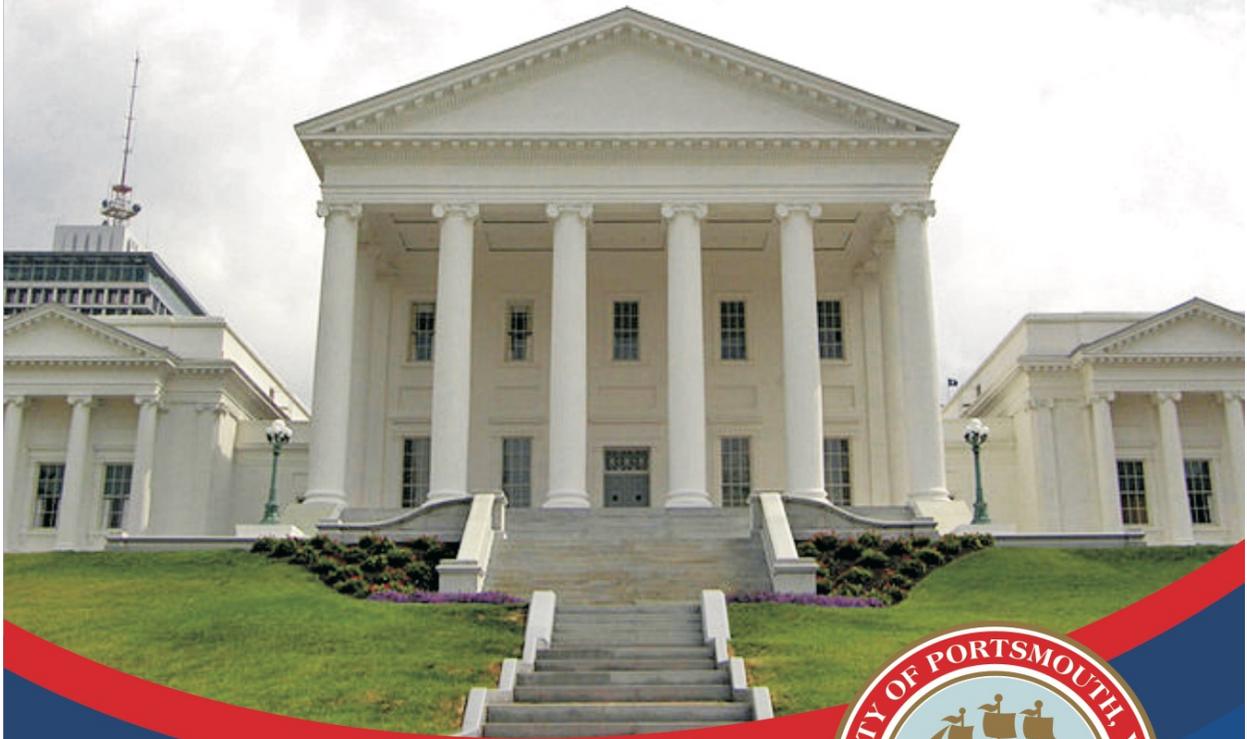


City of Portsmouth, Virginia
2016 Virginia General Assembly
LEGISLATIVE PACKAGE



ADOPTED
November 24, 2015





Portsmouth City Council

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The Honorable Paige D. Cherry, Vice Mayor
The Honorable William E. Moody, Jr.
The Honorable Dr. Curtis E. Edmonds, Sr.
*The Honorable **Elizabeth M. Psimas***
*The Honorable **Danny W. Meeks***
The Honorable Dr. Mark M. Whitaker

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Mrs. Judy Duffy, Interim Chief Financial Officer
Mr. LaVoris Pace, Interim Deputy City Manager

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Portsmouth City Council 2016 State Legislative Package

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Preface

The City Council of the City of Portsmouth respectfully submits to our General Assembly Delegation our 2016 State Legislative Package for your review, consideration and support of the items contained within. On November 24, 2015, this package was formally adopted. The information contained within is in accordance with, and reflects, the City Council's 2030 Vision Principles:

- *Change and New Directions*
- *Leading Maritime Center*
- *Neighborhoods and a Sense of Community*
- *A Robust Economy for Working Men and Women*
- *Lifelong Learning Community*
- *Quality of Life*
- *Efficient, Responsive Government*
- *A Proud Military Community*
- *Pride of Past*

National, state and local governments' economies continue to improve from the economic downturn of the great recession. Unlike the FY2014-2015 State Budget (that anticipated a revenue shortfall of \$2.4 billion through June, 2016) the State of Virginia is showing strong signs of recovery.

We applaud our legislators, the General Assembly, and the McAuliffe Administration for their ability to compromise and work cooperatively to set a course that will steer the Commonwealth back to a position of fiscal health. We are greatly encouraged that in his upcoming proposed biennial budget, Governor McAuliffe is planning on increasing funding for K-12 education with a portion of the \$549.6 million revenue surplus.

In considering other priority needs of local governments, we highly encourage our Governor and General Assembly members to support the recommendations included in the August 27, 2015 Interim Report to the Governor from the Governor's Task Force for Local Government Mandate Review. *These recommendations include needs such as increasing State funding assistance for local police departments (HB599); protecting local government authority to raise revenue; and increasing jail per diems for State responsible inmates, to name just a few.*

As always, we thank you for all of the kind consideration and support you have provided to our City in the past, and we look forward to a continued progressive partnership on matters of importance to Portsmouth in the future. Again, thank you.



A RESOLUTION ENDORSING THE CITY'S 2016 GENERAL ASSEMBLY LEGISLATIVE PACKAGE.

WHEREAS, the Virginia General Assembly deals with a broad range of issues that affect local government both directly and indirectly; and

WHEREAS, the City of Portsmouth has certain concerns that deal with both Portsmouth specifically and local governments in general; and

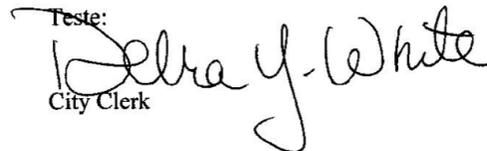
WHEREAS, these concerns need to be made known to Portsmouth's General Assembly delegation so that they may be transmitted for consideration by the Legislature.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portsmouth, Virginia, that it hereby endorses the attached Legislative Package for the 2016 General Assembly session.

