

III. Motorcoach Regulation

While the ACVA Motorcoach Task Force did look at motorcoach practices in other cities, it did not do so in detail. Missing from the discussion was an in-depth analysis of the various regulatory frameworks that other cities use to protect their economies and environments while balancing the interests of residents, businesses, and visitors alike.

What was discussed by the Task Force tended to center around regulations that facilitated bringing *more* motorcoaches into the central historic area in Old Town. Neighborhood routes, idling limits, abandoning the requirement that drivers stay with their vehicle, short and long term neighborhood parking—all of these issues received close attention and, in certain cases, generated stark disagreement.

What was never discussed was the appropriateness of allowing motorcoaches into the Old and Historic District in the first place. Some Motorcoach Task Force members who had experience in the tourism industry indicated that motorcoaches had every right to travel over any road or street they wished and that the imposition of neighborhood restrictions, permitting requirements, or other limitations were either not legal or practical. In the case of Alexandria, it is true that the regulations have not kept pace with what other cities are doing. But this does not mean they cannot be changed. Not only are restrictive regulations the norm in other historic cities, they are considered highly desirable for a healthy tourist economy.

In looking at how other cities have managed the motorcoach traffic generated by tourism, it can be seen that the regulation of motorcoaches is considered essential to the preservation of neighborhoods and historic areas. Tourism has impacts and, if left up to market forces alone, those impacts can be negative. The arguments for motorcoach regulation are based on the fact that there are limits as to how much a community can be exploited.

Why Regulation?

It is important to recognize that the tourism industry is comprised of individual businesses which are no different than other businesses insofar as they all have the same basic profit motive. A motorcoach business is no exception. It charges patrons for its services and seeks to make a profit for its owners. Where a motorcoach business differs is that it is inherently mobile and that it often does not reside in the communities whose resources it seeks to exploit. Being a “business on wheels”, a motorcoach company does not naturally fall subject to the rules and regulations that communities have in place to govern businesses that are fixed by occupying real estate.

Zoning regulations have long been used to limit the types of uses to which an area can be subjected. Because motorcoach traffic is not expressly restrained by land-oriented zoning laws, cities have found it necessary to employ other means to manage this aspect of tourism. This is done with the preservation of the community as an objective.

The ACVA Motorcoach Task Force makes a good point regarding Alexandria: “Every American shares our heritage. Because of Alexandria’s important role in our nation’s history, in a sense, Alexandria belongs to the American people. For those of us who choose to live here, this fact should be taken into account.”¹ The point is well taken. Old Town Alexandria is indeed an historic treasure that the American people can take pride in. But this does not mean that these historic assets should be available for unregulated exploitation by all-comers. Sharing of these assets with visitors should be done in a way that does not harm the community and that will provide long-term benefits for all concerned.

The attractive assets of an historic community—its location, historic sites, architecture, and general ambiance—are really owned by no one. Still, members of the community have a common interest in the maintenance and preservation of these assets for the benefit of all who are part of it, and also for those who come to visit. In economic terms, such assets are termed a “commons”—a set of resources that a community recognizes as being accessible to anyone in the community.

A commons can only continue to be a resource if it is controlled. Unrestrained use will ultimately lead to the destruction of the commons—even while it is valued. This eventuality is called the Tragedy of the Commons, named for a 1968 article in *Science* magazine², which has now found special application in tourism policy. To place the concept in terms of tourism—

“A phenomena that affects public owned resources such as fisheries and grazing lands, also affects tourism. This is the economic principle termed the ‘Tragedy of the Commons’. This occurs when everybody genuinely wants to protect a limited or finite resource, but each person acting in his or her own best interest will inevitably contribute to the destruction of the resource. This happens because being rational, each business person wants to maximize his gain. Since the business owner gets all the benefits from her or his business, while the impact of too many businesses is shared by all merchants. It is to the individual business owners’ benefit, therefore, that he or she have as many and as big of stores as possible because she or he directly realizes all the benefits of expansion and development, but only shares in a portion of the costs of these actions. Since each business owner individually reaches this same conclusion, each business person is locked in a system that compels him or her to increase his or her share of the market (the size of his store, number of stores [or motorcoaches], etc) without limit — in a world that is limited.”³

Because the tourism industry, like most industries, is not inherently self-regulating, many communities have found it necessary to not only regulate tourism in general but to also establish specific rules and regulations for motorcoaches. These regulations provide a framework where the interests of residents, businesses, and tourists can be fairly served and sustained over the long term.

