



Local Green Building Incentives: Overcoming the Dillon Rule in Virginia

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In Virginia, the Dillon Rule provides that local governments possess very little authority, with the balance of power remaining with the state legislature. The Dillon Rule requires that localities obtain express authority from the state legislature before enacting certain types of ordinances, including ordinances mandating green building standards for the private sector.

With the relatively new emphasis and focus on green building, the General Assembly has not granted localities the authority to enact mandates for green building, although the executive branch of the Commonwealth appears poised to emphasize and promote green construction, green energy and green transportation. During his time in office, former Governor Timothy M. Kaine signed several Executive Orders that require state buildings to conform to LEED Silver (as established by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System) or Green Globe standards, and encourage the private sector to adopt energy-efficient building standards by giving preference to facilities meeting LEED or Energy Star standards when leasing such facilities for state use. Since taking office, current Governor Robert F. McDonnell has signed several enabling statutes to encourage and stimulate green construction and green job growth, including a corporate tax credit for the creation of green jobs.

The General Assembly has enacted enabling legislation allowing localities to provide relief from local property taxes for "going green." For example, eligible energy-efficient buildings may be considered a separate class of property for real estate tax purposes, allowing localities to assess the property tax for such buildings at a reduced rate. The City of Charlottesville, the City of Roanoke and Spotsylvania County have enacted ordinances implementing this legislation. Localities are also authorized to exempt or partially exempt certified solar energy equipment and certified recycling equipment from local personal property taxes by declaring it a separate class of property. Localities offering this property tax exemption include Albemarle, Alexandria, Charlottesville, Chesterfield, Dinwiddie, Fairfax, Falls Church, Hampton, Hanover, Henrico, Isle of Wight, King and Queen, Loudoun, Lynchburg, Prince William, Pulaski, Richlands, Roanoke, Spotsylvania, Warren and Wise.

The General Assembly has also passed legislation enabling local governments to grant incentives or provide regulatory flexibility to encourage the use of "green roofs" in the construction and renovation of residential and commercial buildings. Such incentives and flexibility may include a reduction in permit fees, a streamlined process for the approval of building permits, or a reduction in any gross receipt taxes on green roof contractors.

Due to the strict interpretation of the Dillon Rule in Virginia, many localities have elected to use authorized incentives, such as fast-tracking of permits, to increase green building in the private sector. The General Assembly has authorized localities to incorporate "incentive zoning" into their local zoning ordinances, thus allowing the use of increased project density or other benefits and bonuses to a developer that provides certain features or amenities desired by the locality, such as energy-efficient building design. For example, Arlington County allows developers designing LEED-certified projects to develop their sites at a higher density than conventional projects. In Arlington, office buildings are potentially eligible to earn a density bonus of 0.05 floor area ratio ("FAR") for LEED Certified certification, 0.15 FAR for LEED Silver certification, 0.35 FAR for LEED Gold certification, and 0.45 FAR for LEED Platinum certification. Arlington County also developed a Green Building Fund to provide education and outreach to developers and the community on green building issues. If a project proceeds through the site plan process, the project's developer(s) must contribute \$0.045 per square foot of the project to the Fund. A refund will be provided if the project subsequently receives LEED certification because LEED certified projects are not required to contribute to the Fund.

The City of Alexandria enacted a Green Building policy requiring all new commercial buildings to achieve LEED Silver certification if the development requires a site plan or development special use permit. Although the City acknowledges that it is not legally authorized to adopt a new code to mandate the Green Building policy, the City highlights the fact that the policy is a strong statement of expectation emphasizing the City's bias for "green" buildings over buildings that are not green.

The City of Falls Church provides that a developer's intent to receive LEED-certification represents a secondary criterion for developments applying for special exceptions from certain regulations and restrictions. The City of Hampton requires that private developments resulting from the sale of public land in the City's Buckroe Bayfront District must receive LEED Silver certification, and encourages all other private projects to incorporate LEED standards. Other localities, including Chesapeake, Fairfax, and Richmond require LEED certification for their municipal buildings.

Localities in other states have been able to proceed in requiring green building by the private sector, because they are not limited by the Dillon Rule. In Virginia's own backyard, Washington D.C., through the DC Green Building Act of 2006, requires all privately-owned projects to be LEED certified beginning in 2012.

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