



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

Memorandum

To: Board of Housing Community Development Members

From: Erik Johnston, DHCD Director

Subject: New Board Members

Date: July 20, 2018

On July 13, 2018 Governor Northam appointed four new members to the Board of Housing and Community Development. The Chairman of the Virginia Fire Services Board has also appointed a new representative to the Board. Please welcome our new members as they join us in the important work of the Board. The new members are as follows:

- **Azfar Sonny Abbasi** of Vienna, General Counsel, Lenderworks
- **Dr. Mimi Milner Elrod** of Lexington, Mayor of Lexington, 2008 – 2016
- **Andrew M. Friedman** of Virginia Beach, Director, Virginia Beach Department of Housing and Neighborhood Preservation
- **Richard Gregory** of Henrico, Chairman, Lynx Ventures
- **Keith H. Johnson** of Loudoun County, System Fire Chief, Loudoun County Fire and Rescue (VFSB Representative)

As we welcome our new members I would also like to take the opportunity to again extend thanks to our previous members. We are grateful for the service of John Ainslie, Tommy Shields, Shekar Narasimhan, Rich Napier, and David Layman.

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AGENDA
BOARD OF HOUSING and COMMUNITY DEVELOPMENT
Housing and Community Development Committee
Monday, July 30, 2018
Glen Allen, VA
10:00 a.m.

- | | | |
|-------|---|-------------------|
| I. | OPENING | |
| | a. Call to Order | Chairman |
| | b. Roll Call | Kyle Flanders |
| II. | CONSENT AGENDA | Chairman |
| | ▪ Approval of May 21, 2018 minutes | |
| III. | PRIVATE ACTIVITY BOND GUIDELINES | Kyle Flanders |
| | <i>Committee Action:</i> Recommendation to the Board regarding adoption of Guidelines | |
| IV. | INDUSTRIAL REVITALIZATION FUND GUIDELINES | Jeff Sadler |
| | <i>Committee Action:</i> Recommendation to the Board regarding adoption of Guidelines | |
| V. | UNFINISHED BUSINESS | Committee members |
| VI. | NEW BUSINESS | Committee members |
| VII. | COMMITTEE MATTERS | Committee members |
| VIII. | ADJOURNMENT | Chairman |

Note: There will not be an open public comment period during the meeting

AGENDA
BOARD OF HOUSING AND COMMUNITY DEVELOPMENT
Codes and Standards Committee
Monday, July 30, 2018
Glen Allen, VA

**Meeting to begin directly after the conclusion of the Housing and Community Development
Committee**

- | | | |
|------|---|-------------------|
| I. | OPENING | |
| | a. Call to Order | Chairman |
| | b. Roll Call | Kyle Flanders |
| II. | CONSENT AGENDA | Chairman |
| | <i>Approval of Minutes: October 16, 2017</i> | |
| III. | DISCUSSION of PETITION and ADDITIONAL
COMMENTS for the VIRGINIA MAINTENANCE CODE
(USBC) | Chairman |
| | o Committee Action: Recommendation to the Board regarding
final provisions for the Virginia Maintenance Code (USBC) | |
| IV. | OTHER BUSINESS | Committee Members |
| V. | ADJOURNMENT | Chairman |

Note: There will not be an open public comment period during the meeting

AGENDA

BOARD OF HOUSING and COMMUNITY DEVELOPMENT

Monday, July 30, 2018

Glen Allen, VA

To begin directly after the conclusion of the Codes and Standards 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*: May 21, 2018

- III. ELECTION of OFFICERS Erik Johnston

- IV. REPORT of the HOUSING and COMMUNITY DEVELOPMENT COMMITTEE Chairman
 - Action Items*
 - o Adopt Private Activity Bond Guidelines
 - o Adopt Industrial Revitalization Fund Guidelines

- V. REPORT of the CODES and STANDARDS COMMITTEE JP Carr
 - Action Item*
 - o Adopt final provisions for the USBC

- VI. CODE CHANGE PROCESS UPDATE Cindy Davis

- VII. RESOLUTIONS Chairman

- VIII. REPORTS AND INFORMATION
 - a. VHDA Report Susan Dewey
 - b. Report of the Virginia Fire Services Board Sean Farrell
 - c. Report of the Director Erik Johnston

- IX. UNFINISHED BUSINESS Board members

- X. NEW BUSINESS Board members

- XI. BOARD MATTERS Board members

XII. FUTURE BOARD MEETING DATES

Erik Johnston

- September 7, 2018
- Potential Board Retreat Dates
 - October 25/26
 - December 3/4

XIII. ADJOURNMENT

Chairman

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING and COMMUNITY DEVELOPMENT COMMITTEE
10:00 A.M., May 21, 2018
Glen Allen, Virginia

Members Present

Mr. John Ainslie
Mr. John Patrick “J.P.” Carr
Ms. Susan Dewey
Ms. Helen Hardiman
Ms. Abigail Johnson
Mr. Steve Semones
Mr. Tommy Shields

Members Absent

Mr. Shekar Narasimhan
Mr. Earl Reynolds

Call to Order

Mr. Steve Semones, Co-Chairman of the Housing and Community Development Committee, called the meeting of the Committee to order.

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 to approve the minutes of the April 2, 2018, meeting of the Committee. The motion was properly seconded and passed unanimously.

Enterprise Zone
Regulations

Mr. Erik Johnston, Director of DHCD, presented the revised Enterprise Zone Regulations which were amended to reflect the codified changes of the existing size requirements for zone eligibility and specified that a zone amendment which includes elimination of an area or areas within a zone may not be amended so as to exceed the maximum zone size. If the Board approves the regulations, they are scheduled to take effect in July of 2018.

A motion was made to approve the Enterprise Zone regulations; the motion was properly seconded and passed unanimously.

Consolidated Plan/Action
Plan

Ms. Pam Kestner, Deputy Director of Housing at DHCD, provided an update to the status of the development of the five year consolidated plan and annual action plan. Mr. Johnston then presented the allocation recommendations. A motion was made

to approve the Consolidated Plan and annual action plan; the motion was properly seconded and passed unanimously.

Unfinished Business

Mr. Johnston stated that staff continues to work on the Industrial Revitalization Fund and Private Activity Bond guidelines but did not have anything to present for the meeting.

New Business

There was no new business to be discussed.

Committee Matters

There were no Committee matters to be discussed.

Adjournment

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

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Codes and Standards Committee

Monday, October 16, 2017

9:45 a.m.

Glen Allen, VA

Members Present

John Ainslie
J.P. Carr
Robby Dawson
Sean Farrell
Helen Hardiman
Abigail Johnson
Rich Napier
Shekar Narasimhan
Jeff Sadler
Steve Semones
Patty Shields
Tommy Shields

Members Absent

Earl Reynolds

Call to Order

Mr. J.P. Carr, Chairman of the Codes and Standards Committee called the meeting to order.

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.

Opening Remarks

Mr. Carr noted that there would not be public comment during the committee meeting, though the chair may recognize members of the audience for limited comment on specific items. It was noted that any action taken by this committee will be presented as a recommendation to the Board of Housing and Community Development (BHCD).

Approval of Minutes

A motion was made and properly seconded to approve the minutes from the September 18, 2017 meeting of the committee; the motion passed.

Review of the Statewide Fire Prevention Code Development Committee Recommendation on the Final Regulations for the SFPC

Mr. Carr stated that the Statewide Fire Prevention Code (SFPC) Development Committee met prior to this committee meeting to discuss and make a recommendation regarding the final regulations for the SFPC. Mr. Carr stated that the committee did not provide a recommendation.

Ms. Cindy Davis, Deputy Director of Building and Fire

Regulations at DHCD, presented the final regulations based on the approved proposals made by the committee from the September meeting.

Mr. Robby Dawson expressed concerns with the definition of maintained as outlined in section 202 of the SFPC. Mr. Sean Farrell disagreed and said that it was discussed at length and agreed to by the workgroup.

Mr. John Ainslie stated that section 301.3 of the SFPC concerning certificate of occupancy may be a burden to localities and that the language should be changed from shall to may. Mr. Ainslie made a motion to recommend approval of the SFPC with the amendment of section 301.3, Mr. Shekar Narasimhan seconded, the motion passed.

Review of Final Regulations to the USBC

Ms. Cindy Davis, Deputy Director of Building and Fire Regulations of DHCD, presented the final regulations based on the approved proposals by the committee concerning the Uniform Statewide Building Code (USBC).

There was discussion over certain failed proposals from the previous meeting. Since the proposals failed they were not included as part of the regulations as presented. Mr. Narasimhan moved to reconsider proposal number CR-E3902.16 regarding arc fault circuit interrupters (AFCI), Ms. Helen Hardiman seconded, and the motion to reconsider passed.

Mr. Narasimhan moved for the approval of proposal number CR-E3902.16 which was seconded by Mr. Dawson. After some discussion, the motion failed.

The Attorney General's office expressed concern over section 106.4 of the USBC pertaining to communication within local governments. Mr. Farrell made a motion to approve the regulations without section 106.4, Mr. Ainslie seconded, and the motion passed.

*Ms. Abigail Johnson arrived to the meeting.

Review of final regulations for the IBSR

Ms. Davis presented the final regulations based on the approved proposals by the committee concerning the Industrialized Building Safety Regulations (IBSR). Mr. Ainslie made a motion to approve the regulations, Ms. Patty Shields seconded, and the motion passed.

Review of final regulations for the VADR

Ms. Davis presented the final regulations based on the approved proposals by the committee concerning the Virginia Amusement Device Regulations (VADR). Mr. Farrell made a motion to approve the regulations which was seconded and passed.

Other Business

There was no other business to be discussed.

Adjournment

The meeting was adjourned

DRAFT

**BOARD OF HOUSING AND COMMUNITY DEVELOPMENT
MEETING
11:00 A.M., May 21, 2018
Glen Allen, Virginia**

Members Present

Mr. John Ainslie
Mr. John Patrick “J.P.” Carr
Ms. Susan Dewey
Ms. Helen Hardiman
Ms. Abigail Johnson
Mr. David Layman
Mr. Jeff Sadler
Mr. Steve Semones
Ms. Patricia Shields
Mr. Tommy Shields

Members Absent

Mr. Sean Farrell
Mr. Shekar Narasimhan
Mr. Earl Reynolds

Call to Order

Mr. John Ainslie, Chairman of the Board of Housing and Community Development, called the meeting of the Board to order.

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

No comments were made by the public; the public comment period was then closed.

Approval of Minutes

A motion was made and properly seconded to approve the minutes of the April 2, 2018, meeting of the Board; the motion passed.

Report of the Housing and Community Development Committee

Mr. Steve Semones stated that the Housing and Community Development Committee met prior to the Board meeting to discuss the Enterprise Zone regulations. Mr. Semones reported there was a unanimous vote to recommend to the Board to approve the changes to the Enterprise Zone regulations required by legislative changes. The motion was seconded and passed.

Mr. Semones also reported that there was unanimous vote to recommend approval of the Consolidated Plan and Action Plan. The motion was seconded and passed.

2015 Code Change Cycle

Mr. Johnston provided an update to the Board in regards to the

Update

2015 Code Change Cycle. The regulations were published on April 30, 2018. The Uniform Statewide Building Code (USBC), Virginia Amusement Device Regulations (VADR), and the Industrialized Building Safety Regulations (IBSR) were published with a 30-day final adoption period and the Statewide Fire Prevention Code (SFPC) was published with a 60-day final adoption period. A memo detailing this was included in the Board packet. The memo also requested the Board's approval to delegate to staff to review any petitions filed and proceed with suspending the regulations if proper petitions are received. There was discussion on how this was handled in the past and staff responded that the process is not changing but to have the approval by the Board to be notated in the minutes. A motion was made and properly seconded to delegate to staff the role of reviewing of petitions and suspending the regulations if necessary; the motion was unanimously approved.

In order for the codes to stay on track for their currently planned effective dates, the regularly scheduled meetings of July 16 and September 17 are to be rescheduled for July 30 and September 7.

Resolutions

Mr. Ainslie presented resolutions in honor of Rich Napier and Emory Rogers for approval by the Board. A motion was made and properly seconded to approve the resolutions; the motion was unanimously approved.

VHDA Report

Ms. Susan Dewey indicated that the Virginia Housing Development Authority (VHDA) is currently in the process of receiving comments on the Low Income Housing Tax Credit (LIHTC) program Qualified Allocation Plan (QAP). Ms. Dewey indicated she would be happy to accept any comments from the Board. The VHDA Board will meet in June and review the LIHTC applications for the current cycle.

VFSB Report

Mr. David Layman stated that the Virginia Fire Services Board (VFSB) next meeting is scheduled for June 1, 2018, in Richmond followed by a public safety memorial service.

Report of the Director

Mr. Johnston shared several announcements made by the Governor since the last meeting of the Board.