Regulation Through Police Power

Regulation of motorcoaches and other aspects of tourism comes from a state’s constitutionally derived police power. Police power describes the basic right of governments to make laws and regulations for the benefit of their communities. It is the authority conferred upon the states by

the Tenth Amendment and strengthened by the Fourteenth Amendment to the U.S. Constitution and which the states may delegate or allow to devolve to their political subdivisions to enact measures to preserve and protect the safety, health, and welfare of the community.⁴

The Tenth Amendment to the US Constitution states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” State legislatures exercise their police power by enacting statutes, and they also delegate much of their police power to counties, cities, towns, villages, and large boroughs within the state. Those localities that may freely exercise police powers not expressly defined in state statutes are generally known as *home rule* governments. Pure home rule allows local governments to automatically have the powers not claimed by the state or federal governments.⁵

How powers flow from the state level to local governments is left up to the individual states through their state constitutions, state legislatures, and state statutes. Some states allow no powers to devolve to local governments unless they are expressly granted. Virginia is one such state—see Municipal Power, Virginia, and The Dillon Rule on page III-5.

Police power does not specifically refer to the right of state and local government to create police forces, although the police power does include that right. Police power is also used as the basis for enacting a variety of substantive laws in such areas as zoning, land use, fire and building codes, traffic laws, parking, crime, licensing of professionals, liquor, motor vehicles, bicycles, nuisances, schooling, sanitation, environmental protection regulations, and preservation. However, it is impossible to give a complete list of the uses of police power because it is a complete, or plenary, power to regulate anything not delegated to the Federal government by the U.S. Constitution. Thus, the blanket formulation of “health, safety, and welfare” is often used to describe this power.

If a law enacted pursuant to the police power does not promote the health, safety, or welfare of the community, it is likely to be an unconstitutional deprivation of life, liberty, or property. The most common challenge to a statute enacted pursuant to the police power is that it constitutes a “taking”. A taking occurs when the government deprives a person of property or directly interferes with or substantially disturbs a person’s use and enjoyment of his or her property.

The Commerce Clause

Most communities that have enacted restrictive motorcoach regulations have done so using their police power based on public health, safety, and/or welfare arguments. However, counter-arguments have been raised based on the commerce clause of the U.S. Constitution (Article 1, Section 8, Clause 3) which empowers the United States Congress “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The implication of this counter-argument is that since motorcoaches represent commerce within and between states, regulation of such motorcoaches must come from the United States Congress as it is an express power delegated to them by the Constitution.

The commerce clause was raised by some in the ACVA as the reason that motorcoaches could not be regulated within Alexandria. The argument is false since there is ample precedent where community police power has been used to implement and enforce all sorts of traffic and licensing laws. If the commerce clause had superlative authority over police power, it would be impossible for local communities to enact the commonest traffic regulations, or to regulate anything that had a hint of commerce associated with it.⁷

One 2002 legal case was found where the commerce clause was invoked in an attempt to stay a community from implementing a reservation system that would limit the number of motorcoaches allowed to stop in town at any one time. The case was denied in U.S. District court and the reservation system was established. A federal judge believed that the merits of the commerce clause argument were unlikely to succeed at trial and the regulations that restricted motorcoach visits were allowed to stand. See page VI-12, Kennebunkport.

