

Impact Statement DHCD Proposed Changes to SFPC



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Executive Summary

In early 2016, the Department of Housing and Community Development (DHCD) assembled a group of building code officials and building industry professionals to review the Statewide Fire Prevention Code and remove all code sections that pertain to “construction” of buildings (See [Meeting Summary, Chapters 8-10](#), and [Chapters 20-30](#) for recommendations made by the sub-committee concerning changes to the SFPC.)* The Fire Services Board was notified of the work group’s meeting schedule, however, the notices were issued very late in the process and participation by the Fire Service Board has been limited thus far due to scheduling.



In general, the group’s recommendations are predicated on the fact that the Virginia Uniform Statewide Building Code (USBC) is a model code that governs all new construction. The Virginia Statewide Fire Prevention Code (SFPC) is a maintenance code that pertains to maintenance of all existing structures and appurtenances. Where there are conflicts between the SFPC and the USBC, the USBC prevails. Thus far, the group’s recommendations involve removal of over 1,800 individual code sections that they believe involve language pertaining to construction. The group has asserted that any construction references are “unenforceable” under the auspices of the SFPC. However, many of the recommendations may have a direct impact on the safety of Fairfax County residents and visitors and to the safety of our operational firefighting personnel. Other impacts may involve a negative effect on the County’s ISO rating and may impact the FCEDA’s ability to attract businesses due to the lack of a nationally-recognized fire prevention code.

In an effort to fully evaluate the impact of this group’s recommendations upon the Fire Marshal’s Office (FMO) ability to enforce the fire code, maintain the safety of our buildings, and protect the safety of our citizens and firefighters, the FMO has taken several actions.

- A work group of subject matter experts (SMEs) has been empaneled to evaluate the committee’s recommendations. This group includes members of the FMO’s command staff and two of its fire protection engineers.
- Staff from the FMO will attend all future meetings of this DHCD work group. This will involve several trips to Richmond, VA and will enable FMO staff to better monitor the group’s discussions and recommendations.

* These links will only work if you have access to the Fairfax County T:Drive

- Fire Officials from across Virginia have established an informal consortium to pool resources to evaluate the committee recommendations, share information and determine any potential impact to localities. This will allow Fire Officials and fire service members to coordinate their efforts with regard to any opportunities for public comment and to participate in public hearings. This is an effective and established tactic that has worked well in the past to defeat other legislative packages that had the potential for dire impact on public safety.

- FMO staff developed this document that will be used to brief the Board of Supervisors (BOS), County Legislative Director, County Attorney's Office, and other professional organizations such as the International Association of Fire Fighters (IAFF) Local 2068, Virginia Professional Fire Fighters, and Virginia Fire Chiefs Association regarding the actions of this DHCD work group and potential impact to the County.

SFPC Authority and Relation to the USBC

The Code of Virginia, Title §27-97, empowers the Board of Housing and Community Development (BHCD) to adopt and promulgate a Statewide Fire Prevention Code (SFPC). The standard currently adopted by the Board is the 2012 International Fire Code developed by the International Code Council. The BHCD adopted the current amendments to the SFPC effective July 14, 2014.



The BHCD also adopts and promulgates the Virginia Uniform Statewide Building Code (USBC). The USBC is a state regulation promulgated for the purpose of establishing minimum regulations to govern the construction and maintenance of buildings and structures. The USBC is divided into three stand-alone parts. Part 1 contains regulations specific to construction of new buildings and structures and is known as the *Virginia Construction Code*. Part II contains regulations specific to the rehabilitation of existing buildings, including alterations, additions and change of occupancy in existing buildings and structures, and is known as the *Virginia Rehabilitation Code*. Part III of the USBC contains the regulations for the maintenance of existing structures, which is enforced at the option of the local Governments. It is known as the *Virginia Maintenance Code*.

The SFPC prescribes regulations affecting or relating to maintenance of structures, processes and premises and safeguards to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage and use of fireworks, explosives or blasting agents, and provides for the administration and enforcement of such regulations. The SFPC also establishes regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of explosives. (SFPC 101.2, Scope.)

SFPC 101.4 Validity clearly states that, “To the extent that any provisions of the SFPC or the referenced codes or standards are not within the scope of this chapter, those provisions are considered to be invalid. When any provision of the SFPC is found to be in conflict with the USBC, OSHA, or statute, that provision of the SFPC shall become invalid.”