Unfinished Business	There was no unfinished business to be discussed.
New Business	There was no new business to be discussed.
Board Matters	Ms. Dewey inquired whose terms were expiring and who was up for reappointment. Staff responded that Mr. Ainslie's, Mr. Shields', and Mr. Narasimhan's terms were expiring. Ms. Dewey wanted to thank Mr. Ainslie for his service in the event that this meeting was his last meeting.
Future Meetings	Mr. Ainslie advised board members that based on the discussion of the Code Change Cycle that the next meeting of the Board will be held on July 30, 2018.
Adjournment	Upon a motion duly made and seconded, the meeting was adjourned.



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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Memorandum

To: Board of Housing Community Development Members

From: Erik Johnston, DHCD Director

Subject: Private Activity Bond (PAB) Guidelines, Proposed Changes

Date: July 20, 2018

The Code of Virginia charges the Board of Housing and Community Development with developing guidelines for allocation of the state's private activity bond volume cap to local housing authorities and the Governor's Pool (State Allocation). Based on the Board approved guidelines, the Department of Housing and Community Development is directed to process requests for volume cap allocation from the local housing authority allocation and the Governor' Pool (as approved by the Governor). As a best practice, the guidelines require periodic review and updates.

The Board enabled staff to proceed with updating the guidelines at their October 17, 2017 meeting. Staff held two input sessions on March 27 and June 27, 2018. Input sessions were open to interested stakeholders and the public to assist staff in drafting changes to the guidelines and provide feedback on the proposed guideline changes before coming back to the Board for additional input and final adoption. Stakeholders were also able to submit written comments prior to each input session and leading up to the July 30 Board of Housing and Community Development meeting.

The proposed changes to the Guidelines are primarily of a technical nature and were generally supported by stakeholders. A few key changes are as follows:

- When a fee is charged for an application that resubmits in the same year, the funds will be directed to the Virginia Housing Trust Fund not the Commonwealth Priority Housing Fund
- For localities without their own Consolidated Plan, DHCD will determine the project's conformance with the State's Consolidated Plan

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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

- The submission date for documentation of carryforward elections is changed from February to January to allow for potential reallocation if a carryforward project cannot make their election

Should the Board choose to adopt the proposed changes to the guidelines they would become effective January 1, 2019 to coincide with the new calendar and tax year. Enclosed within this packet are the guidelines with proposed revisions, revised applications, meeting summaries, and written comments received.

Enclosure

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1
2 **2018 Virginia Private Activity Bond Allocation Guidelines**

3 **Local Housing Authority Allocation**

4 **State Allocation**

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40 6.1. Reporting Bond Issuance

44 § 1.1. Definitions.

45 The following words and terms, when used in these guidelines, shall have the following meaning, unless
46 the context clearly indicates otherwise.

47 "Allocation" or "award" means the notice given by the Commonwealth to provide a project with a
48 specified amount from the state ceiling for a specific issue of bonds.

49 "Carry forward purpose" means certain projects that are eligible to receive an allocation during a
50 calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the [Internal](#)
51 [Revenue Code of 1986, as amended](#).

52 "Chief appointed official" means the chief administrator of the locality and includes the city manager, the
53 town manager, the county administrator, the county executive, and others.

54 "Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings
55 issued pursuant thereto.

56 ["Consolidated Plan" means the plan required by the United States Department of Housing and Urban](#)
57 [Development \(HUD\) for State and Entitlement jurisdictions that receive funding for any of the following](#)
58 [HUD formula programs: Community Development Block Grant \(CDBG\), HOME Investments](#)
59 [Partnerships \(HOME\), Emergency Solutions Grant \(ESG\) and Housing Opportunities for Persons with](#)
60 [AIDS \(HOPWA\).](#)

61 "DHCD" means Department of Housing and Community Development

62 "Eligibility" means, with respect to any project seeking an allocation of private activity bonds from the
63 local housing authority allocation, that the rents for the units subject to restrictions on the incomes of
64 residents under the Code will meet rent affordability standards. Rent affordability standards can be met
65 by allocation to the project of low-income housing tax credits under Section 42 of the Code or
66 participation in other federal, state or local housing affordability programs that include legally
67 enforceable rent affordability standards.

68 DHCD reserves the right to waive this eligibility requirement in the case of a housing project that
69 addresses another compelling local or state objective.

70 "Exempt facility" means a project requiring allocation from the state ceiling for financing of any of the
71 following:

- 72 1. Sewage, solid waste, and qualified hazardous waste disposal facilities;
- 73 2. Facilities for the local furnishing of electric energy or gas;
- 74 3. Facilities for the furnishing of water (including irrigation systems);
- 75 4. Mass commuting facilities; and
- 76 5. Local district heating and cooling facilities.

77 "Governing body" means the board of supervisors of each county and the council of each city and of
78 each town.

79 "Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation
80 from the state ceiling.

81 "Industrial development bond" means any obligation requiring allocation from the state ceiling for
82 financing any of the following:

83 1. Manufacturing facility;

84 2. Exempt facility.

85 "Issued" means that the private activity bonds have been issued within the meaning of §§ 103 and 141-
86 150 of the Code.

87 "Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the
88 Commonwealth which is empowered to issue private activity bonds.

89 "Local housing authority" means any issuer of multifamily housing bonds or single family housing
90 bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing
91 Development Authority ([VHDA](#)).

92 "Locality" or "localities" means the individual and collective cities, towns, and counties of the
93 Commonwealth.

94 "Manufacturing facility" means any facility which is used in the manufacturing or production of tangible
95 personal property, including the processing resulting in a change of condition of such property, within
96 the meaning of §144(a) (12)(c) of the Code.

97 "Multifamily housing bond" means any obligation which constitutes an exempt facility bond under
98 federal law for the financing of a qualified residential rental project within the meaning of § 142 of the
99 Code.

100 "Population" means the most recent estimate of resident population for Virginia and the counties, cities,
101 and towns published by the United States Bureau of the Census or the [Weldon Cooper](#) Center for Public
102 Service of the University of Virginia before January 1 of each calendar year.

103 "Private activity bond" means a part or all of any bond (or other instrument) required to obtain an
104 allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax
105 exempt, including but not limited to the following:

106 1. Exempt facility bonds;

107 2. Manufacturing facility bonds;

108 3. Industrial development bonds;

109 4. Multifamily housing bonds;

- 110 5. Single family housing bonds;
- 111 | 6. Any other bond eligible for a tax exemption as a private activity bond pursuant to §-141
112 of the Code.

113 "Project" means the facility (as described in the application) proposed to be financed, in whole or in part,
114 by an issue of bonds and that meets all of the requirements for eligibility set forth in these Guidelines.

115 | "Rent affordability standards" means that the rents and any estimated costs of utilities (except telephone)
116 payable by residents shall not exceed 30 percent of the applicable income limits under the Code during
117 the period of time that the bonds issued to finance the project will be outstanding.

118 "Single family housing bond" means any obligation described as a qualified mortgage bond under § 143
119 of the Code.

120 "State Allocation" means the portion of the state ceiling set aside for projects of state issuing authorities
121 and for projects of state or regional interest as determined by the Governor.

122 "State ceiling" means the amount of private activity bonds that the Commonwealth may issue in any
123 calendar year under the provisions of the Code.

124 **§ 2 Administration.**

125 § 2.1. Virginia Department of Housing and Community Development.

126 | Beginning on July 1, 2008, DHCD shall administer the private activity bond program in the
127 Commonwealth as specified in Chapter 50 Section 15.2-5003 of the Code of Virginia. In administering
128 the program, DHCD's activities shall include, but are not limited to, the following:

- 129 A. To determine the state ceiling on private activity bonds each year beyond 2008 based on
130 the federal per capita limitation on private activity bonds and the population.
- 131 B. To set aside the proper amount of the state ceiling on private activity bonds for each
132 project type as specified in state legislation, Chapter 50 (§§ 15.2-5000 through 15.2-
133 5005) of Title 15.2 of the Code of Virginia each year beyond 2008.
- 134 C. To receive and review project applications for private activity bond authority to be
135 awarded from the portion of the state ceiling allocated to local housing authorities and the
136 State Allocation.
- 137 D. To allocate private activity bond authority to projects requesting bond authority from the
138 portion of the state ceiling allocated to local housing authorities and the State Allocation.

139 § 2.2. State Allocation.

140 A portion of the annual state ceiling on private activity bonds will be reserved for allocations to
141 projects of state issuing authorities and projects of state or regional interest as determined by the
142 Governor. The Governor may transfer any portion of the State Allocation to DHCD for allocation to
143 specific projects or for allocation to specific project types in accordance with the provisions of these
144 guidelines.

145 § 2.3. Program Dates.

146 The following is a listing of important application and allocation dates and deadlines concerning the
147 portion of the state ceiling administered by DHCD. DHCD will accept applications at any time during
148 the year and they will be ordered as described below.

149 January 1 - December 15

150 Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by
151 either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond
152 authority will be awarded by DHCD to projects in accordance with state law or Governor's Executive
153 Order and these guidelines. The set-aside for specified project types ends on December 15 of each
154 calendar year.

155 July 1 - Earliest date on which an allocation in excess of \$20 million may be awarded to a local housing
156 authority project

157 December 1 - Last day applications will be accepted for year-end carry-forward purposes.

158 December 15 - Last day for the issuance of private activity bonds for projects that received allocations
159 from the state ceiling prior to this date.

160 December 20 - 31 - Allocations will be made to year-end carry-forward purposes in accordance with the
161 priority system established by these guidelines.

162 § 2.4. Weekend and Holiday Dates.

163 ~~For all references to in these guidelines, if July 31 falls on a weekend or a state holiday, the applicable~~
164 ~~date shall be the previous date to July 31 that falls on a regular state working day.~~

165 Except ~~as otherwise specified in this section and except~~ where federal or state law precludes an extension
166 to a later date, if any date specified in these guidelines falls on a weekend or a state holiday, the date
167 shall be moved to the next following regular state working day.

168 § 2.5. State Guidelines to Change as Federal Law Determines Eligibility.

169 If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity
170 bond financing for any "private activity bond" as defined in § 1.1 of these guidelines, the effect shall be
171 to exclude or include, as the case may be, that portion of the "private activity bond" from these
172 guidelines.

173 **§ 3 Allocations to Individual Projects by DHCD.**

174 § 3.1. State Private Activity Bond Legislation.

175 Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia sets aside specified
176 amounts of the Commonwealth's limited private activity bond issuing authority for different types of
177 projects. DHCD will allocate private activity bond authority to projects requesting bond authority for the
178 portion of the state ceiling allocated to local housing authorities and the State Allocation.

179 § 3.2 Order in which the bond authority reserved for local housing authority projects shall be awarded.

180 Any bond authority reserved for local housing authority projects that is unallocated, that is returned to
181 DHCD, or that otherwise becomes available to DHCD during each calendar year shall be awarded to
182 local housing authority projects in chronological order of the receipt by DHCD of complete applications
183 (including all documentation specified in § 5.3 of these guidelines).

184 § 3.3. Limitation on size of allocations.

185 From January 1 to June 30, all allocations awarded by DHCD from the portion of the state ceiling
186 reserved for local housing authority projects shall be limited to \$20 million per project. On and after
187 July 1 of each year, allocations from the portion of the state ceiling reserved for local housing
188 authority projects shall not be limited in amounts with respect to any local housing authority project
189 (including a project which received a partial allocation earlier in the year).

190 § 3.4 Effective period of allocations.

191 An allocation of private activity bond authority awarded by DHCD from the portion of the state ceiling
192 reserved for local housing authority projects shall be effective for 120 days after the allocation award
193 date or until December 15, whichever is earlier.

194 § 3.56. Reapplying for a second allocation for the same project.

195 A project that receives an allocation and is unable to issue bonds within the effective period of the
196 award may reapply for a second allocation upon the expiration or return of the original allocation.
197 This second allocation must be accompanied by a fee of 0.1 percent (one tenth of one percent) of the
198 amount of the requested private activity bonds. The reapplication will be dated by DHCD as
199 received on the date the reapplication request is submitted and no portion of the original allocation is
200 outstanding. This allocation period shall be effective for 90 days after the allocation award date or
201 until December 15, whichever is earlier. If the project closes within the 90 day allocation period,
202 one-half of the fee will be refunded to the applicant, with the other half being directed to the Virginia
203 Housing Trust Fund~~Commonwealth Housing Priority Fund.~~ -If the project does not close within the
204 90 day allocation period the entire amount will be directed to the Virginia Housing Trust Fund
205 Commonwealth Housing Priority Fund.

206 Each project shall be limited to two allocations during any calendar year.

207 § 3.67. Addressing same date submissions that exceed the available local housing authority allocation

208 Should DHCD receive multiple ~~allocation~~ properly completed allocation requests on the same date, the
209 total of which exceeds the amount of bonds available in the local housing authority allocation, DHCD
210 shall use a random lottery process to determine which requests will receive an allocation.

211 **§ 4 Year-end Allocations to Carry-forward Purposes.**

212 § 4.1. Local Housing Authorities.