SEE UPDATE 

It should be noted that there may be limits as to how far a community can go to implement motorcoach regulation. A number of local governments have expressed reluctance to impose special regulations on motorcoaches using state or federal highways within their communities, e.g. Palm Beach, FL and Aiken, SC.⁸ Although not tested in the courts, it was felt that any restriction of such traffic on state or federal roads in some of these locations might not be enforceable. However, the regulation of motorcoaches on local streets and roads has been deemed perfectly legal and proper. This includes all sorts of limitations on motorcoaches up to and including the outright banning of such traffic when it became necessary.

Police Power in the District, Influences on Alexandria

Because Alexandria is so close to the District of Columbia, it should be noted that the District is a peculiar exception to the concept and implementation of police power. Because the District is a federal district and not part of any state, the police power that exists there is ultimately federal in nature. While the District has been free to adopt their own laws since the institution of home rule in 1974, all laws are still subject to review and approval by the United States Congress.⁹

Beginning in 2007, the District of Columbia began to institute a new set of motorcoach rules and regulations. Prior to that year, the District was an open city as far as motorcoaches were concerned. The new rules have instituted some restrictions (the Capitol Hill neighborhood is now off limits) and has begun to require permits for some motorcoaches visiting the city.

Alexandria is still very much an open city for motorcoach operations. Being part of the Washington metropolitan area, Alexandria's motorcoach regulations have probably been influenced by those in Washington for a long time. As a consequence, Alexandria's tourist and motorcoach regulations have lagged behind those that have been developed in other historic cities in the last few decades. Alexandria, needs to change the rules and to bring the regulations into line with what other historic cities are doing. However, this power does not currently rest with the City as it has not yet received the authority from the state.

UPDATE: Another legal case is worthy of note. In 2007, a lawsuit based on the commerce clause was brought against the District of Columbia by the American Bus Association, the National Tour Association and the United Motorcoach Association. The lawsuit claimed that the trips fees recently established by the District discriminated against interstate commerce and conflicted with the requirements of the International Registration Plan. In a decision on 16 May 2008, Judge Clarke ignored all arguments from the plaintiffs and ruled that the fees met all applicable legal standards.

Alexandria's predicament is somewhat complicated by the fact that, in the eyes of state law, Alexandria does not have home rule and cannot enact any law of its choosing. Pure home rule assumes that a local government may exercise all authority not specifically prohibited it by a state's constitution or statutory law. However, being adherents to a legislative framework known as the Dillon Rule, the Virginia General Assembly has been opposed to extending home rule to its localities.¹⁰ In contrast to home rule, the Dillon Rule construes grants of power to localities very narrowly. Essentially, if there is a question about a local government's power or authority, then the local government does not receive the benefit of the doubt. Under the Dillon Rule, one must assume the local government does NOT have the power in question.

Municipal Power, Virginia and the Dillon Rule

To understand how power flows to local governments in Virginia via the Dillon Rule, some background information is necessary. From the earliest days of the United States, the devolution of power from state to the local level was not constitutionally defined. Only after a long period of confusion, conflict and court action, did the matter achieve some resolution.

While the tenth amendment to the United States Constitution greatly limits the powers of the federal government and places a great deal of power with the states, no express mention is made of the power that should be given to local governments. Because state government could never enact or even envision all regulation that the localities within a state would need, local government was left to take and define power in whatever way it saw fit. This would be a fine thing in a perfect world, but by the mid-1800s it had become clear to many that municipal governments did not always operate in the public interest in an even-handed and honest way.



John Forrest Dillon
(1831-1914)
The Dillon Rule.

