

LAW 272: VIRGINIA LOCAL GOVERNMENT LAW (Fall, 2021)
Syllabus

Instructor: Kevin Black, Assistant County Attorney – Arlington County
Telephone: (571) 218-6454 (Please leave a voicemail)
Email: GMU email TBD

Class Schedule: This class will meet in person on Mondays from 8:10 PM to 10:10 PM, with the room number TBD.

Course Description: This course will focus on fundamentals of Virginia state and local government law primarily by discussing Virginia case law, selected provisions of Virginia state and local legislation and the Virginia Constitution. Students must prepare to participate in class where we will identify legal rules and apply them to new fact patterns. Class attendance is especially important. The goal is to provide students with a fundamental understanding and appreciation for local government law, and to best prepare them should the subject appear on the bar exam.

Required Readings: ***Please note, the materials listed in the required readings for each class are subject to change. Adequate notice will be provided for any changes to the syllabus.*** The required readings for this course include:

- Case decisions cited below to be accessed on Westlaw, Lexis, or on the respective court's website;
- Select sections of the Virginia Code cited below;
- Select sections of the Virginia Constitution cited below; and
- Supplemental texts provided by Mr. Black. The assignments and readings listed below may be modified in class or by email. Students will be given simple exercises to guide their reading and help prepare for class discussion. The Virginia Code and Constitution can be found at this link: <https://law.lis.virginia.gov/>. Students are welcome to conduct outside research, at their discretion, to help them prepare for class. In addition, students are required to have reviewed the Law School's Honor Code before the first class. The Code can be found at this link: <https://sls.gmu.edu/honor/>.

Learning Outcomes: By the end of the course, students should be able to:

- Identify types of Virginia localities and the sources of their authority to regulate themselves and the public.
- Explain, generally, how Virginia localities form, expand, contract, and terminate.
- Understand functions provided by local governments.
- Apply general legal rules that govern Virginia localities' ability to regulate in any field.
- Explain and compare Virginia's legislative processes at the state and local level.
- Apply special rules of interpretation to state statutes and regulations and local ordinances.
- Apply enforcement mechanisms and appeals processes and standards for localities' decisions.
- Analyze local land use decisions for their validity and vulnerability to legal challenges.
- Correctly decide when the defense of sovereign immunity is available and apply the correct test under the circumstances of a case.
- Understand the Virginia Freedom of Information Act and analyze its applicability in a variety of circumstances.
- Understand the public procurement process.
- Analyze localities' authority to tax and issue bonds.

Basis of Evaluation and Assessment:

- 100% of the grade will be a final exam, provided that a grade may be adjusted to the next higher or lower grade (for example, a B to a B+ or an A- to a B+) based on class participation and attendance in accordance with any applicable school policy.
- The exam format will seek essay and fill-in-the-blank answers similar to the format of past Virginia Bar exams.
- During the exam, students may use the assigned reading in this course and any materials they take part in creating (such as notes and outlines created by students in a study group). Students will not be able to access online resources, such as Westlaw and Lexis, and will not be able to use any other materials that the student did not help create, such as outlines created solely by others or texts not assigned as reading.

Office Hours: Mr. Black does not maintain a regular office on campus. Appointments can be made by email or telephone.

Attendance: Attendance will be taken every class. Please refer to the Law School's requirements about attendance and eligibility to sit for the final exam.

Course Schedule: The following is the tentative schedule and **subject to modification.**

August 23

Introduction and Black Letter Overview (Part 1):

- Dillon Rule
- Local Governmental Structures and Authorities
- Taxes and Bonds
- Ordinances
- Preemption by State and Federal Law

August 30

Black Letter Overview (Part 2):

- Land Use and Zoning
- Eminent Domain
- Procurement
- FOIA
- Tort Liability; Claims Procedure; Sovereign Immunity and Section 1983 Cases

September 6

Labor Day – University Closed

September 13

Practice Exam (8:10-9:00) *This is a **non-graded** exam merely testing basic knowledge of topic areas after having received the overview in the first two weeks. The goal of the

overview is to provide adequate context so that each topic is more easily understandable when covered in later classes.

Instruction (9:10-10:10)

The Dillon Rule and the Constitutional Relationship Between the Commonwealth and Local Governments.