213 Any bond issuing authority remaining in the portion of the state ceiling reserved for local housing
214 authorities after December 15 shall be transferred to the Virginia Housing Development Authority
215 (VHDA) upon ~~its~~their written request, after notification by DHCD of the amount of bond authority

216 | available. Any bond authority that remains with DHCD and is not requested by ~~VHDA~~the Virginia
217 | Housing Development Authority shall be allocated to other carry-forward purposes.

218 | **§ 5 Application Procedure.**

219 | **§ 5.1. Project Approval.**

220 | Projects of local issuing authorities must be approved by the governing body having jurisdiction over the
221 | authority as well as by the governing body having jurisdiction over the locality in which the project is
222 | located. This is often the same governing body. Projects of state issuing authorities must be approved by
223 | the Governor.

224 | **§ 5.2. ~~Where to Apply~~Application Submission.**

225 | Housing projects to be financed from the state ceiling allocated to local housing authorities will be
226 | submitted to DHCD. Requests for private activity bond authority from the State Allocation will be
227 | submitted to DHCD and forwarded ~~by DHCD~~ to the Governor's Office.

228 | **§ 5.3. Application Forms for Local Housing Authority Allocation.**

229 | All projects seeking an allocation of private activity bond authority from DHCD must file an application.
230 | Application forms are available from DHCD.

231 | Local housing authorities seeking an allocation of bond authority for housing projects shall file Form
232 | LHA.

233 | All applications and requests for private activity bond authority from DHCD shall be accompanied by the
234 | following documentation for each project:

- 235 | 1. Inducement or official intent resolution or other documentation of the preliminary approval of the
236 | project by the issuing authority, in conformity with applicable federal and state law;
- 237 | 2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or
238 | elected official's approval of the project, in conformity with applicable federal and state law;
- 239 | 3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds
240 | pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is
241 | required;
- 242 | 4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the
243 | project, or if the bonds are to be sold competitively, a letter from the financial advisor for the
244 | project;
- 245 | 5. Certification that the project's financing package will include low-income housing tax credits
246 | under Section 42 of the Code. If such credits are not a part of the project's financing package,
247 | then documentation on participation in another federal, state or local housing program with
248 | legally enforceable rent affordability standards must be included; ~~and~~ and
- 249 | 6. All applications from local housing authorities requesting an allocation of bond authority for
250 | housing projects shall be accompanied by a letter from the chief appointed official of the locality

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251 in which the project is located, endorsing the project and stating that the project is in conformity
252 with the Consolidated Plan covering the locality. If the locality is subject to the State's
253 Consolidated Plan, DHCD will determine if the project is in conformity with the plan.

254 § 5.4. Application Forms for State Allocation.

255 All projects seeking an allocation of private activity bond authority from the state allocation must file an
256 application. Application forms are available from DHCD.

257 Issuing authorities seeking an allocation of bond authority from the state allocation shall file Form SA.

258 All applications and requests for private activity bond authority from the state allocation shall be
259 accompanied by the following documentation for each project:

- 260 | 1. Inducement or official intent resolution or other documentation of the preliminary approval of the
261 project by the issuing authority, in conformity with applicable federal and state law;
- 262 | 2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or
263 elected official's approval of the project, in conformity with applicable federal and state law;
- 264 | 3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds
265 pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is
266 required;
- 267 | 4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the
268 project; or if the bonds are to be sold competitively, a letter from the financial advisor for the
269 project; -and
- 270 | 5. Such other information as DHCD may require to provide a description and analysis of the project
271 to the Governor for ~~his~~ review and consideration.

272 § 5.5. When to Apply.

273 Project applications for current-year allocation may be submitted to DHCD at any time prior to
274 December 15 of each year. Applications for year-end allocations for carry-forward purposes will be
275 accepted by DHCD through December 1 of each calendar year.
276

277 **§ 6 Reporting Requirements for Allocations.**

278 § 6.1. Reporting Bond Issuance.

279 For all private activity bonds issued in the Commonwealth from the portion of the state ceiling allocated
280 to local housing authorities and the State Allocation during any calendar year, a copy of the filed federal
281 Internal Revenue Service (IRS) Form 8038 must be received by DHCD no later than 5:00 p.m. on the
282 expiration date of the allocation award. Bond authority that has not been documented as having been
283 issued by the filing of IRS Form 8038 with DHCD by this deadline will revert to DHCD for reallocation
284 to other projects.

285 | For all allocations to carry-forward purposes, a copy of the filed IRS Form 8328 must be filed with
286 | DHCD by January 15~~February 15~~ following the calendar year in which the carry-forward award was
287 | received. In order to document the amount of bonds issued, a copy of IRS Form 8038 must be sent to
288 | DHCD when the bond(s) are issued.

C. Location of Project – street address and jurisdiction _____

D. Please explain how this project will meet a public purpose

E. Please describe the financial need for tax-exempt private activity bonds

F. Please outline the total financing package for this project with sources and amounts.

GD. Name, address, phone number, and tax ID number of each proposed borrower and developer. Indicate the role of each one listed.

HE. Name, address, and phone number of bond counsel.

3. ATTACHMENTS - ALL ~~FIVE~~ FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.

A. Copy of inducement or official intent resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.

- B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, dated within 60 days of a local public hearing, in conformity with applicable federal and state law. Approval within the 60 day time period may not apply to certain statewide issuing authorities/entities.
- C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.
- D. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, or if the bonds are to be sold competitively, a letter from the financial advisor for the project.
- ~~E. Copy of documentation that the local public hearing was conducted within 60 days of the authorizing resolution~~

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity _____

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Department of Housing and Community Development
Main Street Centre
600 East Main Street
Suite 300
Richmond, VA 23219
Attn: Policy Office

LOCAL HOUSING AUTHORITY APPLICATION HOUSING BOND ALLOCATION

1. GENERAL INFORMATION

A. Issuing Entity _____

B. Name of Project _____

C. Type of Project _____

Single Family

Multifamily

_____ Number of Units

_____ Number of Units

D. Bond allocation requested \$ _____

E. Indicate if this is a first or second submission for this project.

First

Second

F. If this is a second submission, indicate the amount of submission fee included with this application. The fee may be in the form of a letter of credit or a check. _____

2. PROJECT INFORMATION

A. Project Description

B. Please check the appropriate response for the low income set-aside requirement if the project is a multifamily rental project.

40% of the units will be occupied by persons having incomes of 60% of area median income or less.

20% of the units will be occupied by persons having incomes of 50% of area median income or less.

- C. Location of Project – street address and jurisdiction _____
- D. Indicate how rent affordability will be enforced on the units subject to restriction on the incomes of residents under the Code. Rent affordability can be met through an allocation of low-income housing tax credits under Section 42 of the Code or participation in other federal, state, or local housing affordability programs that include legally enforceable rent standards. Please specify the program and the number of units subject to rent affordability.
- _____
- _____
- _____
- E. Name, address, phone number, and tax ID number of each proposed borrower and developer. Indicate the role of each one listed.
- _____
- _____
- _____
- F. Name, address, and phone number of bond counsel.
- _____
- _____

3. ATTACHMENTS - ALL ~~SEVEN SIX~~ ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.

- A. Copy of inducement or official intent resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.
- B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, dated within 60 days of a local public hearing, in conformity with applicable federal and state law.
- ~~C. Copy of documentation that the local public hearing was conducted within 60 days of the _____ authorizing resolution.~~

CD. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

DE. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, or if the bonds are to be sold competitively, a letter from the financial advisor for the project.

EF. A letter from the chief appointed official of the locality in which the project is located, endorsing the project and stating that the project is in conformity with the Consolidated Plan covering the locality. If the locality is subject to the State's Consolidated Plan, DHCD will determine if the project is in conformity with the plan.

FG. Provide documentation of the project's participation in the program ensuring rent affordability indicated in 2D.

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Department of Housing and Community Development
600 East Main Street

Suite 300
Richmond, VA 23219
Attn: Policy Office

Private Activity Bond Stakeholder Input Session Meeting Summary

March 27, 2018

Introduction – DHCD staff and stakeholders provided introductions. DHCD staff briefly explained the agency’s role in private activity bonds, what the Guideline Update process would look like, and how the input session would proceed. The following summary is organized according to sections corresponding with the Private Activity Bond Guidelines.

Section 1 - Definitions

1.1 – Stakeholders inquired about what limits would there would be on infrastructure as related to a housing project.

Response: As part of the application process for the Local Housing Authority Pool and the Governor’s Pool, the Guidelines require (Sec. 5.3 & 5.4) applicants to submit a, “Written Opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required.” It is through this opinion that DHCD would determine the project to be eligible for a private activity bond allocation. Each applicant should confer with their counsel regarding eligible expenses on a specific project.

Section 2 – Administration

2.4 – Stakeholders noted that for many of their processes the next business day was the standard adhered to when a specified deadline falls on a weekend or holiday. Staff took note of this point and also noted the instance where this is referenced is likely no longer relevant as a key date for the Guidelines.

For all references to July 31 in these guidelines, if July 31 falls on a weekend or a state holiday, the applicable date shall be the previous date to July 31 that falls on a regular state working day

Section 3 – Allocations to Individual Projects by DHCD

3.6 – Staff noted that should a fee be required, it would be more appropriate to be paid to the Virginia Housing Trust Fund as opposed to the Commonwealth Priority Housing Fund.

General Comment/Questions: Stakeholders inquired as to whether it would be appropriate to give special consideration to projects that come in for an infrastructures type use with the Governor’s Pool and a housing project from the Local Housing Authority Pool?

Response: Per the Guidelines, properly completed Local Housing Authority applications receive allocations on a first come first served basis. Any preference in the Governor’s Pool for joint projects would be assessed on a case-by-case basis in coordination with the Office of the Governor and the Secretary of Commerce and Trade. As a note, IRS Publication 4078 lists

exempt facilities subject to volume cap - <https://www.irs.gov/pub/irs-pdf/p4078.pdf> (pg. 5). Based on past applications and uses noted in Publication 4078, a joint housing /infrastructure project seems improbable at this time.

Section 4 – Year- end Allocations to Carryforward Purposes

No Comments.

Section 5 – Application Procedure

5.1 – Stakeholders inquired what level of approval was required regarding a situation where there was a Town Housing Authority; would both the Town and County need to provide approval?

Response: Sec. 147 f 2 (ii) of the IRC states that public approval must be obtained from, “each governmental unit having jurisdiction over the area in which any facility, with respect to which financing is to be provided from the net proceeds of such issue, is located (except that if more than 1 governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only 1 such unit need approve such issue).”

5.3 #6 – Stakeholders requested that a definition of, “Consolidated Plan,” be added to the Guidelines.

5.4 #4 – Stakeholders noted that in a situation where there would be a competitive process to determine the buyer/underwriter of the bonds, a letter from a Financial Advisor related to the project has been utilized in the past to satisfy application requirements.

5.4 #5 - Stakeholders requested that gender neutral terminology be used.

Section 6 – Reporting Bond Issuance

6.1 Stakeholders noted that in some cases, an IRS Form 8038 can be filed after closing.

Private Activity Bond Stakeholder Input Session Meeting Summary

June 27, 2018

Introduction – DHCD staff and stakeholders provided introductions. DHCD staff briefly explained the agency’s role in private activity bonds, what the remainder of the Guideline Update process would look like, and how the input session would proceed. There was also a brief recap of the previous input session. The following summary is organized according to corresponding sections in the Private Activity Bond Guidelines.

Section 1 - Definitions

Staff noted that a definition for Consolidated Plan had been added and that the definition for manufacturing facility had been revised.

General Comment/Questions: Stakeholders inquired about the potential to use DHCD HOME, CDBG, and Housing Trust Fund funds in entitlement jurisdictions. Staff indicated that this ability might be limited but that it would be necessary to follow-up with relevant DHCD staff in the divisions of Housing and Community Development.

Section 2 – Administration

2.4 – Staff indicated that language regarding July 31 had been removed as it was not relevant to the guidelines. In response to stakeholder follow-up, staff indicated that as far as dates/timing, there were no proposed changes to the current schedule in Section 2.

General Comment/Questions: There was a stakeholder question about a project that might not close by December 15 and/or the certificate expiration date and if there was any room to add additional time to allow for issuance? Staff responded that December 15/certificate expiration dates are not flexible.

Section 3 – Allocations to Individual Projects by DHCD

3.6 – Staff noted that should a fee be required, it would be more appropriate to be paid to the Virginia Housing Trust Fund as opposed to the Commonwealth Priority Housing Fund.

General Comment/Questions: There was a stakeholder question regarding whether a project that returns its allocation and applies a second time would have to move to the end of the queue? Staff indicated that upon reapplication, the applicant would start at the end of the queue (if applicable at the time of reapplication).

Section 4 – Year- end Allocations to Carryforward Purposes

No Comments.

Section 5 – Application Procedure

5.3 – Staff indicated that there had been proposed changes regarding adding “official intent” in item #1 and also allowing a letter from a financial advisor when bonds are to be sold competitively in item #4. Stakeholders indicated that they didn’t believe housing bonds were typically sold competitively but that they support additional flexibility. Staff noted that for item #6, DHCD would determine conformance with the State’s Consolidated Plan for projects not located in an entitlement area.