BE IT FURTHER RESOLVED that the City Manager is directed to provide a copy of this Resolution and the 2016 Legislative Package to each member of the City's General Assembly delegation.

BE IT FURTHER RESOLVED that the City Manager and/or her designee(s) are hereby authorized and directed to provide necessary input and clarification during the 2016 Virginia General Assembly session and to carry out other activities as needed to assist in attaining the goals and objectives contained in the City's 2016 Legislative Package.

ADOPTED by the Council of the City of Portsmouth, Virginia, at a meeting held on November 24, 2015.

Teste:

City Clerk



2016 Legislative Requests



A. Payment in Lieu of Taxes (PILOT Fees) Nontaxable Real Property – Study Request

Request: The Portsmouth City Council requests a study to determine the practicality and feasibility of local governments entering into mutual PILOT fee agreements with organizations within their jurisdictions that are exempt from Real Property taxes.

Justification:

The aftermath of the great recession has led cash-strapped municipalities across this country to turn an eye to their nonprofit organizations and incorporate them as supporting fiscal partners in their fiscal recovery efforts. Historically, an organization that obtains the status of “non-profit” is awarded various tax exemptions which may include Real Property taxes. This status is awarded to organizations ranging from small community charities, to large institutions like universities, hospitals, museums and large religious institutions. In some cities across the nation, not only are they exempt from paying real property taxes on the buildings they own, but they are also exempt from paying for water and other services. Even though it is acknowledged that they provide “general welfare” services and “social goods” to the communities, they also benefit from the same city services that their tax-paying neighbors enjoy such as police and fire protection, access to roads and education for the children of their employees who live within the same jurisdiction in which they work.

There is no question as to the value of the services to our communities, however, in these tight economic times, local governments find themselves questioning exactly how much indigent care is enough to qualify an organization to be considered a 501-c-3 status, as well as, should tax payers be on the hook to subsidize these groups?

Multiple municipalities have begun taking steps to address this matter. For instance, Boston, Massachusetts’ largest nonprofits “*collectively pay millions of dollars in lieu of taxes*”¹. Other localities such as Madison, Wisconsin and localities in Minnesota are charging fees for services such as street lighting. A 2010 Illinois Supreme Court “*decision connected the degree to which nonprofits deliver legitimate charitable service to the question of whether or not they should be exempt from paying taxes. The court’s decisions upheld a state government denial of a property tax exemption to Provena Hospitals...*”²

¹ “Cities Ask Tax-Exempt Nonprofits to Pay for Services” [Tribune News Service](#) January 28, 2013

² “How Nonprofits Can End Up Becoming a Drain on City Budgets” [Governing Magazine](#) November, 12, 2012



In Baltimore, Maryland, the value of property that is off the tax rolls due to the presence of nonprofits to include state and federal facilities is \$15.1 billion, representing 30 percent of this city's entire assessed value³. Similar to Baltimore, Portsmouth, Virginia has about 44 to 50 percent of the city's entire assessed value off the tax rolls due to the presence of non-taxable entities including local, state, and federal. The total assessed property value on Portsmouth is approximately \$12.5 billion with at least \$5.5 billion lost to the City due to the huge presence of these establishments in our city.

Another similarity between Portsmouth and Baltimore is that like Portsmouth, Baltimore also relies heavily on their property taxes. In Baltimore, this accounts for at least 50 percent of their revenue. In Portsmouth approximately 40 percent of our General Fund revenue is derived from Real Property taxes. However, unlike Boston who is experimenting with a six-year PILOT program with its state hospital and university totaling \$20.4 million in new revenue to the city through FY16, under the Dillon Rule, Portsmouth is unable to implement any programs of this nature without the consent of the General Assembly.

Therefore, the Portsmouth City Council requests the General Assembly to undertake a study to determine the practicality and feasibility of allowing its municipalities to enter into PILOT agreements with organizations that have been declared exempt for Real Property taxes.

³ "Tax-Exempt Properties Rise as Cities Cope with Shrinking Tax Bases" Governing Magazine November, 2012



B. Churchland Bridge Replacement

Request: Priority construction funding for the replacement of the Churchland Bridge

Justification:

Item 444 subsection H of the FY2015-2016 Biennial Budget required: "The Commissioner {of Transportation} is directed to investigate methods through which to fund the replacement of the Churchland Bridge in Portsmouth and report to the Chairmen of the House Appropriations and Senate Finance Committees on the feasibility of including federal and or state funding for the project in the Six Year Improvement Program by October 1, 2014. Since that time, this project has been included into the State's Six Year Improvement Programs (SYIP).

The Administration, completed this task and identified an additional \$8,200,000 for this bridge replacement. However, the project is still \$2,300,000 short of being completely funded. Please remember that the Churchland Bridge is part of a major thoroughfare connecting two sectors of the City by way of High Street. High Street runs the entire north to south stretch of the City to include the City's downtown business corridor. The Churchland Bridge project will replace existing northbound lanes, High Street (Route 17) over the Western Branch of the Elizabeth River. The existing structure is a multiple span, multiple-unit structural steel bridge with a suspended (pin-and-hanger type) span over the navigation channel. The 60% plans have been reviewed by VDOT, and the City is currently planning the combined design public hearing for review and comment on plans and the environment document. The City is also proceeding with the Right of Way phase.

Remaining Funding needed

\$2,800,000

The Portsmouth City Council expresses its gratitude to our General Assembly Delegation, the General Assembly and Governor McAuliffe's for all it has done to identify and secure funding for this \$35,500,000 project. However, as stated earlier, the project is still not fully funded. We ask that out of the \$55 million recently given to our state from the Federal Highway Administration for bridge and highway repairs, that the state provide us with the remainder of the funding needed to complete this sorely needed project.



C. Paradise Bridge – Replacement Funding

Request: The City is requesting \$8,100,000 for the replacement of the Paradise Bridge.