Enter John Forrest Dillon, an Iowa Supreme Court Judge and author of *Municipal Corporations* (1872), one of the earliest treatises to systematically study the subject. Dillon lived during what was probably the lowest point in the history of America's cities. Many city governments were burdened with corruption and inefficiency, and political machines and bosses controlled the day, particularly in big cities. Graft was shamelessly accepted in the many new public works projects and public utility franchises brought about by changing technology and rapidly expanding growth.¹¹

Judge Dillon was a man who greatly distrusted local governments and local government officials. He is quoted as saying that "those best fitted by their intelligence, business experience, capacity and moral character" usually did not hold local office, and that the conduct of municipal affairs was generally "unwise and extravagant." This was not an unreasonable observation at the time.¹²

Dillon had studied medicine at Iowa State University at the age of 19. Shortly after beginning his practice, he abandoned it to study law and was admitted to the Iowa bar in 1852. He was elected as the Scott County prosecutor after a brief private practice in 1853, and was then elect-

ed to a judgeship in Iowa's 7th Judicial Circuit in 1858. He was elevated to the Iowa Supreme Court in 1862 serving until 1869, when he was appointed by President Grant to the 8th Circuit. Judge Dillon was involved in a landmark case that established that a state legislature is recognized as having plenary (complete) control over municipal government except as limited by that state's constitution or the federal constitution. This rule of law is known as Dillon's Rule or more commonly as The Dillon Rule.

In an Iowa State Court decision in 1868, and subsequently upheld by the U.S. Supreme Court in *City of Clinton v. Cedar Rapids and Missouri River Railroad Company*, 24 Iowa 455 (1868), state supremacy was codified.¹³ Judge Dillon adjudicated this case and stated the following in his 1872 *Municipal Corporations*:

“It is a general and undisputed proposition of law that a municipal corporation possesses, and can exercise, the following powers, and no other: First, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; third, those essential to the declared objects and purposes of the corporation not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.”¹⁴

The effect of this ruling was far reaching and enabled many states to reassert control over the power wielded by the various municipalities within their borders. Still, the application of the Dillon Rule by the states was by no means universal nor uniform. Each state has been left to its own methods in defining how powers should be apportioned to the local level.

Thirty-nine states employ the Dillon Rule to define the power of local governments. Of those 39 states, 31 apply the rule to all municipalities and eight (such as California, Illinois, and Tennessee) appear to use the rule for only certain municipalities. Ten states do not adhere to the Dillon Rule at all. And yet, the Dillon Rule and home rule states are not polar opposites. No state reserves all power to itself, and none devolves all of its authority to localities. Virtually every local government possesses some degree of local autonomy and every state legislature retains some degree of control over local governments.¹⁵

What is most remarkable about the Dillon Rule is even though it is not mentioned once in Virginia law or policy, a fact interesting in itself, it nonetheless has been used as the standard for interpretation by state and local courts for more than 100 years. Though lacking the express words of policy, Virginia remains one of the few stalwart Dillon Rule states.¹⁶

The primary argument in support of the Dillon Rule is that it promotes uniformity of law and practice. This is said to be an essential element of building a fair and attractive climate for business (businesses don't want to deal with scores of different legal, regulatory and taxation schemes).¹⁷

The Dillon Rule is not without its detractors. Some criticize that it has been used to stifle action on the local level. It often crops up in local arguments for maintaining the status quo, the implication being that obtaining power from the state is too complicated or time-consuming, thus grew “the mindset associated with the ‘negative presumption’ of Dillon – that localities can’t do things. It handicaps local or regional thinking about public-private solutions that require speed, decision-making at the lowest levels and collaboration.”¹⁸ It is also sometimes seen as an artifact of 19th century thinking and no longer applicable in an age of modern electorates. It has also garnered much blame for the failure of localities to control sprawl and over-development.¹⁹

The Code of Virginia

In looking at what the state code had to say about motorcoach regulation, two statutes were recommended that deal with the authority of Alexandria to regulate motorcoach traffic within the city and in its residential areas.²⁰ Both are very general and do not differentiate categories of vehicular traffic.

Under *Title 15.2 – Counties, Cities and Towns, Chapter 20 – Streets and Alleys*:

§ 15.2-2028. Regulation of traffic.

Every locality may regulate and control the operation of motor and other vehicles and the movement of vehicular and pedestrian travel and traffic on streets, highways, roads, alleys, bridges, viaducts, subways, underpasses and other public rights-of-way and places, provided such regulations shall not be inconsistent with the provisions of Chapter 13 (§ 46.2-1300 et seq.) of Title 46.2.