Local Authority

Section 62-2-6 of the Code of Fairfax County states that the County of Fairfax shall enforce the Virginia Statewide Fire Prevention Code promulgated by the BHCD which will be enforced by the County Fire Marshal. The Code of Fairfax County Section 62-2-7 adopts the Virginia Statewide Fire Prevention Code as the Fire Prevention Code of the County of Fairfax. The Fairfax County Board of Supervisors has authority to amend the state's fire prevention code to be more stringent.



The Fire Marshal's Office also enforces portions of the Uniform Statewide Building Code, Title §36 of the Code of Virginia, and Chapter 61 of the Code of Fairfax County. The portions of the codes under the purview of the Fire Marshal pertain directly to plans review and fire protection and suppression systems. A Memorandum of Understanding between the Building Official and Fire Official exists that grants Fire Marshals authority to enforce portions of the building code.

Potential Violations of Virginia Code

Title 27-97, Adoption of Fire Prevention Code, the opening line states:

“The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. “ In working documents that have been produced by the work group thus far, commenters are not identified as to who they represent (e.g., building official, industry, or other) and why they are engaged as members of the work group. Mr. Rogers, referred to in numerous places in the comments, is a former DHCD employee, but nothing is shown to indicate who he represents at the present time. The fact that a former DHCD employee is involved with this work group could involve a violation of state statutes regarding conflict of interest and may deserve further scrutiny. The efforts thus far have not been cooperatively developed with the Fire Services Board.



Title 27-97 States: “In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the International Code Council, the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. “ By the wholesale deletion of numerous sections of the International Code Council (ICC) International Fire Code, the workgroup is in direct violation of this portion of Title 27-97. The sheer number of deletions of the International Code Council’s (ICC) International Fire Code proposed by the work group produces a Fire Prevention Code that no longer resembles the nationally recognized International Fire Code.

It is imperative that the letter of the law be obeyed with regard to complying with the Code of Virginia throughout this process. Virginia should continue to adopt a nationally recognized and accepted standards set forth by the International Code Council, including only minor additions/deletions to the ICC International Fire Code. Fostering an environment of collaboration should also be maintained throughout this process to ensure inclusion of stakeholders and code professionals with different insight and perspectives than those of building officials. Fairfax County is a jurisdiction that enjoys and encourages an inclusive and collaborative process for its various code enforcement disciplines and with the building industry. Efforts such as the recommendations of this work group could undermine and harm the collaborative code enforcement environment here in Fairfax County.

Potential Impact on Safety of Citizens and Visitors

Deleted code sections proposed by the workgroup remove the authority to deal with unpermitted work. Unfortunately, unpermitted work continues to occur. Unpermitted work constitutes a special hazard for many of our most disadvantaged population, those who are non-ambulatory and the very young. The removal of the interior finish and other provisions of Chapter 8 of the ICC Fire Prevention Code, as proposed by the workgroups, means that there is now no authority under the SFPC for fire inspection personnel to require the removal and abatement of interior finish and other materials which are a fire hazard in child day care (often home day care locations) and in unpermitted residential conversions, often putting numerous persons at risk in locations where they are asleep.



Unpermitted work does and will occur, and no authority to deal with it will be available to the Fire Marshal's Office or the Department of Code Compliance (who also hold certification as fire inspectors). The statutory period for corrections under the USBC expires after two years. As a consequence, fire/life safety violations discovered after that period must be dealt with by the Fire Marshal. Wholesale gutting of the provisions of Chapters 8 and, 9 and deletion of the maintenance sections and portions of Chapter 10 of the ICC's International Fire Code removes any and all real possibility of ameliorating these unpermitted conditions.

Proposed removal by the work group of key provisions of Chapter 9 of the ICC Fire Prevention Code, especially as exemplified at 901.4, Installation, will promote unpermitted work, and remove the authority of the fire marshal to require correction and amelioration of impaired fire protection systems. For instance, the work group has deleted in its entirety --"Required systems shall be extended, altered or augmented as necessary to maintain and continue protection where the building is altered, remodeled or added to. Alterations to fire protection systems shall be done in accordance with applicable standards." This deletion totally vitiates the ability for fire marshals to deal with conditions resulting from changes inside structures made well after the initial construction. In effect, this allows for interior modifications to be made that impact a building's fire protection systems' ability to perform as designed without penalty. This includes fire alarms, sprinklers, fire pumps, special hazard protection systems, and all of the items covered in Chapter 9 of the ICC Fire Prevention Code.