Justification:

The Victory Boulevard Bridge over Paradise Creek (Paradise Creek Bridge) was constructed in 1944. This facility is structurally deficient with a sufficiency rating of 18.7. It is listed in the Dedicated Bridge Fund Priority List for the Hampton Roads VDOT District ranking as #13 in the Top 20 Bridges on the Federal-Aid Highway System.

The Paradise Creek is part of VA 239 in the southern part of the City. This transportation corridor provides key access to the Navy (specifically Gates 29 and 36), the South Norfolk Jordan Bridge, Wheelabrator, the Cradock Neighborhood, and the businesses along George Washington Highway.

The total estimated project cost is \$8,600,000. Of that amount, to date \$500,000 has been secured for the design review portion of the project with a Revenue Sharing Grant from the Commonwealth of Virginia. The \$8,600,000 remaining needs consist of:

- **Right of Way - \$100,000**
- **Construction - \$8,400,000**

The Portsmouth City Council hereby requests that the General Assembly allocate the \$8,600,000 out of the \$55.5 million unexpected and unallocated federal funds received by the Virginia Department of Transportation on October 7, 2015, from the Federal Highway Administration. As this money was allocated to Virginia for projects in the pipeline that are ready for work to begin, this is a project that meets that criteria.



D. Virginia Port Authority – Indexing Budget Item #455 for Inflation

Request: The City of Portsmouth is requesting that State Budget Item #455 be adjusted for inflation. In doing so, the General Assembly should authorize repayment of funds lost to the host cities of the Virginia Port Authority (VPA) over the last eight years, and add language to this Budget item requiring it to be adjusted annually to reflect inflation.

Justification:

For more than twenty-years (20 years) the host cities of the Virginia Port Authority (Portsmouth, Norfolk, Newport News, and Warren County) have requested that the Payment In Lieu of Taxes (PILOT) fees paid to these localities for the loss of value from Real Property taxation be increased to better reflect this loss of revenue to these municipalities. In an effort to address this disparity, during the 2000 General Assembly session, former State Senator Quayle introduced Senate Bill 752 changing the formula for reimbursement and having the funds come from the State's General Fund, rather than from the Virginia Port Authority. Unfortunately, to date, this formula has never been funded.

Realizing the need for more funds for the host cities to address the impact the increasing truck volume was having on our roadways, Delegate Joannou introduced HB 2785 during the 2007 General Assembly session. This bill, passed the General Assembly and was signed into law by former Governor Timothy Kaine. It authorized funds to the host cities via the Commonwealth Transportation Board using the Commonwealth's Transportation Fund for purposes of addressing highway maintenance and repair needs created by or associated with port operations in these localities.

This budget line (Item #455) was originally capitalized at \$1 million. However, with the advent of the great recession, that amount was reduced to \$950,000 and has remained at that level for the past eight years. Over that time, the cost of business has increased to include manpower and materials, and the gap between the costs to maintain these roads and the reimbursement from the State is ever widening. Creating another unfunded mandate by the Commonwealth on these localities. If the original \$1 million had remained in place and was indexed for inflation over the years, the host cities of the VPA would be currently sharing \$1,147,596.72 instead of \$950,000.



Although this may seem like a negligible amount, it would at least better reflect the cost of maintaining and repairing our roads due to port activity than the current static amount that we are receiving. Therefore, the Portsmouth City Council requests that Budget Item #455 be increased to the intended \$1 million and adjusted for inflation over the past eight years. We also request that the General Assembly approve that the CTB pay to the host cities of the port \$354,916.99, which is the total difference between the original \$1 million and the \$950,000 received over the past eight years. We further request that language be added to this Budget Item that requires this Budget Item be adjusted for inflation annually.



E. Elimination/Reduction of Tolls on the Midtown Tunnel/ Downtown Tunnel Project

Request: The Portsmouth City Council requests the General Assembly to identify means and ways to either further reduce the tolls or eliminate them completely on the Midtown/Downtown Tunnel project.

Justification: The Portsmouth City Council and its citizens are grateful for all of the efforts that have been made by the General Assembly and the current Administration to reduce the financial burden and negative impacts these tolls are having on citizens and business in our city. However, it is a well-known and widely accepted fact that the deal the State made with Elizabeth River Crossing, was not a very good business deal for the State or the users of these crossings, and in particular the citizens of Portsmouth and the businesses in our downtown business district. Therefore, much more needs to be done to address this matter.

In a study conducted by Dr. James Koch, and economist with Old Dominion University, he clearly laid out the problems in his January 6, 2014 document. In his summary he stated that “If one indexes the burden that tolls will impose on each city as a percent of its job base, the Portsmouth will be 8.48 times more affected than Virginia Beach, 6.1 times more than Norfolk, and 2.38 more than Suffolk”.⁴ He further stated “Portsmouth restaurants and businesses that have regional clientele will bear the brunt of any decline in discretionary driving. In effect, the tolls will have the impact of a five to ten percent tax on the price paid by their discretionary customers.”⁵ The summary report goes on to say “In the short-run, Portsmouth should expect a several million dollar decline in taxable sales in the City (a two percent decline translates to almost \$12 million annually) and a possible two percent (\$1.76 million) decline in assessed valuations. These effects will be spread unevenly across the City.”

His predictions have begun to manifest themselves with the closing of two of our long term businesses in our downtown corridor, M.M. Crockin Furniture Store and Brutti’s Restaurant. The loss of these two establishments have reduced taxes and lowers the value of the other businesses in the vicinity.

⁴ “The Differential Impact of Tolls on the City of Portsmouth” by James V. Koch Old Dominion University 1/6/14

⁵ “The Differential Impact of Tolls on the City of Portsmouth” by James V. Koch Old Dominion University 1/6/14



The Portsmouth City Council requests that the General Assembly look at all possibilities to negate the fiscal impacts these tolls are having on our businesses and citizens to include modification of HB2312 language where it says it is solely for new transportation projects and add in the Midtown Tunnel as an exception since it was in essence a “new” project having just been approved in 2012. While the state may not be able to fix the tunnel deal, it could easily put language back in HB2313 to provide some relief to the ever-increasing tolls that will be faced. No new revenue is needed, just the recognition that this is the Region’s responsibility to help fund what was called the “Region’s” number one priority project.

