



COMMONWEALTH of VIRGINIA

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July 26, 2013

Mark D. Stiles, Esquire
City Attorney, City of Virginia Beach
Municipal Center, Building 1
2401 Courthouse Drive
Virginia Beach, Virginia 23456-9004

Dear Mr. Stiles:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding certain legal consequences of a locality's adoption of an ordinance as enabled by, and described in § 15.2-922 of the *Code of Virginia*, which authorizes a locality to require that smoke detectors be installed in "any building containing one or more dwelling units." Specifically, you ask whether § 15.2-922 necessitates the retrofit of those buildings for compliance with the current provisions of the Uniform Statewide Building Code ("USBC").

Response

It is my opinion that when a locality, acting pursuant to § 15.2-922, adopts an ordinance to require installation of smoke detectors in "any building containing one or more dwelling units," that enactment does not necessitate the retrofitting with smoke detectors of existing buildings containing dwelling units. It is my further opinion that at such time as smoke detectors may be installed in any building containing dwelling units, the installation must comply with the then-current provisions of the Uniform Statewide Building Code. Finally, it is my opinion that, to remain in compliance with the ordinance, once the smoke detectors are initially installed, the terms of the Uniform Statewide Building Code govern the maintenance or replacement of the smoke detectors.

Applicable Law and Discussion

The General Assembly, "to provide comprehensive protection of the public health and safety,"¹ has "directed and empowered [the Board of Housing and Community Development] to adopt and promulgate a Uniform Statewide Building Code."² Generally,

¹ *VEPCO v. Savoy Constr. Co.*, 224 Va. 36, 44, 294 S.E.2d 811, 817 (1982).

² VA. CODE ANN. § 36-98 (2011).

The Building Code shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such buildings and structures are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations, including procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the Building Code, provided the spirit and functional intent of the Building Code are observed and public health, welfare and safety are assured. The provisions of the Building Code and modifications thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth[.]^{3]}

Moreover, the General Assembly has provided that “[s]uch building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.”⁴

Consistent with these overarching legislative policy considerations, § 15.2-922 provides that “[a]ny locality . . . may by ordinance require that smoke detectors be installed in . . . any building containing one or more dwelling units”⁵ The statute further provides that “[s]moke detectors installed pursuant to this section shall be installed in conformance with the provisions of the Uniform Statewide Building Code . . . , and any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the [USBC].”⁶

“When construing a statute, our primary objective is to ‘ascertain and give effect to legislative intent,’ as expressed by the language used in the statute.”⁷ “Under basic rules of statutory construction, we determine the General Assembly’s intent from the words contained in the statute.”⁸ In addition, generally, “statutes may be considered as *in pari materia* when they relate to . . . the same subject or to closely connected subjects or objects. Statutes which have the same general or common purpose or are parts of the same general plan are also ordinarily considered as *in pari materia*.”⁹

The USBC, as adopted in Virginia, generally is divided into three parts. Part I, the Virginia Construction Code (“VCC”), governs the construction of new buildings and structures.¹⁰ Part II, the Virginia Rehabilitation Code (“VRC”), contains regulations specific to the rehabilitation of existing

³ Section 36-99(A) (2011).

⁴ Section 36-98.

⁵ VA. CODE ANN. § 15.2-922 (2012).

⁶ *Id.* The Virginia Statewide Fire Prevention Code (“VSFPC”) contains similar local-option enabling provisions with respect to smoke alarms. 13 VA. ADMIN. CODE § 5-51-11(E) (2013). This opinion focuses only on your inquiries respecting § 15.2-922, and its enabling authority respecting smoke *detectors*.

⁷ *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011)) (further citation and internal quotation marks omitted).

⁸ *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); *Thomas v. Commonwealth*, 256 Va. 38, 41, 501 S.E.2d 391, 393 (1998)).

⁹ *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957).

¹⁰ *See* 13 VA. ADMIN. CODE §§ 5-63-10 through 5-63-390 (2013).

buildings.¹¹ Part III, the Virginia Maintenance Code (“VMC”), contains regulations specific to the maintenance of existing structures.¹²

By the express terms of § 15.2-922, upon a locality’s adoption of an ordinance requiring the installation of smoke detectors, subsequent installations of smoke detectors should comply with the provisions of the then-applicable edition and subdivision of the USBC for a particular building that is to contain one or more dwelling units.¹³ Once initially installed into a building containing such dwelling units, § 15.2-922 requires only that they be maintained in accordance with the USBC.¹⁴ Thus, the applicable provisions of that code, as they may be revised from time to time and applicable to smoke detectors, will govern all post-installation matters.

With respect to the maintenance of existing buildings and structures, the VMC currently provides that

[b]uildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.^{15]}

Thus, the VMC generally does not require alteration of existing buildings, structures, or equipment to comply with periodic maintenance-related revisions in the USBC.¹⁶ Nevertheless, there is a notable exception to this rule with respect to smoke detectors, dependent upon a specific, inspection-based determination of a locality’s building official:

Smoke detectors in buildings containing dwelling units. AC-powered smoke detectors with battery backup or an equivalent device shall be required to be installed to replace a defective or inoperative battery-powered smoke detector located in buildings containing one or more dwelling units or rooming houses offering to rent overnight sleeping accommodations, when it is determined by the building official that the responsible party of such building or dwelling unit fails to maintain battery-powered smoke detectors in working condition.^{17]}

¹¹ See 13 VA. ADMIN. CODE §§ 5-63-400 through 5-63-440 (2013).