- a. Explosion control provisions are proposed for removal. This constitutes a direct hazard to all citizens in businesses, neighborhoods and workplaces. This constitutes a direct violation of portions of Title 27, and of Title 44, especially 44-146.34 through 44-146.40.
- b. Proposed removal by the work group of key provisions of Chapter 10 (Means of Egress) constitutes *carte blanche* for alterations which impair exiting but which have nothing to do with the "code under which the building was built". These include placing of obstructions, storage, debris and other materials in exit ways. These hazards are a condition often found by the fire marshal in existing buildings, as well as unpermitted alterations to stairwell landings, steps, and other parts of the exit path.

Potential Impact to Businesses

Proposed removal of so many portions of the ICC IFC means that Fairfax County will no longer have a nationally recognized set of codes. Businesses decide where to locate based on a whole host of factors, and one of those factors is the maintenance of adequate safety standards, on which their ratings and insurance costs depend. The proposed changes to the ICC IFC would mean that every jurisdiction in Virginia will have a unique fire prevention code. It costs businesses additional monies to pay for consultant services when nationally recognized codes are not in place (with only minor amendments) since it is more labor intensive to tailor engineering plans and compliance with one-off local or state codes.

Removal of enforcement authority of the fire marshal to deal with unsafe process changes, conditions that could impede the safe egress of building occupants and ensure that fire protection systems are adequate for process changes and commodity storage will encourage those who have no concern safety to proceed without consequence. Conscientious businesses concerned with fire safety who comply with the IFC will be in direct competition from businesses who practice unsafe production methods and allow unsafe conditions inside their buildings. This type of environment would actually encourage businesses to not comply since the Fire Marshal's Office, which routinely inspects businesses, will have diminished authority to order remediation of hazards.

There is the potential for a reduction in Fire and Rescue Department's rating from the Insurance Services Office (ISO). A reduction in this rating could potentially lead to higher fire insurance rates for commercial businesses. For example, the Category 1 (best) rating by the Insurance Services Office awarded to the Fairfax County Fire and Rescue Department results in considerable savings on commercial lines insurance costs for businesses in Fairfax County. Part of ISO's consideration is the enforcement of nationally recognized codes and its commercial and residential fire loss experience. Without that, our ratings could go down, there could be an increase in commercial and residential fire loss and insurance costs paid by businesses in the County may go up.



Potential Impact to First Responders

Removal of hazardous materials tables and standards from the SFPC as advocated by the work group will constitute a direct threat to our first responders. Lack of control of hazardous material substances in all occupancies is a particular concern of the fire inspectors and of firefighting personnel. It is clear that the actions of the work group, with reference to ICC FPC Chapters 20 through 30 removes safeguards from gas stations, from production processes, and from helistops (at our hospitals), and from many locations where they can be introduced regardless of when the structure was built or when it came into use. The proposed removal of shutoff valve requirements is particularly egregious and poses a direct threat to life safety of our residents, visitors and to our first responders.



Codes relating to standpipe systems (for example at helistops) are proposed for removal from the SFPC. Many times helistops are placed on top of existing parking structures. The operational requirements in the ICC's IFC are there to call attention to the requirements for standpipes in those helistop facilities.

Other occupancies where changes are made to accommodate new production processes which only involve equipment or commodity and do not come under the purview of the building code. These types of process and equipment changes pose a direct hazard to workers and to the fire service. Because the members of this group mainly deal with only the USBC, its members fail to recognize that many aspects of buildings are not regulated by the USBC. This would include changes in process, and changes in commodities used in processes. These types of conditions often pose an imminent threat to our first responders.

Elevator operation controls and firefighter elevator service and key requirements are proposed for elimination by the work group. This item has the potential to be devastating for our first responders. Removal of these items from the code will impair the authority of fire inspectors to adequately address changes to equipment. Changes are made all the time to elevators, regardless of the code under which the building was built. Such modifications are routinely made to controllers, circuit interlocks, and per floor elevator door operation to name only a few.

Removal of the requirements for battery ventilation systems again poses a direct hazard to first responders. (See Appendix A). Additional batteries and battery arrays that provide back-up power for phone systems and data centers are often introduced with no alterations to the structure or to any other aspect of the building. These are contents, not items which come under the purview of the USBC.