Section 6 – Reporting Bond Issuance

Staff noted that the term “filed” [forms] was added for clarity and that the date for DHCD to receive IRS 8328 forms for carryforward elections had been moved forward one month to January 15.

General Meeting Comments Questions:

- Stakeholders had follow-up questions from the previous meeting regarding potential for joint housing/infrastructure projects. Staff indicated that the housing authority pool was first come first serve and that historically, infrastructure projects out of the Governor’s Pool has been rare but certain exempt facilities may qualify. Staff indicated that it would be contingent on counsel for the project to determine if a use fit within the IRS “exempt” facility requirement. Staff also noted that road construction and transportation were not under DHCD’s purview. The meeting summary for March 27, 2018 includes additional information regarding potential joint applications.
- Stakeholders indicated concern over the local approval by the governing body coming within sixty days of the public hearing; noting challenges with scheduling and expense. Staff responded that this was outside the purview of what could be changed with the guidelines but that it would be taken into consideration.
- Stakeholders indicated that they did not generally have concerns with the guidelines as had been presented to them at the meeting.

Pages 37-53 include
written comments received from stakeholders regarding
Private Activity Bond Guidelines/Applications

Nusbaum
6/3/18

2018 Virginia Private Activity Bond Allocation Guidelines

Local Housing Authority Allocation

State Allocation

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VI REPORTING REQUIREMENTS FOR ALLOCATIONS

6.1. Reporting Bond Issuance

44 § 1.1. Definitions.

45 The following words and terms, when used in these guidelines, shall have the following meaning, unless
46 the context clearly indicates otherwise.

47 "Allocation" or "award" means the notice given by the Commonwealth to provide a project with a
48 specified amount from the state ceiling for a specific issue of bonds.

49 "Carry forward purpose" means certain projects that are eligible to receive an allocation during a
50 calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Internal
51 Revenue Code of 1986, as amended.

52 "Chief appointed official" means the chief administrator of the locality and includes the city manager, the
53 town manager, the county administrator, the county executive, and others.

54 "Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings
55 issued pursuant thereto.

56 "Consolidated Plan" means the plan required by the United States Department of Housing and Urban
57 Development (HUD) for State and Entitlement jurisdictions that receive funding for any of the following
58 HUD formula programs: Community Development Block Grant (CDBG), HOME Investments
59 Partnerships (HOME), Emergency Solutions Grant (ESG) and Housing Opportunities for Persons with
60 AIDS (HOPWA).

61 "DHCD" means Department of Housing and Community Development

62 "Eligibility" means, with respect to any project seeking an allocation of private activity bonds from the
63 local housing authority allocation, that the rents for the units subject to restrictions on the incomes of
64 residents under the Code will meet rent affordability standards. Rent affordability standards can be met
65 by allocation to the project of low-income housing tax credits under Section 42 of the Code or
66 participation in other federal, state or local housing affordability programs that include legally
67 enforceable rent affordability standards.

68 DHCD reserves the right to waive this eligibility requirement in the case of a housing project that
69 addresses another compelling local or state objective.

70 "Exempt facility" means a project requiring allocation from the state ceiling for financing of any of the
71 following:

- 72 1. Sewage, solid waste, and qualified hazardous waste disposal facilities;
- 73 2. Facilities for the local furnishing of electric energy or gas;
- 74 3. Facilities for the furnishing of water (including irrigation systems);
- 75 4. Mass commuting facilities; and
- 76 5. Local district heating and cooling facilities.

77 "Governing body" means the board of supervisors of each county and the council of each city and of
78 each town.

79 "Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation
80 from the state ceiling.

81 "Industrial development bond" means any obligation requiring allocation from the state ceiling for
82 financing any of the following:

83 1. Manufacturing facility;

84 2. Exempt facility.

and §§ 141-150
~~§ 103~~

85 "Issued" means that the private activity bonds have been issued within the meaning of ~~§ 103~~ of the Code.

86 "Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the
87 Commonwealth which is empowered to issue private activity bonds.

88 "Local housing authority" means any issuer of multifamily housing bonds or single family housing
89 bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing
90 Development Authority (VHDA).

91 "Locality" or "localities" means the individual and collective cities, towns, and counties of the
92 Commonwealth.

93 "Manufacturing facility" means any facility which is used in the manufacturing or production of tangible
94 personal property, including the processing resulting in a change of condition of such property, *within the meaning*
of § 144(a)(12)(c) of the Code.

95 "Multifamily housing bond" means any obligation which constitutes an exempt facility bond under
96 federal law for the financing of a qualified residential rental project within the meaning of § 142 of the
97 Code.

98 "Population" means the most recent estimate of resident population for Virginia and the counties, cities,
99 and towns published by the United States Bureau of the Census or the Weldon Cooper Center for Public
100 Service of the University of Virginia before January 1 of each calendar year.

101 "Private activity bond" means a part or all of any bond (or other instrument) required to obtain an
102 allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax
103 exempt, including but not limited to the following:

104 1. Exempt facility bonds;

105 2. Manufacturing facility bonds;

106 3. Industrial development bonds;

107 4. Multifamily housing bonds;

108 5. Single family housing bonds;

109 | 6. Any other bond eligible for a tax exemption as a private activity bond pursuant to §-141
110 | of the Code.

111 | "Project" means the facility (as described in the application) proposed to be financed, in whole or in part,
112 | by an issue of bonds and that meets all of the requirements for eligibility set forth in these Guidelines.

113 | "Rent affordability standards" means that the rents and any estimated costs of utilities (except telephone)
114 | payable by residents shall not exceed 30 percent of the applicable income limits under the Code during
115 | the period of time that the bonds issued to finance the project will be outstanding.

116 | "Single family housing bond" means any obligation described as a qualified mortgage bond under § 143
117 | of the Code.

118 | "State Allocation" means the portion of the state ceiling set aside for projects of state issuing authorities
119 | and for projects of state or regional interest as determined by the Governor.

120 | "State ceiling" means the amount of private activity bonds that the Commonwealth may issue in any
121 | calendar year under the provisions of the Code.

122 | **§ 2 Administration.**

123 | § 2.1. Virginia Department of Housing and Community Development.

124 | Beginning on July 1, 2008, DHCD shall administer the private activity bond program in the
125 | Commonwealth as specified in Chapter 50 Section 15.2-5003 of the Code of Virginia. In administering
126 | the program, DHCD's activities shall include, but are not limited to, the following:

- 127 | A. To determine the state ceiling on private activity bonds each year beyond 2008 based on
128 | the federal per capita limitation on private activity bonds and the population.
129 | B. To set aside the proper amount of the state ceiling on private activity bonds for each
130 | project type as specified in state legislation, Chapter 50 (§§ 15.2-5000 through 15.2-
131 | 5005) of Title 15.2 of the Code of Virginia each year beyond 2008.
132 | C. To receive and review project applications for private activity bond authority to be
133 | awarded from the portion of the state ceiling allocated to local housing authorities and the
134 | State Allocation.
135 | D. To allocate private activity bond authority to projects requesting bond authority from the
136 | portion of the state ceiling allocated to local housing authorities and the State Allocation.

137 | § 2.2. State Allocation.

138 | A portion of the annual state ceiling on private activity bonds will be reserved for allocations to
139 | projects of state issuing authorities and projects of state or regional interest as determined by the
140 | Governor. The Governor may transfer any portion of the State Allocation to DHCD for allocation to
141 | specific projects or for allocation to specific project types in accordance with the provisions of these
142 | guidelines.

143 | § 2.3. Program Dates.

144 The following is a listing of important application and allocation dates and deadlines concerning the
145 portion of the state ceiling administered by DHCD. DHCD will accept applications at any time during
146 the year and they will be ordered as described below.

147 January 1 - December 15

148 Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by
149 either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond
150 authority will be awarded by DHCD to projects in accordance with state law or Governor's Executive
151 Order and these guidelines. The set-aside for specified project types ends on December 15 of each
152 calendar year.

153 July 1 - Earliest date on which an allocation in excess of \$20 million may be awarded to a local housing
154 authority project

155 December 1 - Last day applications will be accepted for year-end carry-forward purposes.

156 December 15 - Last day for the issuance of private activity bonds for projects that received allocations
157 from the state ceiling prior to this date.

158 December 20 - 31 - Allocations will be made to year-end carry-forward purposes in accordance with the
159 priority system established by these guidelines.

160 § 2.4. Weekend and Holiday Dates.

161 ~~For all references to in these guidelines, if July 31 falls on a weekend or a state holiday, the applicable~~
162 ~~date shall be the previous date to July 31 that falls on a regular state working day.~~

163 ~~Except as otherwise specified in this section and except where federal or state law precludes an extension~~
164 ~~to a later date, if any date specified in these guidelines falls on a weekend or a state holiday, the date~~
165 ~~shall be moved to the next following regular state working day.~~

166 § 2.5. State Guidelines to Change as Federal Law Determines Eligibility.

167 If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity
168 bond financing for any "private activity bond" as defined in § 1.1 of these guidelines, the effect shall be
169 to exclude or include, as the case may be, that portion of the "private activity bond" from these
170 guidelines.

171 **§ 3 Allocations to Individual Projects by DHCD.**

172 § 3.1. State Private Activity Bond Legislation.

173 Chapter 50 (§§ 15.2-5000 through 15.2-5005) of Title 15.2 of the Code of Virginia sets aside specified
174 amounts of the Commonwealth's limited private activity bond issuing authority for different types of
175 projects. DHCD will allocate private activity bond authority to projects requesting bond authority for the
176 portion of the state ceiling allocated to local housing authorities and the State Allocation.

177 § 3.2 Order in which the bond authority reserved for local housing authority projects shall be awarded.

178 Any bond authority reserved for local housing authority projects that is unallocated, that is returned to
179 DHCD, or that otherwise becomes available to DHCD during each calendar year shall be awarded to
180 local housing authority projects in chronological order of the receipt by DHCD of complete applications
181 (including all documentation specified in § 5.3 of these guidelines).

182 § 3.3. Limitation on size of allocations.

183 From January 1 to June 30, all allocations awarded by DHCD from the portion of the state ceiling
184 reserved for local housing authority projects shall be limited to \$20 million per project. On and after
185 July 1 of each year, allocations from the portion of the state ceiling reserved for local housing
186 authority projects shall not be limited in amounts with respect to any local housing authority project
187 (including a project which received a partial allocation earlier in the year).

188 § 3.4 Effective period of allocations.

189 An allocation of private activity bond authority awarded by DHCD from the portion of the state ceiling
190 reserved for local housing authority projects shall be effective for 120 days after the allocation award
191 date or until December 15, whichever is earlier.

192 § 3.56. Reapplying for a second allocation for the same project.

193 A project that receives an allocation and is unable to issue bonds within the effective period of the
194 award may reapply for a second allocation upon the expiration or return of the original allocation.
195 This second allocation must be accompanied by a fee of 0.1 percent (one tenth of one percent) of the
196 amount of the requested private activity bonds. The reapplication will be dated by DHCD as
197 received on the date the reapplication request is submitted and no portion of the original allocation is
198 outstanding. This allocation period shall be effective for 90 days after the allocation award date or
199 until December 15, whichever is earlier. If the project closes within the 90 day allocation period,
200 one-half of the fee will be refunded to the applicant, with the other half being directed to the Virginia
201 Housing Trust Fund~~Commonwealth Housing Priority Fund.~~ -If the project does not close within the
202 90 day allocation period the entire amount will be directed to the Virginia Housing Trust Fund
203 ~~Commonwealth Housing Priority Fund.~~

204 Each project shall be limited to two allocations during any calendar year.

205 § 3.67. Addressing same date submissions that exceed the available local housing authority allocation

206 Should DHCD receive multiple ~~allocation~~ properly completed allocation requests on the same date, the
207 total of which exceeds the amount of bonds available in the local housing authority allocation, DHCD
208 shall use a random lottery process to determine which requests will receive an allocation.

209 **§ 4 Year-end Allocations to Carry-forward Purposes.**

210 § 4.1. Local Housing Authorities.

211 Any bond issuing authority remaining in the portion of the state ceiling reserved for local housing
212 authorities after December 15 shall be transferred to the Virginia Housing Development Authority
213 (VHDA) upon ~~their~~ written request, after notification by DHCD of the amount of bond authority

lits

214 available. Any bond authority that remains with DHCD and is not requested by ~~VHDA~~the Virginia
215 ~~Housing Development Authority~~ shall be allocated to other carry-forward purposes.

216 **§ 5 Application Procedure.**

217 § 5.1. Project Approval.

218 Projects of local issuing authorities must be approved by the governing body having jurisdiction over the
219 authority as well as by the governing body having jurisdiction over the locality in which the project is
220 located. This is often the same governing body. Projects of state issuing authorities must be approved by
221 the Governor.

222 § 5.2. ~~Where to Apply~~Application Submission.

223 Housing projects to be financed from the state ceiling allocated to local housing authorities will be
224 submitted to DHCD. Requests for private activity bond authority from the State Allocation will be
225 submitted to DHCD and forwarded ~~by DHCD~~ to the Governor's Office.

