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Resilience Collaborative



Incorporating Resilience into Local Ordinances, Portsmouth

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Incorporating Resilience into Local Ordinances

I. [Introduction](#)

The following pages contain a number of ideas to make Portsmouth's local ordinances more resilient. Drawing from other Virginia localities and work groups, this document provides short summaries of different types of resilience ordinances and provides examples with notes about applicability for Portsmouth specifically.

In addition to this resource, VCPC recommends that Portsmouth become familiar with:

- [Resilient Hampton](#)
 - A local effort on the part of the City of Hampton to make itself more resilient by alleviating chronic stresses such as recurrent flooding and responding to extreme events in a productive way.
 - Part of the City's plan is to implement more resilience-oriented ordinances in order to improve citizens' quality of life and environmental health.
 - The implementation plan includes speaking with various neighborhoods in order to determine the location, duration, and severity of flooding events, prioritize issues, and come up with potential solutions.
 - Phase I of the plan was conducted over a period of 18 months and resulted in the drafting of an evaluation tool that helps community leaders make decisions about the resiliency of proposed projects and set up next steps for the first pilot project.

- [Building a Better Norfolk](#)
 - Effective as of March 1, 2018, the City of Norfolk implemented a new ordinance to become more flood resilient and direct development to higher ground.
 - The ordinance creates a Coastal Resilience Overlay zone that requires new and redevelopment to comply with new requirements in order to be more flood resilient in addition to an Upland Resilience Overlay District which is meant to encourage development in low flood risk areas.
 - The ordinance also adds a resilience quotient system that gives developers points, based on development type, for using techniques that promote resilience efforts such as stormwater management and flood risk reduction.

II. Purchase of Development Rights

Overview

A Purchase of Development Rights (PDR) program is a formal structure that permits a local government to preserve ecologically important areas by buying development rights from landowners, who can continue to use their properties but not develop them beyond the existing use. If an owner sells a property where Portsmouth has the development rights, the new owner is still bound and unable to develop the parcel beyond existing use. Portsmouth could write a PDR program into its local ordinances to establish a formal procedure to protect valuable open spaces and coastal properties that are not yet fully developed.

Virginia Code

[§ 15.2-5158. Additional powers of community development authorities.](#)

Allows community development authorities created by localities to purchase development rights that will be dedicated as easements for purposes pursuant to the Open-Space Land Act.

[§ 10.1-1700. Definitions.](#)

Defines pertinent terms from Open-Space Land Act, including “open-space easement” and “open-space land.”

Model Language

Stafford County (Chapter 22A – Purchase of Development Rights Program)

Ordinance language – The purpose of the PDR program includes establishing and preserving open space and continuing the rural character of the county; preserving forest and farm land; conserving and protecting biodiversity, wildlife and aquatic habitat.

Comments:

- The purpose of this language is less resilience-based and more agriculture-based.
- Creates the position of a program administrator who establishes, promotes, and oversees the program as well as a volunteer committee that aids the administrator in promoting and implementing the program.
- Establishes a property ranking system for evaluating potential purchases.

III. Transfer of Development Rights

Overview

A Transfer of Development Rights (TDR) occurs when property owners sell development credits/rights from their property to a developer who can use the rights to develop more densely in another location. This allows a locality, with no investment, to create a largely independent market for development rights where value is determined by demand. This may even save the city money because it directs development to areas where the city already provides services (roads, utilities, transportation, etc.). By strategically designating areas as “sending” zones (where there are sellers of development credits), Portsmouth can encourage development away from areas impacted by recurrent flooding, or areas that provide vital ecosystem services, such as storm surge mitigation.

For more information about what makes a TDR program successful, and to read about other Virginia localities’ implementation of TDR programs, see the VCPC [white paper](#) on the topic.

Virginia Code

[§ 15.2-2316.2. Localities may provide for transfer of development rights.](#)

Explicitly enables localities to create TDR programs.

[§ 15.2-2316.1. Definitions.](#)

Defines important terms, including “receiving” and “sending” areas.

