

**FAIRFAX COUNTY,  
VIRGINIA OFFICE OF THE  
COUNTY ATTORNEY**

**MEMORANDUM**

**TO:** Audrey C. Clark, Director  
**FROM:** Building Plan Review and Permits Division  
Department of Planning and Zoning

**DATE:** March 6, 2006

Elizabeth D. Teare^^  
Assistant County Attorney

**REF.NO.:** 90329

**SUBJECT:** Issue Regarding Whether the Virginia Uniform Statewide Building Code  
May Be Enforced Against the Washington Metropolitan Area Transit  
Authority ("WMATA")

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**THIS MEMORANDUM CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS AND IS NOT TO BE RELEASED TO THE PUBLIC. THIS MEMORANDUM IS EXEMPT FROM THE DISCLOSURE PROVISIONS OF THE VIRGINIA FREEDOM OF INFORMATION ACT. VA. CODE ANN. § 2.2-370S(A)(7) (2005).**

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**INQUIRY:**

Whether the County has the legal authority to enforce the provisions of the Virginia Uniform Statewide Building Code ("VUSBC") against the Washington Metropolitan Area Transit Authority ("WMATA").

**OPINION:**

Yes, the County has the authority to enforce the provisions of the VUSBC against WMATA.

**BACKGROUND :**

In a Memorandum dated January 31, 2006, you asked for assistance in addressing a motion approved by the Board of Supervisors on January 9, 2006. That motion directed County staff to evaluate a Resolution of the Mount Vernon Council of Citizens' Associations requesting County staff to "inspect and enforce all applicable rules and regulations regarding public restrooms" in metrorail station areas in Fairfax County. A copy of your memorandum and the Board's motion on January 9, 2006, is attached hereto as Exhibit A. In light of that directive, you have asked for guidance as to whether the VUSBC "is applicable and enforceable at WMATA stations."

## **DISCUSSION:**

In Chapter 627 of the Acts of Assembly of 1958, the Commonwealth of Virginia entered into the Washington Metropolitan Area Transit Regulation Compact (the "Compact"), along with the state of Maryland and the District of Columbia. The United States Congress consented to the Compact (*see* 74 Stat. 1031 (1960)). The Compact subsequently was amended and reenacted by the Virginia General Assembly in Title III, Chapter 736 of the 1997 Acts of Assembly, and a copy of that legislation is attached as Attachment B. It defines WMATA as a "body corporate and politic" (Art. III, § 4), which can "sue and be sued" (Art. V, § 12[a]). Crucially, for purposes of your inquiry, Article XVI § 75 further states:

The [WMATA] Board shall comply with all laws, ordinances and regulations of the Signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

"Signatories" are defined in Article I as "the State of Maryland, the Commonwealth of Virginia and the District of Columbia." Moreover, Article XVI § 76(e) provides:

[WMATA] shall have the power to adopt rules and regulations for the safe, convenient, and orderly use of the Transit facilities owned, controlled, or operated by the [WMATA], including the payment and the manner of the payment of fares or charges therefor, the protection of the Transit facilities, the control of traffic and parking upon the Transit facilities, and the safety and protection of the riding public. In the event that any such rules and regulations contravene the laws, ordinances, rules, or regulations of a Signatory or any political subdivision thereof which are existing or subsequently enacted, these laws, ordinances, rules, or regulations of the Signatory or the political subdivision shall apply and the conflicting rule or regulation, or portion thereof, of [WMATA] shall be void within the jurisdiction of that Signatory or political subdivision.

Consistent with this legislation, the County and WMATA subsequently expressly agreed that WMATA is subject to the jurisdiction of the County. That agreement, styled "Master Agreement Between Washington Metropolitan Area Transit Authority and Fairfax County" (hereinafter "Master Agreement"), is dated February 13, 1975, and a copy is attached as Attachment C. The Master Agreement provides, in pertinent part, that the Authority "is an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland." (Master Agreement, p. 1.) The Master Agreement further explicitly states in relevant part in its preamble: "[T]he Authority shall comply

with all laws, ordinances and regulations of the signatories and the political subdivisions and agencies thereof with respect to . . . zoning, signs and buildings." (Master Agreement, p. 1.) After first defining "County Facilities" to include all structures "under the jurisdiction of the County," the Agreement also states that the design of such facilities shall conform to, among other things, "Fairfax County standards and specifications (including County building, electrical, plumbing and mechanical codes)." (Master Agreement, Art. I, U h; Art. IV, U 22(c).) The Master Agreement further provides that "any . . . County Department... may from time to time inspect the construction [of WMATA facilities] to determine compliance with laws and ordinances of the County or the State." (Master Agreement, Art. X, T| 42.) WMATA also agreed as part of the Master Agreement "to require its contractors to comply with all laws and ordinances that are applicable." (Master Agreement, Art. X, K 42.)

The Virginia General Assembly, in entering into the above-referenced Compact to create WMATA, plainly stated that the entity is subject to the jurisdiction of the County. If there was any doubt about that conclusion, the terms of the Master Agreement explicitly provide that County building, electrical, plumbing and mechanical codes are enforceable by the County against WMATA. Moreover, the existing Master Agreement gives the County the right to conduct reasonable inspections of the WMATA facilities to determine their compliance with the laws and ordinances of the County. Based on all of these provisions, this Office is of the opinion that WMATA is indeed subject to the County's jurisdiction for purposes of enforcing the VUSBC.

### **CONCLUSION:**

The County has the legal authority to enforce the provisions of the VUSBC against WMATA pursuant to the Compact creating WMATA and the existing Master Agreement between WMATA and Fairfax County.

Attachments

cc: Gerald W. Hyland, Supervisor, Mount Vernon District  
Ray Pylant, Director, Commercial Inspections Division, DPWES



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** January 31, 2006

**TO:** Elizabeth Teare  
Assistant County Attorney

**FROM:** Audrey C. Clark, Director:  
Building Plan Review and Permits Division

**SUBJECT:** Request for Assistance

A recent Board Matter, number 7a (see attachment) from the January 9, 2006 meeting, requests County staff to inspect and enforce all applicable rules and regulations regarding public restrooms located at Washington Metropolitan Transit Authority (WMATA) stations. Please investigate this matter on behalf of the Building Official and determine if the Virginia Uniform Statewide Building Code is applicable and enforceable at WMATA stations.

Attachment

cc: James W. Patteson, Director, Land Development Services, DPWES Ray  
Pylant, Building Official, Fairfax County

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CT>  
PO  
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Department of Public Works and Environmental Services  
Land Development Services, Building Plan Review and Permits Division  
12055 Government Center Parkway, Suite 316  
Fairfax, VA 22035-5500  
Phone: 703-222-0114, TTY: 711, Fax: 703-324-1614



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[www.fairfaxcounty.gov/dpwe](http://www.fairfaxcounty.gov/dpwe)

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**Exhibit A**