(Code 1950, § 15-77.55; 1958, c. 328; 1962, c. 623, § 15.1-891; 1997, c. 587.)

Under *Title 46.2 – Motor Vehicles, Chapter 20 – Powers of Local Governments*:

§ 46.2-1305. Regulation of vehicular and pedestrian traffic on roadways and parking areas in residential subdivisions.

The governing body of any county, city, or town which has adopted ordinances under the provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, may require as a part of such land use regulations for residential subdivisions employing roadways and parking areas not in public ownership, the posting and maintenance of signs or other appropriate markings regulating the operation and parking of motor vehicles and pedestrian traffic, and may adopt ordinances applying the regulations to existing and future residential subdivisions.

(1972, c. 471, § 46.1-181.2; 1989, c. 727; 2003, c. 418.)

While both of these statutes clearly give Virginia cities the authority to regulate all traffic, including motorcoaches, neither of these provide the authority to regulate different types of motorized traffic in different ways. Automobiles, motorcycles, commercial trucks and motorcoaches are types of vehicular traffic that are lumped together and treated as equals. Because motorcoaches or buses are not expressly mentioned in either statute, the power to single out

motorcoaches for special regulation is in doubt and, by applying the Dillon Rule, therefore, does not exist as far as these two statutes are concerned.

Are there any Virginia statutes that specifically address motorcoach traffic? There is one. Also under *Title 46.2 – Motor Vehicles, Chapter 20 – Powers of Local Governments* is § 46.2-1304.

§ 46.2-1304. Local regulation of trucks and buses.

The governing bodies of counties, cities, and towns may by ordinance, whenever in their judgment conditions so require:

1. Prohibit the use of trucks, except for the purpose of receiving loads or making deliveries on certain designated streets under their jurisdiction;
2. Restrict the use of trucks passing through the city or town to such street or streets under their jurisdiction as may be designated in such ordinance.

~~The Cities of Poquoson and Williamsburg
Any city having a population of at least 11,200 but no more than 15,000~~ may restrict the operation of nonscheduled buses, other than school buses, over designated streets under its jurisdiction.

(Code 1950, § 46-206; 1958, c. 541, § 46.1-181; 1968, c. 463; 1989, c. 727; 1998, cc. 547, 574.); ~~2007, c. 813.~~

While the Code of Virginia does not use the industry term of “motorcoach,” it seems clear that the phrase “nonscheduled buses, other than school buses” in § 46.2-1304 is meant to include both large motorcoaches and buses of equal or lesser size. What seems peculiar in this statute is that only cities with populations “of at least 11,200 but no more than 15,000 may restrict the operation of non-scheduled buses.” Superficially this is an oddity. What is there about a city of this size that merits this authority while a smaller city or larger city does not?

The simple answer to this is that this is an example of *population bracketing*, a common device used in the Virginia legislature to avoid “special legislation” that would require a super majority for passage.²¹ It is also assumed that there may be significant preparation and substantial paperwork requirements for introducing special legislation making this simpler alternative more attractive for legislators.

In investigating the origins of this statute, it was found that it was the **City of Williamsburg** asking for the authority to restrict non-scheduled buses within the city.²² This is not surprising. The City of Williamsburg has been inundated with motorcoach traffic in recent years. Williamsburg’s historic significance and its location near a number of other prominent tourist attractions has made it a prime target for tourism and motorcoaches.