Model Language

TDR Model Ordinance Work Group of Virginia [Model language](#) (based off of authority given by the Virginia Code sections cited above)

Comments

- In 2009, a work group composed of attorneys, lobbyists, planners, developers, appraisers and other real estate professionals drafted a model ordinance in order to spur localities’ adoption of a TDR program pursuant to the authorizing legislation adopted in 2006 and 2007. The ordinance only contains the recommendations of the work group; it does not reflect the official position or policy of the Commonwealth or any organization.
- The comments note that that this is a voluntary program and include other important information.
- Model TDR deeds are included (deed of severance, deed of transfer, deed of severance and transfer, and quitclaim deed).
- The model ordinance was drafted for an agricultural TDR program; a flooding TDR program would require some different provisions.
- Published in Jan. 2010. Changes to TDRs in VA since this model ordinance was written:
 - [2010](#): Development rights given to receiving areas can now be equal to *or greater* than the development rights from sending areas.

- [2012](#): Sending areas can be campgrounds.
- [2014](#): Localities can now require that developments comply with any locality-adopted neighborhood design standards identified in the comprehensive plan for the receiving area in which the development shall occur, provided such design standard was adopted in the comprehensive plan and applied to the receiving area prior to the transfer of the development right.

Frederick County, VA

[County Code](#)

Comments:

- Leaves value of development rights entirely to seller and buyer (§165-301.03(F)).
- Development rights must include a covenant to which Frederick County is party upon transfer. Details for what the covenant must include are covered within the ordinance.
- Prior to any transfer, owner of the land must pay all taxes and resolve any code violations.
- Discusses density right conversion rate based on number of dwelling units.
- Ordinance is currently in effect.

Arlington County, VA

[County Code](#)

Comments:

- Section 15.5.7.B discusses the transfer of development rights for density purposes within specific site plans.
- Transfer of development rights is permitted for historic area preservation, affordable housing, and open space purposes in areas specifically referenced in a particular Land Use Plan (§ 9.3.5).
- Brief discussion of the requirements and restrictions for the transfer of development rights.
- The County Board is the designated authority that is to approve or disapprove transfers.

IV. Riparian Buffer Tax Exemptions

Overview

Portsmouth could use riparian buffer tax exemptions to encourage land owners not to develop wetland areas that absorb storm surge and provide other important ecosystem services. A riparian buffer is an area of natural growth around a water body, often a stream or wetland that helps filter pollution before it enters the water and reduces shoreline erosion.

Virginia Code

[§ 58.1-3666. Wetlands and riparian buffers; living shorelines \(as Tax Exempt Property\)](#)

Allows local governments to exempt riparian buffers from taxation.

Defines a riparian buffer as: “An area of trees, shrubs or other vegetation, subject to a perpetual easement permitting inundation by water, that is (i) at least thirty-five feet in width, (ii) adjacent to a body of water, and (iii) managed to maintain the integrity of stream channels and shorelines and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.”

[§ 62.1-44.15:67 - :79 Chesapeake Bay Preservation Act](#)

Permits the State Water Control Board to establish criteria for Resource Protection Areas (RPA) and gives localities the authority to designate areas as RPAs. Many RPAs probably could be considered riparian buffers for purposes of tax exemption. In the Chesapeake Bay Preservation Area Designation and Management regulations, 4 VAC § 25-830-80(B)(5) defines an RPA to include, “A buffer area not less than 100 feet in width located adjacent to and landward of the [tidal wetlands; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow; tidal shores], and along both sides of any water body with perennial flow.”

Model Language

An annual report prepared by the University of Virginia’s Weldon Cooper Center for Public Service, in cooperation with the Virginia Association of Counties and Virginia Municipal League, entitled [Virginia Local Tax Rates, 2016](#) states that – according to survey responses from the localities – Gate City, Middlesex County, and Hopewell have authorized local tax exemptions under Virginia Code § 58.1-3666. Although no specific ordinance language authorizing partial or full local tax exemption for wetlands and riparian buffers was found for these localities, local ordinance language related to similar code provisions authorizing partial or full local tax exemption in other situations can provide guidance. For example, Virginia Code § 58.1-3661 authorizes localities to fully or partially exempt “[c]ertified solar energy equipment, facilities, or devices and certified recycling equipment, facilities, or devices.” Among other localities, the City of Hampton has provided for local tax exemption of solar equipment, facilities, or devices within [Article II \(Real Estate Taxes\), Division 3 \(Exemption for Property Utilizing Solar Energy Equipment, Facilities or Devices\)](#) of its City Code.

