

Virginia Administrative Code
Title 9. Environment
Agency 5. State Air Pollution Control Board
Chapter 170. Regulation for General Administration

9VAC5-170-150. Local ordinances.

A. Local ordinances shall be established and approved as follows:

1. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution shall first obtain the approval of the department as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the department shall not approve an ordinance or amendment which regulates an emission source that is required to register with the department or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The department in approving local ordinances will consider, but will not be limited to, the following criteria:

- a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
- b. Adequate local resources will be committed to enforcing the proposed local ordinance.
- c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § [10.1-1308](#) of the Virginia Air Pollution Control Law.

2. Approval of a local ordinance shall be withdrawn if the department determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, the local amendment will be made within six months. If the necessary amendment is not made within six months, the department may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the department to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the department and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the department to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The department will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The department emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the department reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held by the locality prior to granting the variance;
2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality and a major newspaper of general circulation in the state capital area at least 30 days prior to the date of the public hearing by the locality; and

3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the department. The local public hearing required for the variances to the local ordinance and the public hearing required under state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to [9VAC5-40-5640](#) D.

Statutory Authority

§ [10.1-1308](#) of the Code of Virginia.

Historical Notes

Derived from Virginia Register [Volume 14, Issue 3](#), eff. January 1, 1998; Errata, 14:7 VA.R. 1175 December 22, 1997; amended, Virginia Register [Volume 39, Issue 5](#), eff. November 23, 2022.

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