Reading:

- Village of Sugar Grove v. Rich, 808 N.E.2d 525 (Ill. App. 2004);
- Advanced Towing Co., LLC v. Fairfax Cnty. Bd. of Sup'rs, 280 Va. 187 (2010);
- Sinclair v. New Cingular Wireless PCS, LLC, 283 Va. 567 (2012); and
- Va. Const., Art. VII, Sections 1, 2, and 5.

September 20

I. Formation and Structure of Local Governments.

Reading:

- Bennett v. Garrett, 132 Va. 397 (1922) (Do not focus on the evidentiary issues; focus on the Court's general explanation of when incorporation should occur.);
- Fairfax County v. Town of Fairfax, 201 Va. 362 (1959);
- Rockingham County v. City of Harrisonburg, 224 Va. 62 (1982);
- City of Hopewell v. County of Prince George, 240 Va. 306 (1990); and
- Bd. of Supervisors of Loudoun Cty. v. Town of Purcellville, 276 Va. 419 (2008).

II. Authority as Political Subdivision, Special Legislation, and Local School Boards

Reading:

- Infants v. Virginia Hous. Dev. Auth., 221 Va. 659 (1980);
- Alderson v. Cty. Of Alleghany, 266 Va. 333 (2003);
- Fairfax Cty. Sch. Bd. v. S.C. by Cole, 827 S.E.2d 592 (Va. 2019); and
- Va. Const., Art. Art. IV, Section 14; Art. VII, Section 1; and Art. VIII, Section 7.

III. Taxes and Bonds (Short Lecture, no reading required)

September 27

Ordinances Part 1

Reading:

- Va. Code §§ 15.2-1425, 15.2-1426, 15.2-1427, and 15.2- 1428. A public, unannotated version of the Virginia Code is at this link: <https://law.lis.virginia.gov/vacode>;
- Va. Code §§ 15.2-2204 (relating to ordinances that address land use planning and zoning) and 15.2-2286(A)(7) (relating to the amendment or repeal of zoning ordinances);
- Glazebrook v. Board of Sup'rs of Spotsylvania County, 266 Va. 4 550 (2003);
- Gas Mart Corp. v. Board of Sup'rs of Loudoun County, 269 Va. 334 (2005);
- Ace Temporaries, Inc. v. City Council of City of Alexandria, 274 Va. 461 (2007); and
- Arogas, Inc. v. Frederick County Bd. of Zoning Appeals, 280 Va. 221 (2010) (As we will discuss in more detail this semester, a “rezoning” is a legislative act of a governing body to amend the zoning ordinance with regard to a particular lot or collection of lots; a property owner can offer to mitigate the impact of the rezoning on the surrounding community by making

“proffers,” which are voluntary offers from the property owner to the locality that is considering a rezoning).

October 4

Ordinances Part 2

Reading:

- Town of Leesburg v. Giordano, 280 Va. 597 (2010) (explaining the “fairly debatable” standard to review legislative action);
- Tazewell County School Board v. Brown, 267 Va. 150 (2004) (explaining the “great weight” given to public officials’ construction of a statute; considering an Attorney General’s Opinion in statutory construction);
- Nielsen Co. (US), LLC v. County Bd. of Arlington County, 289 Va. 79 (2015) (clarifying the difference between “deference” and “great weight;” construction of statutes that impose taxes; and the canon of “plain meaning”); and
- Board of Sup’rs of James City County v. Windmill Meadows, LLC, 287 Va. 170 (2014) (explaining the retroactive application of statutes that regulate localities).

Tuesday, October 12 (University is closed for Fall Break on Monday, October 11th)

Ordinances Part 3 (Enforcement of or Challenges to Ordinances)

Reading:

- City of Richmond v. Hayes, 212 Va. 428 (1971) (discussing when a writ of mandamus lies);
- Umstattd v. Centex Homes, G.P., 274 Va. 541 (2007) (mandamus did not lie);
- WTAR Radio-TV Corp. v. City Council of City of Virginia Beach, 216 Va. 892 (1976) (discussing mandatory and prohibitory injunctions to enforce laws);
- Carbaugh v. Salem, 225 Va. 310 (1983) (explaining the special rule regarding enjoining future, repeated violations of law);
- Rainey v. City of Norfolk, 14 Va. App. 968 (1992) (explaining ex post facto and retroactive legislation; describing the broad array of remedies a court may impose when enforcing an injunction in a contempt proceeding);
- Tran v. Gwinn, 262 Va. 572 (2001) (interpreting an ordinance in the face of a constitutional challenge; explaining the specificity required in injunctions);
- Bd. of Sup'rs of Fairfax Cty. v. Bd. of Zoning Appeals of Fairfax Cty., 268 Va. 441 (2004);
- Prince William Bd. of Cty. Supervisors v. Archie, 296 Va. 1 (2018) (nonconforming use);
- Miller v. Highland Cty., 274 Va. 355 (2007); and
- Boasso Am. Corp. v. Zoning Adm'r of City of Chesapeake, 293 Va. 203 (2017).