Unpermitted building modifications and extreme fire loading of combustible contents in an unsprinklered building contributed directly to the deaths of nine (9) firefighters in Charleston, SC in the Charleston Sofa Superstore fire on June 18, 2007. This fire has been widely studied by the fire service and various national safety committees. The National Institute of Standards and Technology (NIST) released a technical fire behavior report and a technical study that made

numerous recommendations regarding fire prevention. In particular, **NIST urged state and local communities to adopt and strictly adhere to current national model building and fire safety codes.** Some of the most impactful recommendations NIST made regarding fire prevention involved national model building and fire codes to require sprinklers for this particular type of occupancy. Other recommendations involved adopting model codes that cover high fuel load situations (such combustibles storage in a furniture store), ensuring proper fire inspections, and proper building plan review/examinations. It is critical that the integrity and intent of the national codes be maintained so tragic Line of Duty Deaths (LODDs) can be avoided for our operational firefighting personnel.

Potential Impact to the Fire & Rescue Department

Fire Inspector Certifications. Fire Inspectors will no longer be able to be familiar with the nationally recognized codes on which all certification examinations (i.e., ICC Fire Protection Systems “B” inspector certifications) are now based, since huge portions of the ICC Fire Prevention Code are proposed to be removed in violation of Title 27-97 of the Code of Virginia.

Firefighter Safety Jeopardized. Firefighter safety will be impacted as previously mentioned. This is particularly sobering when the potential for catastrophic loss of life of firefighters could happen due to unpermitted alterations, changes to processes involving equipment only and heavy commodity loading. It is imperative that the integrity of the nationally-recognized codes is maintained to avoid LODD such as those experienced by Charleston, SC at the Charleston Sofa Super Store fire.

Potential reduction in Fire and Rescue Department Rating from the ISO. As previously mentioned, there is potential for the Department’s ISO rating to be negatively impacted. The Department was awarded its most recent rating as a Class 1 Fire Department by the ISO in 2015.



Potential Impact to Fairfax County

Due to proposed removal of many safety provisions from the FPC, there would have to be substantial changes to existing measures taken to protect Fairfax County citizens in their work places and elsewhere. This would mean that the entire computerized set-up for the FIDO would have to undergo major overhaul, at considerable economic cost, impact on FMO staff to provide program changes for database reprogramming and with consequential IT costs regarding reprogramming of the database.

Additional burden will be placed on DPW&ES enforcement staff in order to deal with the altered balance in the model codes. Since the FMO will not have the authority to order correction of numerous hazards that they currently enforce, the FMO will have no choice but to refer these cases to the Building Official and enforcement staff of DPW&ES to ensure that these hazards are mitigated.

Potential Actions to be Considered

Injunction. Court ordered injunction should be sought to compel DHCD to follow the letter and intent of Title 27-97 of the Code of Virginia. Injunction should mandate the halt of the process relating to the Fire Prevention Code until such time as the letter and intent of Title 27-97 have been complied with.

Governor notification. The Governor of the Commonwealth should be notified of the actions taken by DHCD and should be shown the impact on the business community in Fairfax County and in Northern Virginia particularly, as well as the impact on urban jurisdictions generally throughout the state.

Fairfax County Economic Development Authority (FCEDA) notification. Some outreach to FCEDA should be made due to the potential impact on their business recruitment efforts and the potential diminution of our ISO rating.

Economic Impact Study of Potential Safety Failures, Potential Impact on the Environment, and Potential for Increased Life Loss. DHCD should be required to do a detailed economic impact assessment of all proposed removals of sections from the ICC FPC, both local and statewide. The consequences of even one major hazardous materials incident are too awful to contemplate.

Modify Fairfax County Fire Prevention Code (Chapter 62-2-8 of the Code of the County of Fairfax) to reinstate deleted ICC code sections. County staff must be prepared to properly restore into Chapter 62 of the County Code, and in compliance with the provisions of Title 27 (all), those ICC FPC provisions wrongly set for deletion by DHCD in such a manner as to comply with the right and duty of the County to protect its citizens and to put in place provisions which adequately do so. This would mean considerable staff effort and expense, and care must be taken to ensure that the provisions incorporated into Chapter 62 are consonant with all Virginia Statutes and adopted codes. The first Fairfax County Fire Prevention Code was adopted in 1955 and its first local building code was adopted in 1953. It is noted that the Commonwealth did not adopt a Uniform Statewide Building Code until August 1973, almost 20 years after Fairfax County had adopted a code for that purpose.

It is noted that the claimed “problem” cited by the Work Group from DHCD in fact does not exist. Under Section 102.6, Relationship to USBC, code conflicts are adequately and completely dealt with as they have been since the Fire Prevention Code was first adopted in Virginia. The claim that the SFPC as adopted has violated Section 102.6 is patently untrue, and the failure of the work group to adequately consider the implications of such far-reaching proposed code section removals is misguided and disheartening.