226 § 5.3. Application Forms for Local Housing Authority Allocation.

227 All projects seeking an allocation of private activity bond authority from DHCD must file an application.
228 Application forms are available from DHCD.

229 Local housing authorities seeking an allocation of bond authority for housing projects shall file Form
230 LHA.

231 All applications and requests for private activity bond authority from DHCD shall be accompanied by the
232 following documentation for each project:

- 233 1. Inducement^{or official intent} resolution or other documentation of the preliminary approval of the project by the
234 issuing authority, in conformity with applicable federal and state law;
- 235 2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or
236 elected official's approval of the project, in conformity with applicable federal and state law;
- 237 3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds
238 pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is
239 required;
- 240 4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the
241 project, *or if the bonds are to be sold competitively, a letter from the financial advisor for
the project.*
- 242 5. Certification that the project's financing package will include low-income housing tax credits
243 under Section 42 of the Code. If such credits are not a part of the project's financing package,
244 then documentation on participation in another federal, state or local housing program with
245 legally enforceable rent affordability standards must be included.
- 246 6. All applications from local housing authorities requesting an allocation of bond authority for
247 housing projects shall be accompanied by a letter from the chief appointed official of the locality
248 in which the project is located, endorsing the project and stating that the project is in conformity

249 | with the Consolidated Plan covering the locality. If the locality is subject to the State's
250 | Consolidated Plan, DHCD will determine if the project is in conformity with the plan.

251 | § 5.4. Application Forms for State Allocation.

252 | All projects seeking an allocation of private activity bond authority from the state allocation must file an
253 | application. Application forms are available from DHCD.

254 | Issuing authorities seeking an allocation of bond authority from the state allocation shall file Form SA.

255 | All applications and requests for private activity bond authority from the state allocation shall be
256 | accompanied by the following documentation for each project:

257 | 1. Inducement, ^{or official intent} resolution or other documentation of the preliminary approval of the project by the
258 | issuing authority, in conformity with applicable federal and state law;

259 | 2. Documentation of the appropriate governing body's or bodies' (see § 5.1 of these guidelines) or
260 | elected official's approval of the project, in conformity with applicable federal and state law;

261 | 3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds
262 | pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is
263 | required;

264 | 4. A definite and binding financing commitment from the buyer or underwriter of the bonds for the
265 | project; ^{and, or if the bonds are to be sold competitively, a letter from the financial advisor}
^{for the project; and}

266 | 5. Such other information as DHCD may require to provide a description and analysis of the project
267 | to the Governor for his review and consideration.

268 | § 5.5. When to Apply.

269 | Project applications for current-year allocation may be submitted to DHCD at any time prior to
270 | December 15 of each year. Applications for year-end allocations for carry-forward purposes will be
271 | accepted by DHCD through December 1 of each calendar year.

273 | **§ 6 Reporting Requirements for Allocations.**

274 | § 6.1. Reporting Bond Issuance.

275 | For all private activity bonds issued in the Commonwealth from the portion of the state ceiling allocated
276 | to local housing authorities and the State Allocation during any calendar year, a copy of the filed federal
277 | Internal Revenue Service (IRS) Form 8038 must be received by DHCD no later than 5:00 p.m. on the
278 | expiration date of the allocation award. Bond authority that has not been documented as having been
279 | issued by the filing of IRS Form 8038 with DHCD by this deadline will revert to DHCD for reallocation
280 | to other projects.

281 | For all allocations to carry-forward purposes, a copy of the filed IRS Form 8328 must be filed with
282 | DHCD by January 15 ~~February 15~~ following the calendar year in which the carry-forward award was

283 received. In order to document the amount of bonds issued, a copy of IRS Form 8038 must be sent to
284 DHCD when the bond(s) are issued.

- C. Location of Project – street address and jurisdiction _____
- D. Indicate how rent affordability will be enforced on the units subject to restriction on the incomes of residents under the Code. Rent affordability can be met through an allocation of low-income housing tax credits under Section 42 of the Code or participation in other federal, state, or local housing affordability programs that include legally enforceable rent standards. Please specify the program and the number of units subject to rent affordability.

- E. Name, address, phone number, and tax ID number of each proposed borrower and developer. Indicate the role of each one listed.

- F. Name, address, and phone number of bond counsel.

3. ATTACHMENTS - ALL SEVEN ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.

- A. Copy of inducement ^{or official intent} resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.
- B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, dated within 60 days of a local public hearing, in conformity with applicable federal and state law.
- C. ~~Copy of documentation that the local public hearing was conducted within 60 days of the~~
~~authorizing resolution.~~

CD. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

DE. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, *or, if the bonds are to be sold competitively a letter from the financial advisor for the project.*

EF. A letter from the chief appointed official of the locality in which the project is located, endorsing the project and stating that the project is in conformity with the Consolidated Plan covering the locality. If the locality is subject to the State's Consolidated Plan, DHCD will determine if the project is in conformity with the plan.

FG. Provide documentation of the project's participation in the program ensuring rent affordability indicated in 2D.

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Department of Housing and Community Development
600 East Main Street
Suite 300
Richmond, VA 23219
Attn: Policy Office

Nusbaum
6/3/18

**APPLICATION
GOVERNOR'S DISCRETIONARY BOND ALLOCATION**

1. GENERAL INFORMATION

- A. Issuing Entity
- B. Name of Project
- C. Use of Bond Proceeds
 - Manufacturing
 - Exempt facility
 - Other
- D. Bond allocation requested \$
- E. Indicate if this is a first or second submission for this project.
 - First Second
- F. If this is a second submission, indicate the amount of submission fee included with this application. The fee may be in the form of a letter of credit or a check. _____

2. PROJECT INFORMATION

- A. General Description of the Project

- B. Number of jobs to be created (net) within two years of project completion. _____

- C. Location of Project – street address and jurisdiction _____
 - D. Please explain how this project will meet a public purpose
 - E. Please describe the financial need for tax-exempt private activity bonds
 - F. Please outline the total financing package for this project with sources and amounts.
 - GD. Name, address, phone number, and tax ID number of each proposed borrower and developer. Indicate the role of each one listed.
 - HE. Name, address, and phone number of bond counsel.
3. ATTACHMENTS - ALL FIVE ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM. ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE BEEN RECEIVED. ALL DOCUMENTATION MUST BE CURRENT.
- A. Copy of inducement ^{or official intent} resolution or other documentation of the preliminary approval of the project by the issuing authority, in conformity with applicable federal and state law.

- B. Copy of appropriate elected official's or governing body's (or bodies') formal approval of the project, dated within 60 days of a local public hearing, in conformity with applicable federal and state law. Approval within the 60 day time period may not apply to certain statewide issuing authorities/entities.
- C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.
- D. A definite and binding financing commitment from the buyer or underwriter of the bonds for the project, *or if the bonds are to be sold competitively, a letter from the financial advisor for the project.*
- E. ~~Copy of documentation that the local public hearing was conducted within 60 days of the~~
~~authorizing resolution~~

4. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Name of Issuing Entity _____

By: _____
Signature of Authorized Representative

Name (please print) _____

Title _____

Full Address _____

Date _____

Submit completed applications to:

Virginia Department of Housing and Community Development
Main Street Centre
600 East Main Street
Suite 300
Richmond, VA 23219
Attn: Policy Office

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272

273 § 6 Reporting Requirements for Allocations.

Comment [FK(1)]: VHDA Comments in track changes in Section 6.1

274 § 6.1. Reporting Bond Issuance.

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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

Memorandum

To: Board of Housing Community Development Members

From: Erik Johnston, DHCD Director

Subject: Industrial Revitalization Fund (IRF) Guidelines, Proposed Changes

Date: July 20, 2018

As directed by state statute, the Department of Housing and Community Development (DHCD) administers the [Virginia Removal or Rehabilitation of Derelict Structures Fund](#), also known as the Industrial Revitalization Fund (IRF). The Fund receives state appropriations and is intended for use by local governments and their partners to assist in revitalizing vacant and deteriorated industrial and commercial properties. These revitalization goals are accomplished by leveraging state funds with matching local and/or private funds. The goals of the program include the following:

1. Removal of blight which inhibits other investment in the locality
2. Returning properties to the tax rolls
3. Developing end uses that create additional investment and economic activity in the locality/area

The legislation which enables the creation of the Fund directs the Board of Housing and Community Development to develop guidelines by which the Fund will be administered. As a best practice, the guidelines require periodic review and updates.

The Board enabled staff to proceed with updating the Guidelines at their October 17, 2017 meeting. Staff held two input sessions on March 6 and March 20, 2018 in Richmond and Roanoke, respectively. Input sessions were open to interested stakeholders and the public to assist staff in drafting changes to the guidelines and provide feedback on the proposed guideline changes before coming back to the Board for additional input and final adoption. Staff also allowed stakeholders to submit written comments within a defined period, through April 1, 2018.

The most significant proposed guideline changes include changes to the structure of Grant/Loans, Definition of Blight, and Weight of Scoring categories. Previously, projects

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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

with a private, for-profit end use were required to receive the IRF award as a loan managed by Virginia Community Capital unless the property was owned by the locality and leased at a market rate to the private end user. As a result, localities and the investors in some projects developed convoluted ownership arrangements, including land swaps and future purchase agreements which met the program guidelines but kept some properties in the locality's ownership. This can result in the property not returning to the tax rolls. With the proposed changes to grant/loan structure, DHCD gains the flexibility to offer the grant to the locality, who may then loan the award to the investor. This leaves the property in private hands and provides an incentive for localities to arrange the application as a loan, rather than a grant, so that repaid funds can be used to seed a revolving loan pool to finance future projects in the locality.

Staff also proposes that the definition of blight, as written in the Code of Virginia, be included in program guidelines. Historically, projects were scored on a subjective level of blight. With this change, applicant properties will either qualify or not qualify as blighted and "Addressing Degree of Blight" was removed from the scoring chart. This allows staff to increase the weight of scoring elements that reflect the goal of increasing additional investment and economic activity in the project area. With the proposed changes in scoring, staff hopes to receive applicant projects that are more economically catalytic and construction ready with shorter project timelines.

During the timeline provided, no stakeholder provided negative feedback, and it was indicated that the proposed changes were to the benefit of localities applying for funding. Several local economic development officials verbally expressed their strong approval of the changes. Overall, most questions received were specific to the terms of locality or VCC underwritten loans. The new guidelines offer some flexibility for locally managed IRF loans to offer more favorable rates or structures, as approved by DHCD staff on a case-by-case basis. However, the VCC loans are operated under an agreement which states the loan terms of 10-year amortization and 2.5% rate.

Enclosure

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INDUSTRIAL REVITALIZATION FUND (IRF)

Program Guidelines

**Department of Housing and Community
Development**

600 East Main Street, Suite 300

Richmond, VA 23219

804-371-7030



**VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT**
Partners for Better Communities

INTRODUCTION

The Industrial Revitalization Fund (IRF) is funding allocated by the General Assembly to be used for the strategic redevelopment of vacant and deteriorated industrial properties across the Commonwealth. For the purposes of this program, the term “industrial” will be considered to mean any non-residential structure significant to the community due to size, location, and/or economic importance. Remnants of past economic vibrancy and local economies in transition, these structures are no longer suited for their former purpose, and in their current deteriorated condition, stand as a substantial deterrent for future economic opportunity in the surrounding area and region.

Financial barriers typically block the timely redevelopment of these structures and often they require more than local resources to attract private sector investment in order to make a deal cash flow. This is especially true in distressed areas. Therefore, the allocation from the General Assembly is meant to leverage local and private resources to achieve market-driven redevelopment of these structures, creating a catalyst for long-term employment opportunities and on-going physical and economic revitalization. Eligible properties and structures must be vacant and deteriorated and may be redeveloped for any market-driven purpose including mixed-use, regardless of the original use. For purposes of IRF, market-driven purpose is defined as guided by market trends and consumer needs based on market research where there is an actual need to be fulfilled or a market problem to solve.

Availability of Funds

One-time allocations replenish the Virginia Derelict Structures Fund (DSF) established under §36-152 of the Code of Virginia when funding is available. The Virginia Department of Housing & Community Development administers these funds under the Industrial Revitalization Fund (IRF) Program.

Award Amounts

Maximum IRF awards are determined at the time of allocation. A project may apply for less; however, IRF awards may not be used as a substitute for other funds the applicant has already committed to a project. IRF awards require at least a 1:1 match.

ELIGIBILITY

Eligible Applicants

Only local governments (cities, counties, or towns) and regional or local economic or industrial development authorities may submit applications for funding. A unit of local government may apply directly for funding to use on publicly owned property **OR** on behalf of a for-profit or non-profit entity for privately owned property. Localities may designate a redevelopment authority or another similar organization as an agent for project implementation and administration.

Award Funding Structures

While applicants should indicate whether funds are requested as a loan or a grant, DHCD reserves the right to award funding in the manner most appropriate to the project, and to recommend alternative structures as necessary.



