

# VIRGINIA

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Virginia Statutes

- VA. CODE ANN. § 15.2-1102 (2017). General grant of power; enumeration of powers not exclusive; limitations on exercise of power.

A municipal corporation shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the municipality, unless otherwise conferred in the applicable sections of the Constitution and general laws, as amended, of the Commonwealth.

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### DILLON’S RULE PREVAILS IN VIRGINIA

Virginia is widely known as a state that retains Dillon’s Rule with respect to its local governments. Indeed, frequent recent judicial opinions favorably cite to the rule.<sup>1</sup> There is no home rule in the Virginia constitution.

Despite the repeated judicial invocations of Dillon’s Rule, it is clear from the statutory provision cited above that Virginia has delegated something like the police power to municipalities. Hence, Dillon’s Rule co-exists uneasily with a rather broad grant of general regulatory authority. Nonetheless, because there is no constitutional home rule, Virginia cities and counties enjoy no immunity from preemption.

The Virginia courts do not always apply Dillon’s Rule as harshly as its traditional formulation would mandate. For instance, while the traditional Dillon Rule called for resolving all

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<sup>1</sup> *E.g.*, *Marble Techs., Inc. v. City of Hampton*, 690 S.E.2d 84, 90 (Va. 2010) (using Dillon’s Rule to invalidate city’s attempt to use federal designation for environmental protection as a factor in its designation of coastal protection area under state scheme that did not expressly call for consideration of such criterion); *City Council of Richmond v. Wilder*, 74 Va. Cir. 382, 2007 WL 5971774, at \* 6-7 (Va. Cir. Ct. Nov. 29, 2007); *City of Richmond v. Confre Club of Richmond, Va., Inc.*, 387 S.E.2d 471, 473 (Va. 1990) (“In determining the legislative powers of local governing bodies, Virginia follows the Dillon Rule of strict construction.”).

reasonable doubts regarding a city’s legislative power against the city,<sup>2</sup> in some cases the Supreme Court of Virginia has asked only whether the local regulation is “reasonable,” and has purported to give the local government “the benefit of the doubt” in determining whether it possessed a disputed power.<sup>3</sup>

In conclusion, Dillon’s Rule still prevails in Virginia, but perhaps does not constrain city and county initiative authority as rigidly as is commonly thought.

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<sup>2</sup> *Id.*

<sup>3</sup> *Arlington County v. White*, 528 S.E.2d 706, 712-13 (Va. 2000).