F. Expungement of Juvenile Non-Violent Misdemeanor Records – Study Request

Request: The Portsmouth City Council requests the General Assembly conduct a study to assess the need to revise the formulary for expungement under Virginia Code Section 16.1-306 due to the impediments to employment the current formula presents to young adults with juvenile non-violent misdemeanor convictions.

Justification: Prior to 2014, this Code Section did not exist, and there was no remedy in place to address expungement of juvenile records. Seeing a need to address this matter due to the collateral consequences these arrests and convictions have on youthful indiscretions, the General Assembly saw fit to pass House Bill 278 during the 2014 General Assembly session. This bill, which became law (Virginia Code Section 16.1-306) directs the clerk of the Juvenile and Domestic Relations District Courts to annually (January 2nd) destroy all its documents related to a juvenile that has a court record. The Code states that this expungement is to take place once they have reached the age of “19 and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section”.

This Code Section also sets out a formula for expungement of Juvenile and Domestic Relations District Court records. While this is a great start, and one that was truly needed due to the impediments experienced by young adults that have created youthful indiscretions, it does not go far enough. As the law currently stands, a juvenile committing a non-violent misdemeanor offense between the ages of 15 and 19, and never commits another offense, must deal with the collateral consequences of that indiscretion until they are between the ages of 20 – 24.



The problem created by this formula is that when youth reach the 20 – 24 years age range and are unable to secure gainful employment due to their juvenile record not being expunged yet, the impediment to gainful employment, can lead to their becoming less productive, setting the stage of a lifetime of criminal activity and failure in life. The downward spiral created by this societal disenfranchisement tends to lead some to a life of crime to include recidivism. Thus creating a new influx of people into the criminal justice pipeline which has high societal costs associated with it. Those costs include the impact to the victims of the crime, as well as, the public safety costs associated with capturing, prosecuting, incarcerating, releasing and the potential for reoffending.

Youthful indiscretions should not incline one toward a less than productive life as a contributing citizen. Therefore, the nonviolent acts of young teens should not be equated with violent acts that tarnish one’s ability to seek employment and contribute to the community. The current statutory scheme creates a negative spiral into the abyss of a life of crime. This propensity could very well be reduced if we are able to provide public policies that do not set the stage dissuading a person from trying to be a positive contributing taxpaying citizen and a credit to society.

Therefore, the Portsmouth City Council requests that the General Assembly revisit this matter in the form of a study, to determine a better way to address the expungement of non-violent misdemeanor juvenile offenses, so that when our youth become young adults (ages 20 – 24), they do not turn to a life of crime and become disenfranchised citizens of this commonwealth.



G. Creation of a Living Wage Standard for the Commonwealth of Virginia

Request: The 2016 General Assembly create a Living Wage standard to be implemented throughout the Commonwealth of Virginia.

Justification:

There is a current ongoing discussion regarding the struggle of low-income families and how are they able to maintain themselves as the price of living continues to rise, but not their wages. This discussion centers on the question as how great is the gap between the minimum wage and the amount of money needed to cover basic family expenses (basic budget needs) and all relevant taxes. Wages vary according to location as does the cost of living. The basic needs budget and living wage are calculated as follows:

- Basic needs budget = Food cost + child care cost+ (insurance premiums + health care costs) + housing costs + transportation cost + the cost of other necessities.
- Living Wage = Basic needs budget + (basic needs budget * tax rate)

During the 2015 General Assembly session, several bills were introduced in an attempt to raise the minimum wage paid in Virginia. While none of these bills survived the legislative process, the number of bills submitted by both parties indicates the recognition of this problem in Virginia and the need to address it.

The Massachusetts Institute of Technology (MIT) calculates the living wage for the City of Portsmouth is \$12.76 per hour for one adult. This is \$5.51 above the \$7.25 per hour minimum wage currently paid. The City of Portsmouth pays a minimum wage of \$8.01. Although it is slightly above the federal minimum wage, it pales in comparison to what the living wage should be. Much of the push to address this issue nationally has been through local legislation aiming at businesses with public contracts requesting in some cases and urging in others, that they pay their workers a wage sufficient to support their families.

The Portsmouth City Council requests that the General Assembly study this issue and identify and implement a living wage standard for the commonwealth of Virginia. One that will provide the ability of workers to be able to sustain themselves and their families and lessen their reliance on the public dole.



H. Amend Virginia Code 18.2-95 and 18.2-96 to Include Theft of Services with Petite and Grand Larceny Amounts Attached

Request: The General Assembly amend and reenact Virginia Code Sections 18.2-95 and 18.2-96 to include theft of services. Also attached to this is a request providing for an increase in the prosecutorial thresholds of \$500 for petite larceny and \$1,000 for grand larceny of said services.

Justification:

Currently the Code of Virginia is silent on theft of services, which is not the case in at least 38 other states in America. The problem is that when a person contracts with a service provider for an agreed upon amount, and the contractee does not fully pay for the contractor's services, the contractor does not have any recourse but to pursue a costly civil process through the courts for the balance due.

The problem arises if the balance due is less than the cost to prosecute. As the law in Virginia currently stands, the costs associated in seeking a judicial remedy for smaller amounts of money in a contractual dispute is a prohibitive disincentive. Therefore, more often than not, the contractor loses money on the contract and the contractee has in effect, stolen services through the breaching of the contractual agreement.

Therefore, the City of Portsmouth, in support of small businesses, requests the General Assembly to amend the Code of Virginia, adding services to the list of elements that constitute petite and grand larceny that a contractor can seek a less costly civil judgement through, and set the thresholds for these crimes at \$500 for petite larceny, and a \$1,000 threshold for grand larceny of services.



I. Amend and Reenact Virginia Code Section 19.2-392.2 Relating to Expungement of Police and Court Records

Request: The General Assembly amend and reenact Virginia Code Section 19.2-392.2 relating to the expungement of police and court records allowing judges the ability to automatically expunge nolle prosequi cases.