DHCD will issue an **IRF GRANT** under the following conditions:

- The property is publicly owned;
- The privately owned property has an option agreement/contract in place for purchase by a local government at the time of the application; or
- The private property is owned by a not-for-profit, tax-exempt entity.
- Financing to complete the entire project as specified in the IRF application has been secured as evidenced by formal letters of interest, term sheets, or commitment letters.

~~IRF Grants will be awarded and disbursed directly to the locality, even if the property is owned or developed by a not for profit entity.~~ In cases where the local government intends to lease the property to a private, for-profit entity, a market rate lease is required; **upon resale of the property to a private, for-profit entity, DHCD will may require repayment of a prorated grant amount.**

DHCD will issue an **IRF GRANT/LOAN** under the following conditions:

- The property is owned by a private, for-profit entity and the end-use will be owned by a private, for-profit business.
- Financing to complete the entire project as specified in the IRF application has been secured as evidenced by formal letters of interest, term sheets, or commitment letters.
- ~~IRF loans are underwritten by Virginia Community Capital (VCC).~~ IRF Grant/Loans may be funded as a grant to the applicant local government (or local Economic Development Authority), who will in turn make a loan to the for-profit entity. The following standard terms and conditions will apply to all projects unless ~~VCC and~~ DHCD determines that a regionally significant project requires more favorable terms. The terms of the loan must be agreed to by DHCD.
 - ~~Interest Rate: 2.52-5%~~
 - ~~Amortization: 10 Years~~
 - ~~Commitment Fee: 1% (50% due within 14 days of execution of IRF loan performance agreement and remainder due at IRF closing.)~~
 - ~~Environmental review~~ Review
 - DHCD will require an executed performance agreement with the developer
- If the locality is unwilling ~~able to manage the loan, — or, by DHCD's determination, unable to manage the loan at DHCD's discretion —~~, the loan may be underwritten by Virginia Community Capital (VCC). In this case, VCC will require a commitment fee of 1% (50% due within 14 days of execution of IRF loan performance agreement and the remainder at IRF closing). ~~and~~

All projects, regardless of award structure, Projects must be ready to ~~close~~ execute a contract or performance agreement ~~on~~ within six months of award announcement.

- ~~Projects~~ Agreements may ~~close be executed~~ simultaneously with to the closing of the first trust lender for primary financing or after; however, IRF grant/loans **will not close before** all other sources of primary financing are closed or commitment letters with a closing date have been issued.



- Failure to ~~close execute the contract or performance agreement within six months~~ within six months may result in the IRF funds being reprogrammed to another project. The applicant will be given the opportunity to apply again once the project is more prepared for IRF loan closing. DHCD has the discretion to offer an extension beyond six months where delays are caused by circumstances beyond the control of the developer ~~but only under certain circumstances for delays that are not under the developer's control.~~

~~While applicants should indicate whether funds are requested as a loan or a grant, DHCD reserves the right to award funding in the manner most appropriate to the project, and to recommend alternative structures as necessary.~~

All projects, regardless of award structure, will be required to have a deed covenant/restriction or a lien for a period of 10-years that requires DHCD approval prior to any sale or change in end-use for the property. In the case of a sale to private sector entity and/or a change of use during the 10-year period, DHCD may require a pro-rated repayment of the IRF funds based on the number of years of the deed restriction remaining.

Match

To demonstrate project viability and the applicant's commitment, applicants are required to provide a 100 percent (1:1) local match from private or public sources. The match must either be cash or documented costs that are directly associated with the improvements to the property where IRF funds are expended. Local match may include federal (CDBG or other), state, local, and private funds spent on activities directly related to the targeted project within the last **full** fiscal year.

A locality may use documented administrative costs as up to five percent (5%) of the local match. The use of administrative costs as local match must be outlined in the application and will need to be documented through invoices or payroll records. The locality must provide a description of specific in-kind resources committed, including methods used to determine their value.

Example: An applicant that is seeking a \$300,000 IRF grant must provide a match of at least \$300,000 (100% match). Local match in excess of \$300,000 ~~(100% match)~~ will increase the application's score. This applicant could include up to \$15,000 in documented administrative costs in their \$300,000 match.

IRF funds may not be used as a substitute for other funds the applicant or end-user has already committed to a project. If the project proposes a for-profit, private end-use, DHCD considers an equity investment by that entity into the IRF project as an indication of long-term commitment to the project.

Eligible Match:

- Acquisition costs - include current property appraisal as documentation of value or documentation of purchase price (HUD-1 Settlement statement, bill of sale or deed), whichever is less;
- Documented costs **directly** associated with **physical activities** on the IRF project site;
- Construction-related soft costs related to engineering, design or architectural activities (must be specifically identified in the application);
- Investments into Machinery & Tools, taxable by the locality;



- Public notices, permit or dumping fees and inspections costs (or waivers of such) directly related to physical activities (must be specifically identified in the application);
- No more than five percent (5%) local match will be accepted as in-kind or cash for out-of-pocket administrative costs.

Ineligible Match:

- State or local taxes;
- Site remediation;
- Interest or principal payments on current debt on the property;
- Investments in Business Personal/Tangible Property (Furniture, Fixtures, and Equipment).

Eligible Use of Funds

The IRF program is flexibly designed so that funds can be used for a wide variety of revitalization and redevelopment activities such as **acquisition, rehabilitation, or repair** (including securing and stabilizing for subsequent reuse) of specific structures, as well as **demolition, removal, and other physical activities**.

In the case of acquisition, DHCD will limit its financial participation to the property's fair market value and the associated legal costs of acquisition. Fair market value is considered to be the lesser of the property's documented acquisition costs or appraised value. IRF funds may also be used for the legal costs associated with demolition. However, funds may not be used **solely** for acquisition or demolition unless it can be demonstrated that the locality has committed other redevelopment funds to the property, and there is a market-based redevelopment plan outlining reuse options, target markets/niches, and a property marketing strategy including the entity responsible for implementation. In addition, action must be taken by the locality to improve the property's readiness for redevelopment. Generally, demolition should be used only in circumstances where the size or location of a building precludes any significant redevelopment potential or in cases where there is an imminent safety threat.

Site remediation is **not** an eligible activity for IRF. Virginia's Department of Environmental Quality offers several programs to assist with remediation and environmental assessment including the Voluntary Remediation & Brownfields/Land Renewal Programs. Visit <http://www.deq.virginia.gov> for more information. Grant administration is **not** an eligible activity for IRF.

It is **not the intent** of the IRF Program to fund the relocation of existing Virginia businesses into a redeveloped structure, particularly if the relocation or expansion occurs simultaneously with the closure or significant reduction of operations in another Virginia locality. If this type of project is proposed as part of a significant expansion, the applicant must demonstrate that it is clearly part of the community or region's economic development strategy and how business relocation has a quantifiable impact on that strategy.

Eligible Properties

[According to the Code of Virginia § 36-3, a "blighted property" means any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or improvement previously designated as blighted pursuant to § 36-49.1:1, under the process for determination of "spot blight."](#)

The program is targeted toward (functionally) **vacant and deteriorated** properties whose poor condition creates a



notion of physical and economic blight in the surrounding area, and often is a deterrent to surrounding development. Projects may consist of multiple properties provided they are adjacent and/or adjoining and are related in either their negative impact (e.g., three adjacent severely deteriorated downtown buildings that create a negative impact on the remainder of the block) or end use (e.g., rehabilitation of an abandoned warehouse into a shell building with purchase of adjacent property for parking.)

Eligible properties and structures may be redeveloped for any market-driven purpose including mixed-use, regardless of the original use. For purposes of IRF, mixed-use is defined as “a building incorporating residential uses in which a minimum of **30 percent of the useable floor space** will be devoted to commercial, office, or industrial use or in which **30 percent of the projected project revenue** is derived from the commercial space.”

It is **not the intent** of the IRF Program to fund new construction or the development of greenfield properties, unless done in coordination with the redevelopment of an eligible vacant or deteriorated property.

<u>Former Property Uses:</u>		
Eligible		Ineligible
<ul style="list-style-type: none"> • Manufacturing • Warehousing • Mining • Warehousing • Mining • Transportation • Power Production 	<ul style="list-style-type: none"> • <u>Department stores</u> • <u>Theaters</u> • <u>Hotels</u> • <u>Shopping Centers</u> • <u>School Buildings</u> 	<ul style="list-style-type: none"> • Solely residential • Scattered site projects • Greenfield sites

FUND ACCESS

In the case of **GRANTS**, a contract between DHCD and the grantee outlining end products, conditions, fund disbursement and termination must be executed **before any funds are disbursed**. Funds may only be used for **expenses incurred after the signing of the contract, unless otherwise negotiated with DHCD**. IRF grant funds are available on a **reimbursement basis only**, for **costs** the applicant has incurred and paid for. Documentation of matching funds must be submitted with each remittance before any funds are disbursed.

In the case of **GRANT/LOANS**, IRF funding will be released through VCCs as a grant to the applicant local government entity (or approved Economic Local Economic Development Authority), (or Virginia Community Capital, at DHCD's sole discretion if there is no local development authority), who will then make a loan to the private developer pro-rata with other funders or once other sources are expended. This will be determined in discussion with developers upon DHCD's award notification.

Funding Priorities

The ultimate intent of the IRF program is to fund **shovel-ready** projects that will act as a catalyst to spark additional private investment and job creation in distressed areas that have been targeted for economic development and community revitalization as part of a larger economic restructuring or economic development strategy. Based on that intent, DHCD has established the following funding priorities:

1. **Clear relationship to a local or regional economic development strategy.**



Applicants must identify the economic development strategy that the proposed project will support. This strategy should be an element of an existing redevelopment, blight removal, or economic development plan, and applicants should cite the specific documents that substantiate the goals of project. Applicants must explain what is currently being done in the community and how the IRF funds will accelerate and expand those economic restructuring and development activities. Additionally, the application should identify why the proposed project is being prioritized for IRF funds over other projects in the locality.

2. High degree of blight and deterioration to be addressed.

Applicants must describe the extent of the physical deterioration and identify the negative impact the property is having in the community. DHCD is seeking to invest in projects that will address the negative impact the property has on the community's ability to attract private investment and job ~~creation~~creation. Applicants must demonstrate that addressing the property is a local priority, and projects that seek to repurpose a property will be given more consideration than projects that focus only on demolition/site clearance. Higher priority will be given to projects involving blight abatement and elimination, than those proposing blight prevention.

3. Project readiness.

DHCD will give higher priority to shovel-ready projects that will lead to the efficient and **immediate** redevelopment of blighted properties. Projects that can demonstrate "readiness to proceed" will be given the greatest consideration. Readiness to proceed is demonstrated by having **finalized plans** and **primary financing in place** (formal letters of interest, term sheets or letters of commitment) for an identified **end-use/user**. Capacity for project implementation by the locality or developer will also be a consideration in project readiness. For applications requesting grant funding, readiness to proceed should be demonstrated by community support for the project, and the receipt of public input where appropriate. **NOTE:** Any developers, contractors, and professional services funded by an IRF grant must be procured in accordance with the [Virginia Procurement Act \(VPPA\)](#). Applicants should submit documentation to detail that procurement requirements have been met for any professional services contracted to date. Grantees will be required to submit documentation to detail that procurement requirements have been met, prior to any execution of contracts that obligate IRF funds. See the list of items that should be provided, if available, to show project readiness (Page 13).

Projects that can show the ability to close on the IRF loan or go under contract with DHCD within six months of an IRF award notification will be the most competitive for funding. DHCD reserves the right to withdraw funding should the applicant not be under contract/close the IRF loan in a reasonable amount of time. DHCD also reserves the right to withdraw funding if there are substantial or significant changes to the development team, scope of work or community economic benefit.

4. Project with a clear end use.

Successful applicants will be able identify a tangible end-use to be completed in a reasonable amount of time, typically an 18~~-~~month timeframe. Successful projects will have executed development agreements, commitment letters from non-profit partners, operations/management agreements, leases for space, and detailed operations plans. Projects that have speculative or undetermined end uses will be considered a lower priority. If the application proposes a non-profit end use, the applicant or end user must demonstrate long-term sustainability by providing a 10 year operating pro forma and other documentation of financial solvency.

5. End use will have a clear and significant community economic impact.

Applicants must describe how the project will have a clear positive impact on the community. Applicants must



demonstrate how the completion of the IRF project will be a catalyst to larger economic revitalization efforts in the locality and region and will spark additional investment in the surrounding area. Applicants should include quantified expectations for primary impact (such as net new jobs, new businesses, and leveraged private investment) and any secondary impact (such as increased local sales, meals, or lodging tax ~~revenue,~~ ~~increased revenue,~~ ~~increased~~ export or non-export (tourism) revenues, increased daily and/or overnight visitors, and availability of commercial square footage.) In addition, applicants should describe how the project may be catalytic to the community in non-economic terms (such as access to services or resources, workforce development, and quality of life improvements). Projects that show significant community economic impact will be given higher priority; whereas projects with a public sector end-use will be lower priority. For IRF purposes, a full-time equivalent job is defined as employment of at minimum 35 hours per week. Existing employees or unpaid volunteer positions should not be included in job creation projections and will not be considered in application scoring.