October 18

I. Preemption of Local Regulation by State

Reading:

- Lamar Co., LLC v. City of Richmond, 287 Va. 348 (2014);
- King v. Arlington Cnty., 195 Va. 1084 (1954);
- Bd. of Sup'rs of Loudoun Cnty. v. Pumphrey, 221 Va. 205 (1980); and
- City of Norfolk v. Tiny House, Inc., 222 Va. 414 (1981).

II. Land Use and Zoning Part 1 (Zoning and State and Federal Control)

Reading:

- For comparison, read the Fifth Amendment to the US Constitution and Article 1, Section 11 of the Virginia Constitution (relating to the damaging and taking of property for public use with just compensation);
- *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005);
- *Nollan v. California Coastal Com'n*, 483 U.S. 825 (1987);
- *Dolan v. City of Tigard*, 512 U.S. 374 (1994);
- *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013); and
- *Cupp v. Board of Supr's of Fairfax County*, 227 Va. 580 (1984).

October 25

Land Use and Zoning Part 2 (Eminent Domain and Inverse Condemnation; Acquisition and Disposal of Property; Vested Rights)

Reading:

- *Nelson County v. Coleman*, 126 Va. 275 (1919);
- *Livingston v. Va. Dept. of Transportation*, 284 Va. 140, 726 S.E.2d 264(2012);
- *Richmeade L.P. v. City of Richmond*, 267 Va. 598, 594 S.E.2d 606 (2004);
- *Lee v. City of Norfolk*, 281 Va. 423 (2011); and
- *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019).
- Va. Code §§ 15.2-2307 and 15.2-2311.

November 1

- I. Procurement (Lecture and Discussion, no reading required).
- II. FOIA (Lecture and Discussion, no reading required).

November 8

Part 1 of Tort Liability; Sovereign Immunity; Claims Procedures

Reading:

- Va. Code §§ 15.2-1243 through and including 15.2-1249;
- Va. Code § 15.2-209;
- *Niese v. City of Alexandria*, 264 Va. 230 (2002);
- *Bialk v. City of Hampton*, 242 Va. 56 (1991);
- *Woods v. Town of Marion*, 245 Va. 44 (1993);
- *Gambrell v. City of Norfolk*, 267 Va. 353 (2004);
- *Robertson v. W. Virginia Water Auth.*, 287 Va. 158 (2014);
- *Messina v. Burden*, 228 Va. 301 (1984);
- *Pike v. Hagaman*, 292 Va. 209 (2016);
- *Seabolt v. Cnty. of Albemarle*, 283 Va. 717 (2012);
- *Murphy v. Charlotte Cty. Dep't of Soc. Servs.*, 57 Va. App. 784 (2011);
- *Commonwealth v. Burns*, 273 Va. 14 (2007);

- Gray v. Virginia Sec'y of Trans., 276 Va. 93 (2008); and
- Manhattan Cmty. Access Corp. v. Halleck, 139 S. Ct. 1921 (2019) (defining traditionally governmental functions).

November 15

Part 2 of Tort Liability; Sovereign Immunity; Claims Procedures

Reading:

- Viking Enter., Inc. v. Cnty. of Chesterfield, 277 Va. 104 (2009);
- Nuckols v. Moore, 234 Va. 478 (1987);
- Dominion Chevrolet Co. v. Henrico Cnty., 217 Va. 243 (1976);
- Starnie E. Lyttle Co. v. Hanover Cnty., 231 Va. 21 (1986); and
- Parker v. Prince William Cnty., 198 Va. 231 (1956) (please be prepared to discuss whether the plaintiff should have used the procedure in Va. Code §§ 15.2-1243 through and including 15.2-1249 or the procedure in Va. Code Section 15.2-209).

November 22

Guest Speaker RE: Civil Rights and Section 1983 Cases.