Justification:

The inability of a person to pay the legal costs and fees associated with having their court and police records expunged once a case has been nolle prosequi, sets up severe barriers to employment for citizens in the Commonwealth of Virginia.

Currently, the Virginia Code Section 19.2-392.2 sets out only one statutory scheme for the feeless expungement of nolle prosequi cases:

- *19.2-392.2 (B) – there is no fee charged in the instances where the expungement is based upon someone else using your name or information.*

All other cases fall under Virginia Code Section 19.2-392.2 (L), and the costs subject to 17.2-275. The lengthy legal process for expunging ones record, and the costs associated with it (attorney fees, court costs, fees, etc.) are financial deterrents to a citizen of the commonwealth that was not convicted of a crime, yet still retains an arrest record. This situation sets up barriers to gainful employment for those citizens that cannot afford to pursue such costly actions to clear their name and expunge their records.

The Commonwealth of Virginia in recent years has made great strides in addressing the collateral consequences of criminal arrests and convictions in Virginia, becoming “smart on crime” instead of “tough on crime”. This barrier to employment set up by the inability of a judge to automatically expunge nolle prosequi cases should be addressed as well. By doing so, it will remove employment impediments and innocent citizens are not further victimized by an institutional system that does not serve well those who cannot afford to seek the legal remedies set out within it. Removal of this institutional barrier can also serve as a deterrent to possible criminal activities that may result from ones becoming disgruntled from being disenfranchised and unable to earn an honest living.

Therefore, the Portsmouth City Council requests that the General Assembly remove this impediment by amending and reenacting this Code section to provide judges, the discretion and ability to automatically expunge nolle prosequi cases.



L. Elizabeth River Crossings, LLC Fines Late Fees

Request: The Portsmouth City Council requests that the General Assembly pass legislation that addresses the inaccuracies and problems that have arisen with the charging of late fees by the Elizabeth River Crossings, LLC (ERC) since they began charging tolls on the Midtown and Downtown tunnels.

Justification: Since the inception of the tolls being implemented on these two tunnel facilities connecting the cities of Portsmouth and Norfolk, there have been numerous billing problems and erroneous late fees assessed on motorists using these facilities.

This problem is well documented in the number of newspaper articles that have appeared in the Daily Press and the Virginian Pilot as well as news stories that have aired on local television stations. On July 10, 2015, WAVY Television reported that Attorney General Mark Herring had stated he will work with the Virginia Department of Transportation to “determine the legality of administrative fees that are added to delinquent toll bills.”⁶ At issue is the \$25 delinquent bill fee added by ERC, and in other cases a delinquent fee of \$10 per tunnel trip.

At the request of State Senator Kenneth Alexander, Attorney General Herring issued a legal opinion stating “fees can be charged, if they are used to cover the actual costs of recovering delinquent tolls. They cannot be charged as a means of raising revenue or offsetting a budget shortfall”.⁷ The investigation conducted by 10 On Your Side “uncovered some drivers whose bills ended up more than ten times their actual toll charges”.⁸ In a news release by WAVY 10 on July 9, 2015, it cited a person who lives in Norfolk that legitimately had \$250 worth of toll charges, but never received a bill until six months after her last trip. She was shocked that the bill was for \$1,500.⁹

The City of Portsmouth is requesting that the General Assembly enact legislation to address this matter. In so doing the legislation crafted should:

- **Lower the amount of fees involved**
- **Give “violators” more time and options for payments**
- **Direct ERC to use their attorneys to litigate “violators” and not use tax payer funded Commonwealth Attorneys.**

⁶ WAVY 10 – July 10, 2015 “AG to probe admin fees added to tunnel toll bills?”

⁷ WAVY 10 – July 10, 2015 “AG to probe admin fees added to tunnel toll bills?”

⁸ WAVY 10 – July 10, 2015 “AG to probe admin fees added to tunnel toll bills?”

⁹ WAVY 10 – July 9, 2015 “Tunnel toll troubles continue: Fair toll fees?”



M. Mandatory Disclosure of Relevant Information to Sellers of Historic Properties without Home Associations.

Request: The Portsmouth City Council requests that the General Assembly submit to the Virginia Housing Commission the issue of mandatory disclosure of all pertinent information involving property located in historic districts that are not covered by homeowner's associations for study and recommendations to the 2017 General Assembly.

Justification:

Virginia Code Section 55-519 (Required disclosures) subsection (B) 3 states: "*The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality ...*".

Virginia Code Section 55-509.5 (Contents of association disclosure packet" delivery of packet) does not specifically speak to Virginia Code Section 55-159 (but it is embedded in Chapter 357 Acts of the 2013 General Assembly) which is incorporated into Virginia Code Section 55-509.5

The problem presented is that homeowner's associations, under Virginia Code Section 55-509.5 provides potential sellers of property within their association with certain information relating to the property, to include permitted information regarding improvements, or alternations made to the property that cannot be in violation of the "declaration, bylaws, rules and regulations, architectural guidelines...."¹⁰ Due to the inclusion of the words "*architectural guidelines*" although not specifically disclosing the regulations relating to properties in historic districts, the prospective purchaser of the property is provided with the needed information to make an informed decision regarding the purchase. Sellers of property in historic districts not covered by home associations are governed by Virginia Code Section 55-519 which does not require disclosure of information regarding historic districts.

There appears to be a disconnect and an unevenness in the law as pertaining the disclosure information, whereby one seller is provided information by default of the property being covered by a home association following Virginia Code Section 55-509.5, and the non-home association seller which follows Virginia Code Section 55-519. Because of this conflict in the way disclosures of historic properties requirements are provided to prospective buyers, the Portsmouth City Council requests that the General Assembly submit this matter to the Virginia Housing Commission for study and recommendations that will provide better transparency under the law to be considered during the 2017 General Assembly.