6. High Economic Distress in project locality.

Extra consideration will be given to projects located in communities that are experiencing higher degrees of distress. However, it is not intended to compensate for poorly conceived projects that do not score well on the other funding priorities. Distress will be based on three measures below, using data from the U.S. Census Bureau and the Virginia Employment Commission. Scoring will be weighted based on the number of distress measures the locality is experiencing.

- a. **Poverty rate** of at least 150 percent of the state average (16.8%);
- b. **Median household income** of 70 percent of the state average (\$46,384); and
- ~~c. **Unemployment rate** of at least 150 percent of the state average (6.6%)~~
- c.

See Appendix A for pre-calculated scores for all cities and counties. Towns may use the distress score of the county, or they may calculate their own based on the town's Census tracts, whichever method provides the higher distress score. Guidance on where to find the necessary data is provided on page 16.

Other Considerations

DHCD encourages localities to apply for projects that will have a strong significance to the broader community and region, in areas of ongoing or identified redevelopment/revitalization. Applicants will receive **bonus points** for projects that meet the following characteristics:

- Part of a significant **regional focus**. This includes projects located in an area covered by a revenue sharing agreement or projects cited in a formal regional economic development plan.
- Eligibility for local real property tax abatements (§58.1-3221) or other **local incentives** to encourage investment.
- Location in an **Enterprise Zone** and ability to qualify for the state and local incentives. **IRF loans** may be included in the Enterprise Zone Real Property Investment Grant schedule of Qualified Real Property investments, while **IRF grants** must be excluded.
- Location in a designated **Virginia Main Street** community, a local, state or federal **historic district**, a **redevelopment or blight removal district**, a **Technology Zone**; or other similar district.
- Location in a current **CDBG project area**.
- Committed project leverage exceeds 1:1 match.



Prioritization

A locality may only submit one application per funding round; ~~therefore~~localities must identify and authorize the project that will have the most meaningful impact on local community revitalization and economic development efforts. As such, a resolution from the local governing body authorizing the request for funding is an application requirement. If the locality is applying on behalf of a non-profit or private for-profit, the resolution should indicate the specific match amount and identify the entity that will be responsible for providing the matching funds.

SUBMISSION REQUIREMENTS

Applications for IRF funding must be submitted through DHCD’s Centralized Application Management System (CAMS). You can access CAMS using the following link: <https://dmz1.dhcd.virginia.gov/camsportal/Login.aspx>

SCORING

Funds will be allocated through a competitive process that will give greater priority to projects leading to the efficient and immediate redevelopment and/or reuse of abandoned “industrial” structures. Applications will be evaluated according to a scoring system and projects will be selected for funding on the basis of the higher scores in descending order until all funds are allocated. Scoring criteria and point allocation will be as follows:

Relationship to Economic Development Strategy	15%
Readiness Addressing Degree of Blight	30% 15%
End Use Plans Readiness	15% 25%
Economic Impact	25%
Distress End-Use Plans and Impact	10% 30%
MatchDistress	5%10%
TOTAL Match	100%5%
TOTAL	100%

A strong application will be able to document that the project is **ready-to-go, but could not be finished without the injection of the IRF funds.**

PERFORMANCE AGREEMENTS & CONTRACTUAL OBLIGATIONS

Successful applicants will be **required to sign a contract/performance agreement** committing them to the economic outcomes, property use, fund use and match outlined in approved application and any pre-contract/performance agreement negotiations.

All applications, contracts and performance agreements are subject to negotiation with DHCD. All projects will be required to have a deed covenant/restriction or a lien for a period of 10-years that requires DHCD approval prior to any sale or change in end-use for the property. In the case of a sale to private sector entity and/or a change of use during the 10-year period, DHCD may require a pro-rated repayment of the IRF funds based on the number of years of the deed restriction remaining.

All approved projects will be committed to a project completion date of 18 months from contract execution/loan closing, by which all activities must be completed and drawdown requests/loan disbursements submitted to DHCD/VCC. Any project that receives funding and does not use all of its designated funds by the project



completion date specified in its contract/loan award may lose the remaining fund balance.

SUBSTANTIAL PROJECT CHANGES AFTER APPLICATION SUBMITTAL

DHCD reserves the right to rescind the funding offer if substantial changes to the project scope and/or financing needs occur after application submittal. DHCD will be concerned of the impact of such on project cash flow, project timing, need for IRF funding, intent of the IRF program, and projected outcomes as outlined in the original application. To maintain consideration for IRF funding, substantial changes to project scope and/or budget will require applicants to provide DHCD with an updated description of the project.

CONTACT

For more information on the IRF program please contact:



Virginia Department of Housing and Community Development

600 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 371-7030



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

July 20, 2018

To: Board of Housing and Community Development Members

From: Erik C. Johnston, Director

RE: Additional Comments and Final Action on Suspended Portion of USBC

The final adoption (comment) period for the Uniform Statewide Building Code (USBC) closed on May 30, 2018. A valid petition was received regarding the USBC and as a result; the following sections of the USBC were suspended in order to receive additional comment on changes between the proposed and final phases:

- 13VAC5-63-470 E, Subsection, E 103.2.3, Responsibility
 - Note: Section/subsection lettering and numbering deviates slightly from the petition based on publication of an Errata in the Register, this did not affect the content of the suspended section
- 13VAC5-63-485, Section 105, Violations

The referenced sections relate to provisions within the Virginia Maintenance Code pertaining to responsibility and violations. The additional comment period for these sections started on June 25, 2018 and will end on July 25, 2018. Included within this package are the following items: notice of suspension and language as approved in final phase, comments received during the additional comment period, a petition requesting suspension of the aforementioned sections, and code change proposal information relating to the suspended sections. Any comments not included with this memo but received before the July 25th deadline will be sent under a separate cover prior to the Board meeting.

The Board will take action to either adopt/readopt the suspended code section with amendments, adopt/readopt the suspended code section without amendments, and also to designate a new effective date for the suspended code sections. Staff recommends September 4th as the proposed effective date for this code section.

For your reference we have included a link to the information provided to you in June regarding suspension of the USBC -

https://www.dropbox.com/sh/tqseyce03hm23de/AADGfqhyOJutKb_YVvBOIe3pa?dl=0

Partners for Better Communities



www.dhcd.virginia.gov

Regulations

3. A student as authorized by the Dean of Students or the dean's designee for good cause shown. Requests for such authorization shall be evaluated on a case-by-case basis and may contain conditions to maintain the safety of the university community.

C. Entry upon ~~such~~ university property in violation of this prohibition is expressly forbidden. Persons violating this prohibition will be asked to remove the weapon immediately from university property. Failure to comply with this request may result in arrest for trespass. Members of the university community are also subject to disciplinary action.

8VAC115-20-30. Person lawfully in charge.

In addition to individuals authorized by university policy of job duties, College of William & Mary police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R18-5522; Filed June 4, 2018, 1:58 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Suspension of Regulatory Process and Additional Comment Period

Title of Regulation: 13VAC5-63. Virginia Uniform Statewide Building Code.

Statutory Authority: § 36-98 of the Code of Virginia.

Public Comment Deadline: July 25, 2018.

Agency Contact: Kyle Flanders, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the Board of Housing and Community Development is suspending specific provisions of the final Virginia Uniform Statewide Building Code (13VAC5-63), published in [34:18 VA.R. 1744-1961 April 30, 2018](#), and corrected by an errata published in this issue of the Virginia Register of Regulations. The board is suspending and soliciting additional comments on one subsection and one section that were added to the regulation between publication of the proposed regulations and publication of the final regulations.

The additional comment period ends on July 25, 2018. Written comment regarding these specific provisions may be submitted to the agency contact.

The specific provisions, as corrected by the errata for 13VAC5-63-470, are as follows:

13VAC5-63-470 E (Section 103.2.3 Responsibility).

~~D.~~ E. 103.2.3 Responsibility. The owner of a structure shall provide and maintain all buildings, structures, systems, facilities and associated equipment in compliance with this code unless it is specifically expressed or implied that it is the responsibility of the tenant or occupant.

13VAC5-63-485. Section 105 Violations.

105.1 Violation a misdemeanor; civil penalty. In accordance with § 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of § 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

105.2 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit, inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code.

105.3 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 106. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

105.4 Notice of violation. If the code official determines there are violations of this code a written notice of violation may be issued to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 105.3. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 105.3. The code official shall provide the section numbers to the owner for any code provisions cited in the notice of violation. The notice shall require

correction of the violation within a reasonable time. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the timeframe established for any reinspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

Exceptions:

1. Notices issued and legal proceedings or emergency actions taken under Section 106 for unsafe structures, unsafe equipment, or structures unfit for human occupancy.

2. Notices issued for failing to maintain buildings and structures as required by Section 103.2, as evidenced by multiple or repeated violations on the same property are not required to include a compliance deadline for correcting defects.

105.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment, and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

105.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official may request the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality or legal counsel so authorizes, the code official may issue or obtain a summons or warrant. Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation for the same property.

105.7 Penalties and abatement. Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

VA.R. Doc. No. R16-4664; Filed June 6, 2018, 10:58 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

REGISTRAR'S NOTICE: The Board for Barbers and Cosmetology is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board for Barbers and Cosmetology will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).**

18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).

18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-90).

18VAC41-70. Esthetics Regulations (amending 18VAC41-70-120).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: August 1, 2018.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Summary:

The amendments extend the reduction in application, renewal, and reinstatement fees for all Board for Barbers and Cosmetology licenses through August 31, 2020, in compliance with § 54.1-113 of the Code of Virginia.



THE APARTMENT AND OFFICE BUILDING ASSOCIATION
OF METROPOLITAN WASHINGTON

THE VIRGINIA APARTMENT MANAGEMENT
ASSOCIATION



July 19, 2018

Mr. John Ainslie, Chairman
Virginia Board of Housing and Community Development
600 East Main Street, Suite 300
Richmond, VA 23219

RE: Action to Update the USBC by adoption of 2015 edition of the USBC

Dear Chairman Ainslie and Members of the Board of Housing and Community Development,

On May 23, 2018, pursuant to Code of Virginia, Sec. 2.2-4007.06, the Apartment and Office Building Association of Metropolitan Washington and the Virginia Apartment Management Association (AOBA/VAMA) requested an opportunity for AOBA/VAMA and any other interested party to submit oral and written comments on changes contained in final regulations for the Uniform Statewide Building Code (USBC) published in the Virginia Register on April 30, 2018 (Volume: 34 Issue: 18). One or more changes had been made to a proposed regulation which had substantial impact on AOBA/VAMA members and other building owners throughout the Commonwealth. Specifically, AOBA/VAMA felt the following sections, as currently drafted, could expose responsible building owners to unreasonable risk of prosecution:

Part III Maintenance (International Property Maintenance Code)

- **13VAC5-63-470. Chapter 1 Administration; Section 103 Application of Code; Sec. D. 103.2.2 Responsibility; and**
- **13VAC5-63-485. Section 105 Violations**

Since the filing of the AOBA/VAMA petition, multiple discussions have occurred among key stakeholders, specifically: myself, on behalf of AOBA/VAMA; Greg Revels, Henrico County Building Official and Co-Proponent of the code changes cited above; Sean Farrell, on behalf of VBCOA; and Chip Dicks, FutureLaw, LLC, on behalf of the Northern Virginia Apartment Association. I am pleased to advise the Board that those discussions have resulted in consensus substitute language, provided and briefly explained below, which the participants respectfully submit for the Board's consideration.

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First, the participating stakeholders ultimately determined that, in regard to 13VAC5-63-470. Chapter 1 Administration; Section 103 Application of Code; Sec. D. 103.2.2 Responsibility, **no revisions are necessary** to the text which was published in the Virginia Register on April 30, 2018. This section consolidates, in one place, owner responsibilities which have previously appeared in multiple sections of the VPMC, and there is no objection to final adoption of it in its current form.

Second, in regard to 13VAC5-63-485. Section 105 Violations, the participating stakeholders agreed that **Section 105.6 should be revised by deleting the last sentence of the section and adding a new subsection 105.6.1**, so that it reads as follows:

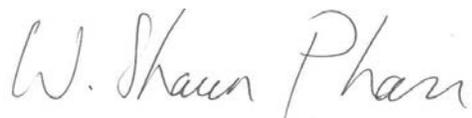
105.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official may request the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality or legal counsel so authorizes, the code official may issue or obtain a summons or warrant. ~~Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation for the same property.~~

105.6.1 Further action for corrected violations: Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a responsible party is served with three or more separate notices of violation for the same property within any five consecutive years. Legal proceedings shall not be instituted under this section for violation notices issued pursuant to the initial inspection of the property. Legal proceedings for violations that have been abated in residential rental dwelling units within a multifamily apartment development may only be instituted for such violations that affect safe, decent or sanitary living conditions.