V. Incentive Zoning and Downzoning

Overview

Incentive zoning is a tool localities use to encourage developers to conform to building requirements above-and-beyond those normally imposed. For example, in exchange for allowing a developer to build more units than normally permitted in a certain area, Portsmouth could require the developer to use resilient building practices. Portsmouth's ordinances already allow for this sort of deal-making, but the city could enhance the ordinance with a few changes.

Portsmouth could also enter into voluntary agreements with property owners to downzone their properties. When a locality downzones a property, it officially changes the permitted uses for that property. Landowners tend to dislike downzoning, so local governments sometimes offer tax credits in return. Portsmouth could use voluntary agreements in the same way it might use riparian buffer tax exemptions to prevent or reduce development in certain areas.

Virginia Code

[§ 15.2-2286. Permitted provisions in zoning ordinances](#)

Permits localities to engage in incentive zoning.

[§ 15.2-2201. Definitions.](#)

Defines incentive zoning as: "the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features... desired by the locality, including but not limited to... environmentally sustainable and energy-efficient building design...."

[§ 15.2-2286. Permitted provisions in zoning ordinances.](#)

Permits local ordinances that allow localities to exchange tax credits for downzoning.

Amending Portsmouth's Language

The relevant part of Portsmouth's zoning ordinance is § 40.1-5.8: Green Building Incentives. Portsmouth could modify this section in the following ways (changes highlighted in red):

- Part (A), Purpose
 - In an effort to encourage sustainable development practices within the zoning districts as a means of addressing global climate change, **protecting** natural resources, **improving local flooding resilience**, and ensuring a high quality of life for future city residents, the following green building incentives are provided.
- Table 40.1-5.8(F): Menu of Green Building Features
 - Add another section titled "Resilience" which will reward owners for:
 - Extra freeboard: elevating structures so that their lowest floors are at least (X') above the 100-year flood plain.
 - Using flood-resistant materials

- Raising A/C units above a certain height
- Using nature-based solutions instead of gray infrastructure
- Implementing stormwater runoff control
- Placement of vegetation
- Installation of flood vents in basements

Norfolk's Resilience Quotient

Portsmouth could draw inspiration from [Norfolk's Resilience Quotient](#), which is part of its new ordinance "Building a Better Norfolk." The ordinance creates a system whereby developers earn points for adopting different resilience measures that promote flood risk reduction, stormwater management, and energy resilience. New development in Norfolk, with certain exceptions, must earn a minimum number of points to go forward, depending on the style of development.

Highlights:

- Norfolk will review a proposed development for compliance when the developer applies for a permit.
- Certain developers can expedite the review process if they commit to implementation of specific sets of resilience measures.
- Provides a variety of options for developers to improve their scores, including:
 - Installing green roofs
 - Installing impact-resistant windows

VI. Land Use Value Assessments

Overview

Some localities encourage property owners to keep their properties undeveloped through land use value assessments. Portsmouth could value land at its use value instead of its potential value when calculating how much the owner owes in taxes to discourage building in areas where development would negatively impact resilience. Portsmouth already has a land use value assessment ordinance that can serve this purpose. The city could retool this ordinance to focus on resilience, potentially pairing the effort with a web page with more information.

Virginia Code

[§ 58.1-3231. Authority of counties, cities and towns to adopt ordinances.](#)

Authorizes localities to adopt land use value assessment ordinances.

[§ 58.1-3230. Special classifications of real estate established and defined.](#)

Provides definitions for types of real estate that can be eligible for land use value assessment, including “open-space use” properties that preserve natural resources, riparian buffers, and wetlands, among other things.

Portsmouth’s Ordinance

Portsmouth’s [ordinance](#) already sets out the application and determination processes for its land use value assessment program. The city could, however, expand its “Findings of Fact” section to talk more about the public interests served by open spaces. It could also emphasize the need for coastal resilience.

James City County Example

[Sample web page](#) describing land use value assessments.

- Presents the important information to property owners.
- Links to an application that residents can fill out annually.
- Portsmouth could improve on this model by creating an online application and by tying the land use assessment program more directly to local resilience.