¹⁰ Virginia Code Section 55-509.5 (A) 9



**LOCAL / REGIONAL / STATEWIDE
PUBLIC POLICY
ISSUES**



1. Protection of Local Taxing Authority (Oppose Elimination/Restructuring of BPOL & M&T Taxes)

Over the past several General Assembly sessions, legislators have introduced several bills proposed to eliminate the Business and Professional Occupational License (BPOL) tax and the Machinery and Tools (M&T) tax. Although they were originally established to pay for the War of 1812, these taxes have become a significant source of revenue for cities and towns throughout the Commonwealth of Virginia.

It is a certainty that this issue is far from being resolved. The importance of these taxes to our revenue stream cannot be understated. Any plan to eliminate them must include an alternate means of replacing them dollar for dollar. For Portsmouth's FY2016 budget these two combined revenue sources generated \$7,324,386. As Real Property Taxes are the major source of revenue for this City, loss of these funds without a stable, consistent and recurrent revenue source would mean another increase in our Real Property Tax Rate. **Increasing our Real Property Tax Rate again is unconscionable for this Council.** We do not want to impose such a burden on our citizens.

The Portsmouth City Council therefore urges the legislature to support the recommendation of the Governor's Task Forces for Local Government Mandate Review and "not eliminate any local taxing authority without providing a replacement taxing authority of equal or greater value"¹¹.

2. Casino Gaming

In looking at ways to diversify the economy of Virginia, bringing legalized gaming to Virginia has been an issue that has come before the General Assembly for more than twenty-years, only to be consistently voted down. In the meanwhile, successful gaming establishments have been developed in several states, including Maryland. In 2007, gambling activities generated gross revenues (the difference between the total amounts wagered minus the funds or "winnings" returned to the players) of \$92.27 billion in the United States.¹² Commercial casinos provided 354,000 jobs,¹³ and state and local tax revenues of \$5.2 billion as of 2006.¹⁴

¹¹ "Governor's Task Force for Local Government Mandate Review" Interim Report to the Governor – August 27, 2015

¹² "[Industry Information: Fact Sheets: Statistics: Gaming revenues for 2007](#)". American Gaming Association. Retrieved 2007-05-19.

¹³ "[Industry Information: Fact Sheets: General Info: Casino Employment](#)". American Gaming Association. Retrieved 2007-05-19.

¹⁴ "[Industry Information: Fact Sheet: Statistics: Tax Payments - Commercial Casinos](#)". American Gaming Association. Retrieved 2007-05-18.



In spite of the arguments made by critics of gambling and the inability of the legislature to embrace this economic development opportunity, depending on the outcome of the challenge launched by Stand Up for California against the federal recognition of the Pamunkey Indians winning federal recognition this year¹⁵, the possibility of casino gaming coming to Virginia is an ever increasing reality. As reported in The Washington Post {this decision} “... could have a big impact beyond the borders of the Pamunkey Indians’ 1,200-acre reservation east of Richmond, The tribe’s new status means it could eventually open stores that sell tax-free goods and pursue gambling ventures in a state that has long rejected casinos.”¹⁶

Gaming in any form has a “long established tradition in both Virginia and the Nation, with a strong majority (85%) of adults who approve of casino gaming.”¹⁷ The 2013 study conducted by the staff of the Hampton Roads Transportation Planning Organization (HRTPO) and the Hampton Roads Planning District Commission (HRPDC) at the request of the Senate Committee on General Laws and Technology concluded:

- “The median estimate for gross gaming receipts resulting from casino gaming in Hampton Roads is \$375 million, which is consistent with estimates from casino development companies, where estimates range from \$357 to \$550 million.”¹⁸
- “In spite of the fact that casino gaming has been the subject of numerous in-depth studies, there is little consensus with respect to the social and economic impacts of gaming.”¹⁹

Legalizing gaming in the Commonwealth of Virginia will also bring a sorely needed source of revenue to its host city. If that host city were Portsmouth, 10% of the taxes imposed on the establishment would be awarded to this City. For a fiscally stressed city such as ours, this infusion of revenue would be greatly welcomed.

The Resolution adopted on December 18, 2013 by the Portsmouth City Council supporting Casino Gaming and Senator Lucas’ 2014 efforts in this area stands as well for the 2016 session of the General Assembly. We continue to stand by our former Resolution, and we support Senator Lucas’ efforts in this General Assembly Session.

¹⁵ “Pamunkey tribe’s federal recognition put on hold” [PilotOnline.com](#) – October 9, 2015

¹⁶ “A renowned Virginia Indian tribe finally wins federal recognition” [The Washington Post](#) July 2, 2015

¹⁷ “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)

¹⁸ “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)

¹⁹ “Casino Gaming In Hampton Roads” September 2013 – HRTPO/HRPDC (Page 1)



A RESOLUTION BY THE COUNCIL OF THE CITY OF PORTSMOUTH, VIRGINIA IN SUPPORT OF SENATOR L. LOUISE LUCAS' SENATE BILL 19 PRESENTED TO THE 2014 GENERAL ASSEMBLY.

WHEREAS, the Virginia Supreme Court's ruling in *Meeks vs. VDOT and Elizabeth River Crossings OPCO, LLC*, allows the imposition of an initial tolls burden of over \$1,000 per year on the average commuter through the Midtown/Downtown Tunnels and the Martin Luther King Expressway beginning in February 2014 and the siphoning of a huge amount of funds out of the Portsmouth and Hampton Roads economies; and

WHEREAS, the tolls' burden on citizens and businesses that use the project facilities and the funds being removed from the Hampton Roads economy will increase annually by 3.5% for 58 years; and

WHEREAS, during the 2014 General Assembly Session, Senator L. Louise Lucas has introduced Senate Bill 19 (SB19) relating to the Virginia Toll Relief Act; Virginia Casino Gaming Commission to allow casino gaming within the Commonwealth of Virginia under certain conditions, and

WHEREAS, under the proposed new Virginia Code of Sections 59.1-577 and 59.1-578 in Article 7 of SB 19, 90% of the proceeds from the taxes imposed on gaming establishments will be paid into a Toll Mitigation Fund to offset the tolls imposed for the construction and maintenance of the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project, with the remaining 10% collected to be placed in the State Local Casino Gaming Proceeds Fund; and

WHEREAS, under the provisions of the proposed new Virginia Code Section 59.1-580, in Article 7 of SB 19, the proceeds from the taxes imposed on gaming establishments will be paid into the State Local Casino Gaming Proceeds Fund to pay each locality in which casino gaming establishments are located and in which admission taxes are collected.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Portsmouth, Virginia, that it supports and endorses the legislative efforts of Senator Lucas to have the General Assembly pass legislation to allow casino gaming within the City by which by which revenues from casino gaming can help mitigate the cost of the tolls thereby reducing the severe financial burden and negative impacts on the citizens and businesses in Portsmouth and the entire region; and

BE IT FURTHER RESOLVED that the City Manager is directed to forward a copy of the forgoing Resolution to Senator L. Louise Lucas and the other Portsmouth General Assembly delegation.