Exception: Legal proceedings shall not be instituted for violations that have been abated on owner-occupied single family dwellings.

No other revisions to Section 105 are being recommended. The participating stakeholders believe that these clarifying revisions will meaningfully reduce the potential for an inappropriate request to institute legal proceedings against a responsible party, and we urge their adoption by the Board.

Sincerely,



W. Shaun Pharr, Esq.

Senior Policy Advisor



THE APARTMENT AND OFFICE BUILDING ASSOCIATION
OF METROPOLITAN WASHINGTON

THE VIRGINIA APARTMENT MANAGEMENT
ASSOCIATION



May 23, 2018

Mr. John Ainslie, Chairman
Virginia Board of Housing and Community Development
600 East Main Street, Suite 300
Richmond, VA 23219

RE: Action to Update the USBC by adoption of 2015
edition of the USBC

Dear Chairman Ainslie,

Pursuant to Code of Virginia, Sec. 2.2-4007.06, the Apartment and Office Building Association of Metropolitan Washington and the Virginia Apartment Management Association (AOBA/VAMA) request an opportunity for AOBA/VAMA and any other interested party to submit oral and written comments on changes contained in final regulations for the Uniform Statewide Building Code (USBC) published in the Virginia Register on April 30, 2018 (Volume: 34 Issue: 18). One or more changes have been made to a proposed regulation which have substantial impact on AOBA/VAMA members and other building owners throughout the Commonwealth.

Specifically, the following sections, as currently drafted, expose responsible building owners to unreasonable risk of prosecution:

Part III

Maintenance (International Property Maintenance Code)

- **13VAC5-63-450. Chapter 1 Administration; Section 101 General**

Sec. D. 103.2.2 Responsibility; and

- **13VAC5-63-485. Section 105 Violations**

Enclosed herewith, please find five (5) petition sheets bearing signatures of thirty-five persons in support of this request. It is AOBA/VAMA's intent to submit comments and proposed changes for consideration by the Board of Housing and Community Development during the comment period. It is also our intent to craft proposed changes in consultation with VBCOA, in hopes of securing its concurrence with the proposed changes ultimately submitted to the Board.

Sincerely,



W. Shaun Pharr, Esq.
Senior Policy Advisor



THE APARTMENT AND OFFICE BUILDING ASSOCIATION
OF METROPOLITAN WASHINGTON

THE VIRGINIA APARTMENT MANAGEMENT
ASSOCIATION



The undersigned support AOBA/VAMA's petition to the Virginia Board of Housing and Community Development, pursuant to Code of Virginia, Sec. 2.2-4007.06, and request an opportunity for AOBA/VAMA and any other interested party to submit oral and written comments on changes contained in final regulations for the Uniform Statewide Building Code (USBC) published in the Virginia Register on April 30, 2018 (Volume: 34 Issue: 18). Specifically, AOBA/VAMA intend to submit comments and proposed changes for consideration by the Board of Housing and Community Development regarding the following sections which, as currently drafted, expose responsible building owners to unreasonable risk of prosecution:

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Sec. D. 103.2.2 Responsibility; and

- **13VAC5-63-485. Section 105 Violations**

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- **13VAC5-63-485. Section 105 Violations**

Michael P. [Signature]
Michael [Signature]
Jessie Durham
[Signature]
[Signature]

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- **13VAC5-63-485. Section 105 Violations**

From Above
Jessie Butler
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THE APARTMENT AND OFFICE BUILDING ASSOCIATION
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ASSOCIATION



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**Part III
Maintenance (International Property Maintenance Code)**

- **13VAC5-63-450. Chapter 1 Administration; Section 101 General**
Sec. D. 103.2.2 Responsibility; and
- **13VAC5-63-485. Section 105 Violations**

[Handwritten signatures]
Brooke Thunders
Tamy M Ray
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M-103.2.1 cdpVA-15

Proponent : Earl Weaver, Representing VBCOA Property Maintenance Code; Co-Proponent: Greg Revels, representing Henrico County (Earl.Weaver@Richmondgov.com and rev04@henrico.us)

2012 Virginia Maintenance Code

Add new Section 103.2.2 as follows:

103.2.2 Responsibility. The owner of a structure shall provide and maintain all buildings, structures, systems, facilities and associated equipment in compliance with this code unless it is specifically expressed or implied that it is the responsibility of the tenant or occupant.

Add a new Section 105 (Violations) after existing Section 104.5.3.4 (Qualifications), add new Section 105.1 and change Sections 104.5.4, 104.5.4.1, 104.5.4.2, 104.5.5, 104.5.6, and 104.5.7 as follows:

SECTION 105 **VIOLATIONS**

105.1 Violation a misdemeanor; civil penalty. In accordance with Section 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of Section 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

104.5.4 105.2 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit, inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code.

104.5.4.1 105.3 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reason-able time unless an emergency condition exists as provided under the unsafe building provisions of Section ~~105~~ 106. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and re-inspected in a reasonable time designated by the code official.

104.5.4.2 105.4 Notice of violation. If the code official determines there are violations of this code ~~other than those for unsafe structures, unsafe equipment or~~

~~structures unfit for human occupancy under Section 105, the code official may issue a written notice of violation may be issued to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1 105.3. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1 105.3. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed. The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. The notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the building provisions of Section 105. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the time frame established for any re-inspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.~~

Exceptions:

1. Notices issued, and legal proceedings or emergency actions taken, under Section 106 for unsafe structures, unsafe equipment or structures unfit for human occupancy.
2. Notices issued for failing to maintain buildings and structures as required by Section 103.2, as evidenced by multiple or repeated violations on the same property, are not required to include a compliance deadline for correcting defects.

~~104.5.5~~ **105.5 Coordination of inspections.** The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

~~104.5.6~~ **105.6 Further action when violation not corrected.** If the responsible party has not complied with the notice of violation, the code official ~~may~~ shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality or legal counsel so authorizes, the code official may issue or obtain a summons or warrant. Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation for the same property.

~~104.5.7~~ **105.7 Penalties and abatement.** Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to

require correction or abatement of a violation.

(renumbering remaining sections of the VMC accordingly)

Reason: This proposal creates a new section in the VMC specific to violations of the code, including violations of 103.2. New Section 105.1 is copied from Section 115.1 of the VCC, to reinforce Code of Virginia Section 36-106 citing that it is unlawful to violate the VMC. Section 105.4 is reformatted to relocate the exemptions for unsafe structures cited per Section 106 as exceptions from this section. A new exception is provided to also exempt violations of Section 103.2 from having to incorporate compliance deadlines, since these are on-going violations. The sentence requiring issuance of a notice of violation prior to initiating legal proceedings is proposed for deletion because Section 105.6 prohibits legal action prior to issuance of a violation notice.

The new draft also provides clear responsibility for owners to continually maintain buildings and structures instead of only when cited for violations by the code official. Language is also provided to assure that violations of Section 103.2 shall only be cited or prosecuted based on the discovery of multiple or repeated violations on the same property.

Cost Impact: None.

Workgroup Recommendation

Workgroup 1 Recommendation Recommendation: Non-Consensus Final

Workgroup 1 Reason: None

Board Decision

Board Decision: Approved

Board Reason: None

M-103.2.1 cdpVA-15

**BOARD of HOUSING and COMMUNITY DEVELOPMENT
COMMONWEALTH OF VIRGINIA**

At a regular meeting of the Board of Housing and Community Development held in Glen Allen, Virginia on Monday, July 30, 2018, at the hour of 10:00 a.m., the following resolution was unanimously adopted:

WHEREAS, John W. Ainslie was appointed by Governor Robert F. McDonnell and confirmed by the 2010 Virginia General Assembly to serve on the Board of Housing and Community Development for a term of four years; and

WHEREAS, He was reappointed to the Board by Governor Terence R. McAuliffe and confirmed by the 2014 General Assembly to serve for a term of four years; and

WHEREAS, He served the Board with distinction from 2010 until 2018, serving on the Housing and Community Development, Codes and Standards, and the Statewide Fire Prevention Code Development Committees; and

WHEREAS, He served as Chairman of the Board from 2016 until 2018, Vice-Chairman of the Board from 2014 until 2016, Chairman of the Codes and Standards Committee, and representative to the Virginia Fire Services Board from 2012 until 2016; and

WHEREAS, His commitment to the best interests of the Commonwealth coupled with his knowledge and experience made him an asset to this Board; and

WHEREAS, His effective advocacy of his perspective, along with his respectful consideration of the views of others rendered him an invaluable participant in the Board's deliberations; and

WHEREAS, His intelligence, integrity and dedication earned him the sincere respect and admiration of the members of this Board, its staff and all others associated with its activities; and

WHEREAS, His good humor, his wit and his graciousness added immeasurably to the pleasure and satisfaction derived from service on this Board; and

WHEREAS, The termination of his service with the Board deprives the Commonwealth of a distinguished and faithful public servant and this body of a valued member and good friend;

NOW, THEREFORE, BE IT RESOLVED, That the Board of Housing and Community Development does hereby express its gratitude to **John W. Ainslie**, for his many contributions to this body and acknowledges with regret the loss of his company and good counsel.

BE IT FURTHER RESOLVED, That a copy of this resolution be spread upon the Minutes of this meeting and that a framed copy thereof be presented to **John W. Ainslie** as a permanent testament of our affection, esteem, and high regard.

Chairman

**BOARD of HOUSING and COMMUNITY DEVELOPMENT
COMMONWEALTH OF VIRGINIA**

At a regular meeting of the Board of Housing and Community Development held in Glen Allen, Virginia on Monday, July 30, 2018, at the hour of 10:00 a.m., the following resolution was unanimously adopted:

WHEREAS, Shekar Narasimhan was appointed by Governor Terence R. McAuliffe and confirmed by the 2014 Virginia General Assembly to serve on the Board of Housing and Community Development for a term of four years; and

WHEREAS, He served the Board with distinction from 2014 until 2018, serving on the Housing and Community Development and Codes and Standards Committees; and

WHEREAS, He served as Co-Chairman of the Housing and Community Development Committee and representative to the Virginia Housing Development Authority Board of Commissioners; and

WHEREAS, His commitment to the best interests of the Commonwealth coupled with his knowledge and experience made him an asset to this Board; and

WHEREAS, His effective advocacy of his perspective, along with his respectful consideration of the views of others rendered him an invaluable participant in the Board's deliberations; and

WHEREAS, His intelligence, integrity and dedication earned him the sincere respect and admiration of the members of this Board, its staff and all others associated with its activities; and

WHEREAS, His good humor, his wit and his graciousness added immeasurably to the pleasure and satisfaction derived from service on this Board; and

WHEREAS, The termination of his service with the Board deprives the Commonwealth of a distinguished and faithful public servant and this body of a valued member and good friend;

NOW, THEREFORE, BE IT RESOLVED, That the Board of Housing and Community Development does hereby express its gratitude to **Shekar Narasimhan**, for his many contributions to this body and acknowledges with regret the loss of his company and good counsel.

BE IT FURTHER RESOLVED, That a copy of this resolution be spread upon the Minutes of this meeting and that a framed copy thereof be presented to **Shekar Narasimhan** as a permanent testament of our affection, esteem, and high regard.

Chairman

**BOARD of HOUSING and COMMUNITY DEVELOPMENT
COMMONWEALTH OF VIRGINIA**

At a regular meeting of the Board of Housing and Community Development held in Glen Allen, Virginia on Monday, July 30, 2018, at the hour of 10:00 a.m., the following resolution was unanimously adopted:

WHEREAS, Tommy Shields was appointed by Governor Robert F. McDonnell and confirmed by the 2013 Virginia General Assembly to serve on the Board of Housing and Community Development; and

WHEREAS, He was reappointed to the Board by Governor Terence R. McAuliffe and confirmed by the 2014 General Assembly to serve for a term of four years; and

WHEREAS, He served the Board with distinction from 2013 until 2018, serving on the Housing and Community Development, Codes and Standards, and the Statewide Fire Prevention Code Development Committees; and

WHEREAS, His commitment to the best interests of the Commonwealth coupled with his knowledge and experience made him an asset to this Board; and

WHEREAS, His effective advocacy of his perspective, along with his respectful consideration of the views of others rendered him an invaluable participant in the Board's deliberations; and

WHEREAS, His intelligence, integrity and dedication earned him the sincere respect and admiration of the members of this Board, its staff and all others associated with its activities; and

WHEREAS, His good humor, his wit and his graciousness added immeasurably to the pleasure and satisfaction derived from service on this Board; and

WHEREAS, The termination of his service with the Board deprives the Commonwealth of a distinguished and faithful public servant and this body of a valued member and good friend;

NOW, THEREFORE, BE IT RESOLVED, That the Board of Housing and Community Development does hereby express its gratitude to **Tommy Shields**, for his many contributions to this body and acknowledges with regret the loss of his company and good counsel.

BE IT FURTHER RESOLVED, That a copy of this resolution be spread upon the Minutes of this meeting and that a framed copy thereof be presented to **Tommy Shields** as a permanent testament of our affection, esteem, and high regard.

Chairman