¹² See 13 VA. ADMIN. CODE §§ 5-63-450 through 5-63-540 (2013).

¹³ Identification of the specific kind or type of smoke detector required to be installed in a building containing one or more dwelling units, upon the enactment of such an ordinance, is beyond the scope of this Opinion.

¹⁴ This maintenance requirement would apply to smoke detectors existing in a building containing one or more dwelling units on the effective date of an ordinance adopted pursuant to § 15.2-922.

¹⁵ See 13 VA. ADMIN. CODE § 5-63-470(B) (2013).

¹⁶ See *Clayton v. State Bldg. Code Technical Review Bd.*, 2011 Va. App. LEXIS 36, *8, 2011 WL 382134 (2011) (unpublished).

¹⁷ 13 VA. ADMIN. CODE § 5-63-350(P) (which provision relates to existing structures, and adds a § 3413.6 to the USBC in Virginia, derivative of the section-numbering system found in the 2009 International Building Code). Identification of the specific regulatory provisions or local conditions that may lead a locality’s building official to conduct an inspection of an existing building’s smoke detectors is beyond the scope of this Opinion. See VA. CODE ANN. § 36-105 (2012) (setting forth general provisions regarding building inspections); and see 13 VA. ADMIN. CODE § 5-51-135(H) (containing language for inclusion in the VSFPC pertaining to the frequency of inspection of smoke detectors). See generally VA. CODE ANN. §§ 36-99.3 through 36-99.5:1 (2011), and 13 VA. ADMIN. CODE §

You specifically ask whether the adoption of an ordinance pursuant to § 15.2-922 “requires the retrofit of . . . [existing] . . . buildings for compliance with the current provisions of...” the USBC. In my examination of the USBC, I find only the above-quoted provision that is specifically directed to smoke detectors in buildings containing dwelling units; its language does not generally require the retrofitting of existing buildings with such detectors. This absence of language distinctly differs from USBC provisions relating to smoke detectors in several other types of existing structures where human habitation occurs, such as those specific to college and university dormitories,¹⁸ juvenile care facilities,¹⁹ assisted living facilities,²⁰ hotels and motels,²¹ and adult day care centers.²² For each of these facilities, the USBC requires installation of smoke detectors regardless of when the building was constructed. Based upon these differences in wording within the USBC regarding the requirement to retrofit existing buildings with smoke detectors, I conclude that local ordinances adopted pursuant to § 15.2-922 do not require the retrofit of existing buildings that contain one or more dwelling units so as to require the immediate installation of smoke detectors.²³

As noted above, following a locality’s adoption of an ordinance pursuant to §15.2-922, and according to that statute’s express language, any installation of smoke detectors in buildings containing dwelling units should be in accordance with the then-current provisions of the USBC.²⁴ Moreover, with respect to post-installation maintenance or replacement of smoke detectors in a such a building, one must refer to the applicable sections of the *Code of Virginia*, to smoke detector-specific provisions of the USBC, and to any responsible party-specific determinations of the local building official for appropriate guidance.

Conclusion

Accordingly, it is my opinion that when a locality, acting pursuant to § 15.2-922, adopts an ordinance to require installation of smoke detectors in “any building containing one or more dwelling

5-63-650(K) through (O), and (Q) through (X) (for examples of statutory and USBC provisions relating to smoke detectors that are not germane to your specific inquiries).

¹⁸ See 13 VA. ADMIN. CODE § 5-63-350(L) (which provision relates to existing structures, and adds a § 3413.2 to the USBC in Virginia).

¹⁹ See 13 VA. ADMIN. CODE § 5-63-350(M) (which provision relates to existing structures, and adds a § 3413.3 to the USBC in Virginia).

²⁰ See 13 VA. ADMIN. CODE § 5-63-350(O) (which provision relates to existing structures, and adds a § 3413.5.2 to the USBC in Virginia).

²¹ See 13 VA. ADMIN. CODE § 5-63-350(T) (which provision relates to existing structures, and adds a § 3413.10 to the USBC in Virginia).

²² See 13 VA. ADMIN. CODE § 5-63-350(X) (which provision relates to existing structures, and adds a § 3416.14 to the USBC in Virginia).

²³ See generally *Halifax Corp. v. First Union Nat’l Bank*, 262 Va. 91, 100, 546 S.E.2d 696, 702 (2001) (wherein the court stated, “When analyzing a statute, we must assume that the General Assembly chose, with care, the words it used in enacting the statute, and we are bound by those words when we apply the statute Additionally, when the General Assembly includes specific language in one section of a statute, but omits that language from another section of the statute, we must presume that the exclusion of the language was intentional.” (citations omitted)).

²⁴ This opinion focuses upon your inquiry regarding the issue of retrofitting of existing buildings with smoke detectors following a local governing body’s adoption of an ordinance pursuant to the enabling authority of § 15.2-922. Thus, it does not address legal issues pertaining to installation of smoke detectors in new, or newly rehabilitated buildings containing one or more dwelling units, or upon a change of use of a building from non-residential to residential.

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units," that enactment does not necessitate the retrofitting with smoke detectors of existing buildings containing dwelling units. It is my further opinion that at such time as smoke detectors may be installed in any building containing dwelling units, the installation must comply with the then-current provisions of the Uniform Statewide Building Code. Finally, it is my opinion that, to remain in compliance with the ordinance, once the smoke detectors are initially installed, the terms of the Uniform Statewide Building Code govern the maintenance or replacement of the smoke detectors.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General