ADOPTED by the Council of the City of Portsmouth, Virginia at a meeting held on December 18, 2013.

Teste:

Delmay White
City Clerk



3. Virginia Port Authority – Virginia International Gateway (Formally A.P. Maersk Terminal or APM)

The Port of Virginia in Portsmouth has been an integral business partner with the City since its inception in the early 1970's. It is widely recognized and acknowledged that the Virginia Port Authority (VPA) is the most valuable publicly owned asset in the Commonwealth of Virginia. Since its inception, it has contributed immeasurably to the State's tax revenues, business profitability, business growth and employment throughout the Commonwealth.

Serious concerns have arisen regarding the State acquiring ownership of Virginia International Gateway (formerly Maersk). While the City recognizes the concerns of the State, to eliminate the extremely expensive 20-year lease; the State must in turn recognize the significant impact the loss of this over \$6 million tax revenue will have on a financially strapped City should it take over this facility without making the City whole.

The City is not opposed to the State taking ownership of the Virginia International Gateway, as long as it is made financially whole in the transaction.

4. Full Funding of Enterprise Zones (EZ)

Enterprise Zones, otherwise known as EZ was established by the General Assembly in 1982. This State and local partnership has proven to be one of the most effective methods of using incentives to stimulate the economy. Over the past four General Assembly sessions, there has been a push to either expand this program to include localities that are not distressed, or to eliminate it completely. Between 2011 and 2013 there were several legislative attempts to allow for status based on distress factors in a particular area (census tract) of a locality, rather than locality-wide distress.

The Portsmouth City Council urges the General Assembly to not expand this program without also increasing the funding levels. We further recommend that if this program is expanded, then it should be made into a two-tier system, one for distressed communities, and the other for communities with distressed areas located within them.



5. Increase Public Transit Funding – Hampton Roads Transit (HRT)

Transit funding is an important regional priority policy issue. As such, it should be an eligible expense for existing and future regional transportation funding. The existing funding for HRT overwhelmingly relies on local general funds. This over reliance hinders HRT's ability to plan and deliver a robust regional transit system that can support our region's economic competitiveness and mobility. Furthermore, it limits the ability of local governments to make investments across a broad range of municipal needs, including transportation, public education and public safety.

Two critical points that should be addressed to assist HRT in this session of the General Assembly are:

- “For Northern Virginia and Hampton Roads regional transportation revenues collected by the existing 2.1 percent gas tax, establish the same or similar protective floor to the wholesale price per gallon that is used to compute state wholesale fuel taxes.
- Address the capital funding gap associated with the end of allocations from transportation revenue bonds authorized in 2007. Explore making Capital Project Revenue (CPR) bonds revolving to support statewide transit capital program stability.²⁰ “

The Portsmouth City Council supports this region's request for the Joint Legislative Audit and Review Commission (JLARC) to conduct a study to review the equity of transportation funding.

²⁰ “ Final TDCHR Board Meeting – 09.24.15 (Adopt Final 2016 Policy Priorities: 10.22.15)”



6. Full K-12 Education Funding

The Portsmouth City Council stands with our Portsmouth Public School Board in opposing any funding methodology that results in further shifting funding responsibility from the state to localities. We support a Joint Legislative and Audit Review Commission's (JLARC) study to determine how the Standards of Quality (SOQ), Standards of Learning (SOL), and Standards of Accreditation (SOA) requirements may be revisited and adequately funded.

We furthermore support any adequacy and equity studies for K12 state funding. Recent studies and articles addressing this issue include:

- "JLARC: Va. Spending drop squeezes schools" Richmond Times Dispatch – September 14, 2015
- JLARC Study – *Low Performing Schools in Urban High Poverty Communities* – June 2014 – Recommendations: *More grants, teacher residency programs*
- USDOE Office for Civil Rights letter – October 1, 2014 – *The problem of unequal access to Educational Resources*
- Center on Budget and Policy Priorities – May 20, 2014 – *Most States Funding Schools less Than Before the Recession*

As soon as practicable, we ask that you restore the SOQ Support Cost Reductions which have been in place since 2007. Finally, please fully fund the cost of K12 Rebenchmarking.

7. Host Cities of the Virginia Port Authority (VPA) Equitable Funding

For more than thirty (30) years, the City of Portsmouth, along with the other host cities of the VPA have campaigned for more equitable funding from the State to address the impact the VPA, has on our respective jurisdictions.

While we are pleased to have the VPA operating in Portsmouth, and we have been good business partners for 66 years, the fact remains that its daily operations comes at a tremendous cost to our City. More than 800 trucks a day enters and exits from these facilities. VPA's business enterprise occupies 1,170 acres of nontaxable prime waterfront property in three host cities. In Portsmouth, the total assessed land and building value for VPA property for FY15 is \$126,476,870. If this property was taxable it would have generated well over \$1.6 million in Real Property taxes.

The Portsmouth City Council requests that the General Assembly and the Governor address this matter by either fully funding the new formula it approved in 2000 or devise another method in which payments to the host cities is much more equitable than the current outdated methodology.



