



ANCC FOUNDATION Did You Know?



Fairfax: An Independent City

Last month's (March 2021) "Did You Know" article followed the journey of Army Navy Country Club's Fairfax property from its earliest days as part of Northumberland County (1648) to its incorporation in 1961 as an "Independent" City.

Fairfax: An Independent City

Background. There are forty-one "independent cities" in the United States, thirty-eight of which are in the Commonwealth of Virginia.¹ Beginning with the 1871 Virginia constitution (drafted to recognize West Virginia as a separate state), all municipalities incorporated as "cities" have been "independent cities". As such they are geographically, politically, and administratively independent of any county. In Virginia independent cities are classified as either first-class or second-class depending upon if they have their own circuit court or not. The City of Fairfax is a second-class city because it shares a circuit court with the County. Because the Courthouse belongs to the County, when you are on the Fairfax County Courthouse campus you are not in the City of Fairfax, you are in the County. Under Virginia law an independent city can serve as the County seat even through it is not part of the county – this is the case with Fairfax County.

Fairfax County/City Relationship. Each city/county relationship is unique with one jurisdiction or the other providing services to the other. The following is a summary of the Fairfax County/City relationship:

- 1) Courts. While Fairfax City has its own district court², it utilizes the Fairfax County Circuit Court, the court with jurisdiction for all jury trials.
- 2) Schools. The City of Fairfax has a five-member School Board and owns, maintains, and provides capital improvement funding for four schools: Fairfax High School, Catherine Johnson (formerly Lanier) Middle School, Providence Elementary School, and Daniel's Run Elementary School. The operation of the schools is contracted (Schools Service Agreement) to Fairfax County.
- 3) Property. While the City controls zoning, property assessments, and property tax rates, the County records deeds for properties within the City.

¹ The other three are St. Louis, MO; Baltimore, MD; and Carson City, NV.

² The Virginia General District Court (GDC) is the lowest level of the Virginia court system and is the court with which most Virginians have contact. The jurisdiction of the GDC is generally limited to traffic cases, other misdemeanors, and civil cases involving amounts of under \$25,000.

- 4) Building Permits and Inspections. The City issues building permits and conducts building inspections for properties within its jurisdiction.
- 5) Permits and Licensing. The City manages its own permits and licensing operations.
- 6) Roads. The City is responsible for the construction and maintenance of City roads.
- 7) Parks. The City is responsible for the construction and maintenance of parks.
- 8) Police and Fire. The City operates its own Police and Fire Departments.³
- 9) Adult and Juvenile Detention Centers. The City uses County detention centers.⁴
- 10) Waste Water Treatment. The City maintains its own wastewater system consisting of 108 miles of wastewater collection lines and 5 wastewater pumping stations, all of which conveys the wastewater to Fairfax County's Noman M. Cole Jr. Pollution Control Plant for treatment and disposal. The City owns capacity at the plant and reimburses Fairfax County for all wastewater treatment and upgrade services.
- 11) Health Department. The Fairfax County Health District, which includes the City, was established by the Commonwealth which supplies funding based upon a formula approved by the General Assembly.
- 12) Library. The County owns and operates the only public library in the City of Fairfax - the City of Fairfax Regional Library and its Virginia Room.

Service agreements between the County and City are generally not mandated by the General Assembly, i.e., they are the result of a free negotiation between the parties involved.

More Than You Need to Know

Annexation

Historically most county/city disputes have involved the annexation of county lands by a city. Under Virginia law, cities may unilaterally annex land from a county, but neither a county or a city may annex the land of another city. In 1979, the Virginia General Assembly temporarily blocked the right of cities to annex territory from counties. The temporary ban has never been lifted, and in 2016 it was extended to 2024.

Annexation boundaries are typically drawn to shift properties that generate a positive cash flow to city control. Shopping centers and industrial sites generate more tax revenue than the cost to provide public services, since commercial properties (unlike residential properties) add no children to the school system. Accordingly, cities typically minimize annexation of residential communities, which require more tax dollars than they generate to provide schools, fire/police, library, and other public services. A potential exception to this rule is up-scale residential communities (e.g., Farrcroft) whose high property appraisals and demographics may produce a positive cash flow.

Many of Virginia's cities have engaged in annexation boundary disputes with adjacent counties, with both sides paying expensive legal bills to challenge proposed changes in city-county

³ The two City of Fairfax fire stations use station numbers (3 and 33) assigned by the County.

⁴ Former City of Fairfax mayor Scott Silverthorne served his three month sentence for a meth-for-sex scheme in the Fairfax County Adult Detention Center.

boundaries. In Hampton Roads, several counties ended the threat of annexation by getting charters from the General Assembly as independent cities, e.g., City of Virginia Beach (Princess Anne County) and the City of Chesapeake (City of South Norfolk and Norfolk County).

Towns. Prior to becoming an independent city in 1961, the current City of Fairfax was chartered as the Town of Fairfax within Fairfax County. Towns rely on the revenue distributions from their parent county, but also may provide services not provided by the county and can levy property taxes over and above the county. Interestingly, a Town can annex other County land while remaining part of the county.

Reversion. If a City were to change its charter to a Town (reversion), the county gains property tax and sales tax revenue from the area that used to be an independent city. However, it is unlikely that a financially healthy city would choose to change its status to that of a town, so the additional costs of providing education and social services to former city residents will probably exceed the additional tax revenue. Accordingly, unless the receiving county has a higher tax rate than the reverting city, a change of a city to town status would likely pose a financial burden on the receiving county.

In 1988, the General Assembly authorized cities with less than 50,000 people (City of Fairfax has a population of approximately 24,000) to revert to town status. There were limits on the option, including:¹

- The proposed change from city to town status will not substantially impair the ability of the adjoining county in which the town will be located to meet the service needs of its population.
- The proposed change from city to town status will not result in a substantially inequitable sharing of the resources and liabilities of the town and the county.

Cities may not become towns unilaterally. Under the 1988 law, the reversion process is managed by the Virginia Commission on Local Government and ultimately decided by a special court with three judges appointed by the Supreme Court of Virginia. Those three judges have the responsibility to ensure there will not be substantial impairment to the county's ability to provide services to its existing residents and there will not be a substantially inequitable sharing of resources and liabilities after reversion. Their decisions can be appealed to the Supreme Court of Virginia for ultimate resolution.

To ensure fairness, the special court that managed the transition stays in existence for 10 years. New judges are appointed as needed to fill vacancies that may occur, so the court can "*enforce the performance of the terms and conditions under which town status was granted.*"⁴ Once a city reverts to being a town, it can never go back to being a city.

