; enumeration of powers not exclusive; limitations on exercise of power, <https://law.lis.virginia.gov/vacode/title15.2/chapter11/section15.2-1102/> (last viewed Dec. 10, 2019).

<sup>3</sup> *Pearson v. City of Falls Church*, No. 2422-10-4, 2012 WL 124396 (Va. Ct. App. Jan. 17, 2012) (unpublished) (finding express authority for the ordinance under Va. Code Ann. § 15.2-1102 because the local trespassing ordinance "plainly furthers the reasonable objective of preventing, crime, protecting life and property, and preserving the peace," and finding implied authority under Va. Code Ann. § 15.2-1102 despite the existence of a statewide trespassing statute because state and local governments may have concurrent jurisdiction over the same subject as long as the local law is not inconsistent with state law).

<sup>4</sup> *Stallings v. Wall*, 235 Va. 313, 318 (1988) (concluding that the general grant of power under Code § 15.1-839 permitted the enactment of the ordinance).

<sup>5</sup> *Elsner Bros. v. Hawkins*, 113 Va. 47, 50 (Va. 1912) (finding authority for ordinance prohibiting pawnbrokers from dealing in certain weapons within the "broad and comprehensive police powers" delegated by the legislature to the city of Richmond, allowing for ordinances "to secure and promote the general welfare of the inhabitants of the city, such as they may deem proper for the safety, health, peace, good order, and morals of the community" as well as ordinances "as may be deemed desirable and suitable to prevent vice and immorality, to preserve public peace and good order, to prevent and quell riots, disturbances, and disorderly assemblages, etc.").

At least one court has read Va. Code Ann. § 15.2-1102 narrowly, concluding that it did not grant the requisite local authority to enact a local policy.<sup>6</sup>

#### **IV. County Home Rule**

Virginia law does not grant counties home rule. However, Va. Code Ann. § 15.2-1200 grants counties some general police/general welfare powers. Va. Code Ann. § 15.2-1200 (West 2019).

Va. Code Ann. § 15.2-1200, pertaining to counties, states as follows:

Any county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth. Such power shall include, but shall not be limited to, the adoption of quarantine regulations affecting both persons and animals, the adoption of necessary regulations to prevent the spread of contagious diseases among persons or animals and the adoption of regulations for the prevention of the pollution of water which is dangerous to the health or lives of persons residing in the county.

Va. Code Ann. § 15.2-1200 (West 2019).

Courts have relied upon the grant of power in Va. Code Ann. § 15.2-1200 to uphold at least some local ordinances.

#### **Examples of local laws upheld as valid based on Va. Code Ann. § 15.2-1200 (or similar earlier versions):**

- a local county law prohibiting nude and semi-nude dancing<sup>7</sup>
- a local law prohibiting the keeping of a vicious dog<sup>8</sup>

On the other hand, courts have also rejected Va. Code Ann. § 15.2-1200 as a source of authority in some cases.<sup>9</sup>

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<sup>6</sup> *Marcus Cable Assocs., L.L.C. v. City of Bristol, Virginia*, 237 F. Supp. 2d 675, 679 (W.D. Va. 2002) (concluding that a municipality may not operate a cable television system through its own fiber optic network also capable of delivering broadband, noting, in relevant part, that while Va. Code Ann. § 15.2-1102 “is an additional statute of general application that provides localities the authority to exercise functions ‘necessary or desirable to secure and promote the general welfare,’” the statute “is limited, however, to those powers granted by state law” because “[o]therwise, there would be no limit to the powers of a municipality”).

<sup>7</sup> *Boyd v. Cty. of Henrico*, 592 S.E.2d 768, 782 (Va. Ct. App. 2004) (finding that the “delegation of police powers” in Va. Code Ann. § 15.2-1200 “includes the power to regulate nude and semi-nude dancing”).

<sup>8</sup> *King v. Arlington Cty.*, 195 Va. 1084 (Va. 1954) (finding that a broad grant of police power, Va. Code § 15-8(5), which empowered counties “[t]o adopt such measures as they deem expedient to secure and promote the health, safety, and general welfare of the inhabitants of their respective counties, not inconsistent with the general laws of this State,” permitted the county to adopt an ordinance prohibiting the keeping of a vicious dog).

<sup>9</sup> *See, e.g., Johnson v. Goochland Cty.*, 206 Va. 235, 239 (Va. 1965) (concluding that state statutes, including Va. Code § 15.1-510, similar to Va. Code Ann. § 15.2-1200, did not provide sufficient authority for a county ordinance involving the regulation of individual trailers).

## V. Preemption

Virginia recognizes Dillon's Rule "of strict construction concerning the powers of local governing bodies." *Commonwealth v. Cty. Bd. of Arlington Cty.*, 217 Va. 558, 573 (Va. 1977). The Supreme Court of Virginia has described Dillon's Rule as establishing that "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable." *Id.* at 574.<sup>10</sup>

The Virginia courts do not always apply Dillon's Rule as harshly as its traditional formulation would mandate. For instance, while the traditional Dillon Rule called for resolving all reasonable doubts regarding a city's legislative power against the city,<sup>11</sup> in some cases the Supreme Court of Virginia has asked only whether the local regulation is "reasonable." In *Arlington County v. White*, for example, the Supreme Court of Virginia considered whether a county could include domestic partners under its self-funded health insurance benefits plan for county employees. The court struck down the practice, explaining that under Virginia's application of Dillon's Rule, "[w]here the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable," and "[a]ny doubt in the reasonableness of the method selected is resolved in favor of the locality." 259 Va. 708, 712 (Va. 2000) (quoting *City of Virginia Beach v. Hay*, 258 Va. 217, 221 (Va. 1999)).<sup>12</sup> The court found that the county's definition of "dependent" as including domestic partners was not reasonable. *Id.* at 713.