8. Jail Per Diem Payments for State-Responsible Inmates

Over the years, the Virginia's legislature has increasingly shifted the costs for criminal justice onto local governments. "During the recession, the State reduced its share of per diem rates paid to local and regional jails from \$8 to \$4 per day for local-responsible inmates, and from \$14 to \$12 per day for state-responsible inmates.²¹" Over this same period of time the definition of a "state-responsible inmate" was also changed by the legislature from felons with sentences of two-years or more, rather than the prior designation of felons with sentences of one year or more. These changes have significantly increased the number of inmates that are now considered to be local-responsible inmates along with the cost of housing and caring for them.

In spite of the economic recovery the State is experiencing from the Great Recession, these changes remain in place. It is estimated that these changes have shifted "at least \$19 million in new annual costs to local governments and tax payers²²." The City of Portsmouth operates a local jail, and is host to the Hampton Roads Regional Jail with local-responsible inmates in both facilities. While the change in status of inmates is relatively new, the reductions in per diem rates over the past two years has resulted in an approximate loss of \$200,000 per year to the City of Portsmouth.

Therefore, the Portsmouth City Council stands in agreement with the recommendations to the Governor included in the Governor's Task Force for Local Government Mandate Review and asks that the General Assembly act upon these recommendations in this session of the legislature.

9. The Governor's Community Wealth Building Fund

This is a new concept being introduced by Virginia First Cities (VFC), of which Portsmouth is a member. It is conceived that this fund could provide a means by which the Commonwealth could "effectively incentivize localities to undertake holistic and creative efforts to address long-standing patterns of poverty and social and economic inclusion."²³ This fund would be authorized in the FY2017 - 2019 biennial budget with an initial capitalization of \$10 million in State General Funds for the first year, with increases over the next three fiscal years with a cap of \$15 million.

²¹ "Governor's Task Force For Local Government Mandate Review" Interim Report to the Governor – August 27, 2015 - page 9

²² Governor's Task Force For Local Government Mandate Review" Interim Report to the Governor – August 27, 2015 - page 9

²³ Virginia First Cities – 2016 Virginia General Assembly Package



Many of VFC's membership, similar to Portsmouth, either have average poverty rates higher than the national standards, or pockets of high poverty within their jurisdictions. In a March 15, 2015 article reported in Forbes, the contributor, Tim Worstall, argues that the true US poverty rate is 4.5% not the reported 14.5%.²⁴ Either way, the poverty rates of the VFC members exceeds either estimate. For Portsmouth the 5-year estimate of the overall number of persons in poverty as reported by the U.S. Census Bureau for the period of 2009 – 2013 was 16,988 persons representing 18.4% of the City's population. According to this same chart, the number of children in poverty in our City was 6,857 representing 30.7% of the children in our City.²⁵ According to the Commission on Local Government for the Commonwealth of Virginia, as of 2013 Portsmouth ranked 13 on the list of fiscally stressed localities.²⁶

The Portsmouth City Council sees a high potential value in a Fund of this nature for it will provide an essential tool in formulating means to address this problem. We therefore fully support VFC in this effort.

10. Medicaid Funding Expansion

The Medicaid program is jointly funded by the federal government and states. The federal government pays states for a specified percentage of program expenditures, called the Federal Medical Assistance Percentage (FMAP). FMAP varies by state based on criteria such as per capita income. The Affordable Care Act, also known as Obama Care Medicaid Expansion is one of the biggest milestones in health care reform. Obama Care's Medicaid expansion expands Medicaid to our nation's poorest in order cover nearly half of uninsured Americans. However, a change to the law will leave millions of working families without coverage by 2016. Poor working families are the most likely to not have insurance due to affordability. Medicaid expansion helps "cover the gap" between current Medicaid eligibility and families being able to afford private health insurance using marketplace subsidies. Under the Affordable Care Act, states that allow more people onto their Medicaid rolls can pass along most of the cost to the federal government. Once the law is fully implemented in 2020, states are supposed to pay 10 percent.

²⁴ "The True US Poverty Rate Is 4.5% Not 14.5%" Forbes – March 15, 2015

²⁵ "Table One. Counties and Cities in Commonwealth of Virginia with at Least 18% Poverty Rate" American Community Survey 5-year estimates (2009 -2013), U.S. Census Bureau

²⁶ "Report on Comparative Revenue Capacity, Revenue Effort And Fiscal Stress of Virginia's Cities and Counties FY 2013" Commission on Local Government Commonwealth of Virginia – January 2015.



It was recently reported that Virginia's Medicaid program will cost close to \$1 billion more over the next two years. This cost must be addressed. The funds allocated to cover the growth in this program reduces the funds that is available for other priorities in the commonwealth, to include increased funding for K-12 education. Virginia's refusal to expand Medicaid under the federal Affordable Care Act, is causing a loss of coverage to an estimated 400,000 people who presently do not have insurance. Furthermore, the expansion of Medicaid would have positive economic benefits for the state. The Virginia Hospital & Healthcare Association estimated that it would provide a \$3.9 billion boost to the economy annually, and federal funds could support over 30,000 jobs.²⁷

The Portsmouth City Council sees great value to the commonwealth and its citizens in expanding Medicaid under the Affordable Care Act and encourage the General Assembly to reconsider its opposition to this expansion.

²⁷ [The Huff Post](#) "Virginia Medicaid Expansion Got A Boost With Terry McAuliffe's Win, But Republicans Are Still Against It" November 6, 2013.



2016 General Assembly Legislative Package Endorsements



2016 Legislative Packages Endorsements:

The Portsmouth City Council endorses and supports the legislative packages and initiatives of several organizations to include, but not limited to those listed below. We furthermore empower our City Manager and her designee/s to represent the City's interests on all matters pertaining to these and any other legislative and budgetary initiatives that impact the City of Portsmouth:

- **Hampton Roads Planning District Commission**
- **Hampton Roads Transportation Planning Organization**
- **Hampton Roads Transportation Accountability Commission**
- **Hampton Roads Transit**
- **Tidewater Community College**
- **Treasurers' Association of Virginia**
- **Virginia Commissioner of Revenue's Association**
- **Chesapeake Bay Foundation**
- **Virginia First Cities**
- **Virginia Library Association**
- **Virginia Municipal League**
- **Virginia School Boards Association**
- **Virginia Community Criminal Justice Association**



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