Issue Presented

You ask whether the City of Hampton is authorized to enact a proposed ordinance entitled "The Hampton Housing Quality Assurance Ordinance"1 ("Hampton Housing Ordinance").

Response

It is my opinion that the Hampton Housing Ordinance is unauthorized to the extent that the ordinance applies in areas other than conservation and rehabilitation districts designated by the city’s local governing body, or it applies in areas other than those designated as blighted under § 36-49.1:1.

Facts

You relate that the City of Hampton desires to implement the Hampton Housing Ordinance in order to improve and preserve residential housing in the city through a program of inspections that comply with Part III of the Virginia Uniform Statewide Building Code regulations.2 You state that the city has selected two "venture" areas to test the ordinance, and ask whether the city may enact the proposed ordinance.

The Hampton Housing Ordinance makes it unlawful for any person to reoccupy a rental unit or for any owner or agency to permit reoccupancy of any unit that is vacant on or after the effective date of the ordinance, in the areas specified, until the building official has issued a quality assurance certificate.3 The areas specified in the ordinance are Hampton Housing Venture area neighborhoods and areas in the city authorized to request the ordinance.4 The Hampton Housing Ordinance defines "quality assurance certificate" as a

The Hampton Housing Ordinance is unauthorized to extent ordinance applies in areas other than conservation and rehabilitation districts designated by city’s local governing body or blighted areas.

The Honorable Thomas D. Gear
Member, House of Delegates
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written document, signed by the local building official or his
designee, authorizing an applicant or his designee(s) to occupy a
vacant dwelling unit as a resider, subject to the limitations specified
in the certificate.\(^5\)

The Hampton Housing Ordinance exempts certain dwellings from
the quality assurance certificate requirement.\(^6\) Any nonexempt
owner, however, who fails to comply with the ordinance, shall be
guilty of a misdemeanor, punishable by a fine not to exceed $1,000
for each offense.\(^7\) The quality assurance certificate appears to be
the equivalent of a certificate of compliance.\(^8\)

**Applicable Law and Discussion**

Virginia has long followed the Dillon Rule of strict construction.
"This rule provides that municipal corporations have only those
powers that are expressly granted, those necessarily or fairly
implied from expressly granted powers, and those that are essential
and indispensable. When a local ordinance exceeds the scope of
this authority, the ordinance is invalid."\(^9\)

Section 36-98 directs and empowers the Board of Housing and
Community Development "to adopt and promulgate a Uniform
Statewide Building Code." Section 36-98 provides that the Building
Code "shall supersede the building codes and regulations of the
counties, municipalities and other political subdivisions and state
agencies."\(^10\) Section 36-105 addresses the actions a locality may
take regarding an existing residential structure.

A 1986 opinion of the Attorney General concludes that a locality
has no authority to implement a policy requiring the owner of
premises to obtain an occupancy permit or a certificate of
compliance when the premises are vacated prior to reoccupancy,
where the issuance of the permit is conditioned on the owner
granting access for an inspection and remedying any violations that
are found.\(^11\) The Supreme Court of Virginia has stated that "[t]he
legislature is presumed to have had knowledge of the Attorney
General's interpretation of the statutes, and its failure to make
corrective amendments evinces legislative acquiescence in the
Attorney General's view."\(^12\) In 1994, the General Assembly
amended § 36-105 by adding a fourth paragraph specifically
authorizing localities to "require the issuance of certificates of
compliance with current building regulations for existing residential
buildings located in conservation and rehabilitation districts."\(^13\)
When new provisions are added to existing legislation by
amendment, a presumption arises that, "in making the amendment
the legislature acted with full knowledge of, and in reference to, the existing law upon the same subject and the construction placed upon it by the courts."\textsuperscript{14} It is presumed further that the legislature acted purposefully with the intent to change existing law.\textsuperscript{15} Therefore, the General Assembly altered the interpretation of § 36-105 by this Office by specifically authorizing localities to require certificates of compliance in certain situations. Section 36-105 was further amended in 1995 and 2002.\textsuperscript{16} The fourth paragraph of § 36-105 now provides:

\begin{quote}
The local governing body may, upon an affirmative finding of the need to protect the public health, safety and welfare, \textit{require the issuance of certificates of compliance} with current building regulations for existing residential buildings \textit{located in conservation and rehabilitation districts designated by the local governing body, or in other areas designated as blighted pursuant to § 36-49.1:1,}\textsuperscript{17} after inspections of such buildings upon termination of the rental tenancies or when such rental property is sold, or at specific time intervals, for a specific property, but not more than once each calendar year upon a separate finding that such additional inspections are necessary to protect the public health, safety or welfare. If, however, an inspection has been conducted within the last twelve-month period, no inspection shall occur upon the termination of a rental tenancy or upon a change in ownership.… Such certificate of compliance shall be issued in accordance with the administrative provisions of the Building Code. [Emphasis added.]
\end{quote}

Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.\textsuperscript{18} Section 36-105 is specific in delineating when a locality may require the issuance of a certificate of compliance. Upon making an "affirmative finding of the need to protect the public health, safety and welfare,"\textsuperscript{19} a locality may require the issuance of a certificate of compliance for certain properties in designated areas.\textsuperscript{20}

The Hampton Housing Ordinance applies in Hampton Housing Venture area neighborhoods and in designated areas of the city authorized to request the ordinance.\textsuperscript{21} The ordinance does not provide a definition of "venture area," nor does it explain what constitutes a designated area that is authorized to request the
ordinance. In addition, I am unable to find in either the Hampton City Charter or any city ordinance a definition of the term "venture area." Section 36-105 is specific in the findings a local governing body must make in order to require the issuance of a certificate of compliance or its equivalent. Section 36-105 authorizes a locality to require "the issuance of certificates of compliance ... for existing residential buildings located in conservation and rehabilitation districts designated by the local governing body, or in other areas designated as blighted pursuant to § 36-49.1:1." The Hampton Housing Ordinance appears to apply to areas other than city-designated conservation and rehabilitation districts or blighted areas. To the extent it does so, I must conclude that the Hampton Housing Ordinance is unauthorized by Virginia law.

Conclusion

Accordingly, it is my opinion that the Hampton Housing Ordinance is unauthorized to the extent that the ordinance applies in areas other than conservation and rehabilitation districts designated by the city’s local governing body, or it applies in areas other than those designated as blighted under § 36-49.1:1.

1Your inquiry pertains to Article VIII, Chapter 9 of The Hampton Housing Quality Assurance Ordinance entitled "Hampton Housing Quality Assurance Certificate Program, Building and Development Regulations" [hereinafter Hampton, Va., Ordinance].


3Hampton, Va., Ordinance § 9-187, supra note 1.

4Id.

5Id. § 9-186.

6Id. § 9-188.

7Id. § 9-197.


9City of Chesapeake v. Gardner Enterprises, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997) (citations omitted); see also op. no. 01-096 to William C. Shelton, Dir.,
10See also 13 Va. Admin. Code 5-61-125 (providing that Part III of Virginia Uniform Statewide Building Code regulations "supersedes all building maintenance codes and regulations of the counties, municipalities, political subdivisions and state agencies that have been or may be enacted or adopted").


14Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913).


17Section 36-49.1:1 addresses the authority and procedures for localities to acquire or repair property that is "blighted," as that term is defined in § 36-49(1).


19For the purposes of this opinion, I assume the city council has made, or will make, such a finding.

20Section 36-105.

21Hampton, Va., Ordinance § 9-187, supra note 1.