As the sections above demonstrate, Dillon's Rule co-exists uneasily with a rather broad grant of general regulatory authority under Va. Code Ann. § 15.2-1102 and Va. Code Ann. § 15.2-1200. Or, as one circuit court put it with regards to Va. Code Ann. § 15.2-1102 (applicable to municipal corporations), "The Virginia Uniform Charter Powers Act . . . complements the Dillon Rule" and "[t]he fundamental premise underlying the Dillon Rule and the Virginia Uniform Charter Powers Act is that not all powers of a City, exercised by a City's governing body, need be expressly set forth in the City's Charter." *City Council of City of Richmond v. Wilder*, 74 Va. Cir. 382 (Va. 2007) (citation omitted).

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<sup>10</sup> See also *Bd. of Sup'rs of Augusta Cty. v. Countryside Inv. Co., L.C.*, 258 Va. 497, 503 (Va. 1999); *Bd. of Sup'rs of Fairfax Cty. v. Horne*, 216 Va. 113, 117 (Va. 1975).

<sup>11</sup> See, e.g., *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 417 (Va. 2010) ("Thus, '[i]f there is a reasonable doubt whether the legislative power exists, the doubt must be resolved against the local governing body.'") (quoting *Bd. of Sup'rs of Powhatan Cty. v. Reed's Landing Corp.*, 250 Va. 397, 401 (Va. 1995)).

<sup>12</sup> See also *Broad Run Vill., LC v. Bd. of Sup'rs, Loudoun Cty.*, No. 21099, 2003 WL 21715239, at \*1 n.2 (Va. Cir. Ct. Feb. 20, 2003) ("The Dillon Rule would limit the power of the Board to act only when granted the power to do so by the legislature, when the power is necessarily implied from the express grant, and when the power is essential and indispensable. Where the grant does not set forth the method of implementing the express grant, the exercise of the power by the Board will be upheld so long as the method selected is reasonable."); *Logie v. Town of Front Royal*, 58 Va. Cir. 527 (Va. 2002) ("Where the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable. Any doubt in the reasonableness of the method selected is resolved in favor of the locality.") (quoting *White*, 259 Va. at 712).

## VI. Local Legislative Immunity

The Fourth Circuit has found that local legislators of political subdivisions are entitled to absolute legislative immunity under federal law. *Bruce v. Riddle*, 631 F.2d 272, 274 (4th Cir. 1980).

The Supreme Court of Virginia has noted that “members of a board of supervisors, legislators of a municipality, are outside the scope of both federal and state Constitutional legislative immunity provisions,” explaining that the federal Speech or Debate Clause “does not apply to the states” and that the state’s immunity protection under Article IV, Section 9 of the Constitution of Virginia provides immunity only to the General Assembly. *Bd. of Sup’rs of Fluvanna Cty. v. Davenport & Co. LLC*, 285 Va. 580, 588 (Va. 2013).<sup>13</sup> The Supreme Court of Virginia found in that same case, however, that state and local legislators are entitled to common law legislative immunity. *Id.*<sup>14</sup>

Section 15.2-1405 of the Virginia Code separately offers a statutory source of immunity for local government officials.<sup>15</sup>

## VII. Other Relevant Issues

The Virginia Constitution includes a “single object” requirement for bills in Article IV, Section 12. Va. Const. art. IV, § 12.<sup>16</sup>

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<sup>13</sup> A later Supreme Court of Virginia decision exploring the application of Article IV, Section 9 of the Constitution of Virginia to state actors acknowledged that “there are numerous other bodies in the Commonwealth whose members perform legislative functions, such as boards of supervisors, city councils, etc.,” but the court limited its opinion “to consideration of the legislative privilege granted to Members of the General Assembly by the Constitution of Virginia.” *Edwards v. Vesilind*, 292 Va. 510, 516 (Va. 2016).

<sup>14</sup> The court explained that legislative actions protected under this common law immunity, “include, but are not limited to, ‘delivering an opinion, uttering a speech, or haranguing in debate; proposing legislation; voting on legislation; making, publishing, presenting, and using legislative reports; authorizing investigations and issuing subpoenas; and holding hearings and introducing material at Committee hearings.’” *Id.* at 589 (citation omitted).

<sup>15</sup> The statute states: “The members of the governing bodies of any locality or political subdivision and the members of boards, commissions, agencies and authorities thereof and other governing bodies of any local governmental entity, whether compensated or not, shall be immune from suit arising from the exercise or failure to exercise their discretionary or governmental authority as members of the governing body, board, commission, agency or authority which does not involve the unauthorized appropriation or misappropriation of funds. However, the immunity granted by this section shall not apply to conduct constituting intentional or willful misconduct or gross negligence.” Va. Code Ann. § 15.2-1405 (West 2019).

<sup>16</sup> The provision states: “No law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.” Va. Const. art. IV, § 12. The Supreme Court of Virginia has explained that “[t]he fact that many things of a diverse nature are authorized or required to be done in the body of the act, though not expressed in its title is not objectionable, if what is authorized by the act is germane to the object expressed in the title, or has a legitimate and natural association therewith, or is congruous therewith, the title is sufficient.” *Marshall v. N. Virginia Transp. Auth.*, 275 Va. 419, 429–30 (2008) (quoting *Town of Narrows v. Bd. Of Sup’rs*, 128 Va. 572, 582–83 (Va. 1920)). Ultimately, Article IV, Section 12 “requires that subjects encompassed in a statute, but not specified in the statute’s title, be congruous, and have a natural connection with, or be germane to, the subject stated in the title.” *Id.* Nevertheless, the provision “does not require that an act’s title include an index to each provision of the act.” *Id.*