Williamsburg has the advantage of a superb visitors center that can easily be accessed via a number of state and federal highways. Motorcoach visitors may be disembarked there or at a number of other locations in the area. Restaurants and lodging in Williamsburg are also easily accessed via state and federal roads. Because the locations of these amenities are not generally

UPDATE: Virginia HB 1200, introduced by Delegate Steve Landes in 2006, replaced population brackets and other description found in the code of Virginia with locality names in 2007.

in conflict with the residential areas or with the historic areas, the motorcoaches seems to be largely self-managed. Still, it was deemed necessary to have the power to regulate the movement of “unscheduled buses” as a special class. Without that authority, it was felt that nothing could be regulated for these types of vehicles, not even parking places.²³

The fact that Williamsburg has been given the authority to restrict motorcoach traffic indicates that the Virginia General Assembly has recognized the importance of providing this power in some instances. Doing so in the case of Williamsburg shows that historic ambiance of the community and the general health, safety, and welfare of the public were in consideration. The power to restrict “unscheduled buses” (motorcoaches) is a power that Alexandria should also have for the similar reasons of protecting the city’s ambiance as well as the general health, safety, and welfare of the public.

Obtaining this power for Alexandria should not be difficult. A new population bracket for Alexandria could be added to § 46.2-1304 just as Williamsburg was. Communications with members of Virginia’s General Assembly indicate that the request for legislation could be submitted to the General Assembly's Legislative Services division, whose staff would write the actual text of the bill which Alexandria’s delegate would then submit as patron during the General Assembly session.²⁴

SEE UPDATE 

Obtaining the authority to regulate motorcoaches through the legislative device of population bracketing should be recognized for what it is, an expedient measure. A longer term goal should be to solidify this authority based on historic preservation and residential neighborhood concerns using health, safety, and welfare arguments—and to have the law specifically say so.

Of course there needs to be agreement with the city that obtaining this power for Alexandria is a good and proper thing to do. Community organizations and city council need to be informed and involved in this process.

Federal, State and Interstate Regulation of Motorcoaches

Federal Motor Carrier Safety Administration. At the federal level, regulation of motorcoaches is under the supervision of the U.S. Department of Transportation (DOT) through the agency of the Federal Motor Carrier Safety Administration (FMCSA).²⁵ This agency is primarily concerned with operational safety and does not involve itself in issues of where motorcoaches can and cannot go. Therefore, it is of little value in local control of motorcoach traffic and won’t be cited further as such.

International Registration Plan. Regulation at the state and interstate level usually entails the proper registration of the motorcoach as a commercial vehicle so that the appropriate taxes are paid. Commercial vehicles that operate between states or the provinces of Canada must belong to the International Registration Plan (IRP) which apportions taxes based on the travel in those different jurisdictions.²⁶ However, motorcoaches are exempt from this requirement with a

UPDATE: Since population bracketing may no longer be used (see the update on the previous page), special legislation in Richmond will now be required for Alexandria to obtain regulating authority.

notable local exception. The District of Columbia now requires (as of 2007) that a visiting motorcoach belong to the International Registration Plan to avoid having to acquire a trip permit to operate in the District.²⁷ This discussion is expanded in Note 26. Also see *Washington DC*, pages VI-2 thru VI-5, and *page VI-20* for more.

George Washington Memorial Parkway. Motorcoaches are commercial vehicles and as such must have a National Park Service permit to travel on the George Washington Memorial Parkway.²⁸ The unfortunate aspect of this rule is that it is suspected that few motorcoaches are either aware of the requirement to have a permit or bother to go through the trouble of obtaining one. Compliance is considered to be haphazard and is impossible to detect without field inspections by authorized persons. Enforcement appears to be all but absent. This discussion is expanded in Note 28. Also touched on in page VI-5 and in *pages VI-21 and VI-22*.

Regulating Motorcoach Tourism as a Business

It is common to look at the vehicular aspects of motorcoaches when considering regulations. However, it was discovered that in many of the places that restrictively regulate motorcoach traffic, the business aspect of motorcoach traffic was regulated as well.

Motorcoaches perform two basic (but not exclusive) functions in the course of their travels. Motorcoaches function as:

- 1) Basic transport by delivering passengers to a destination and as a
- 2) Touring-for-hire platform (offering sight-seeing and narration as a business).

The first function is basically one of access. This is analogous to a taxi delivering passengers to an address or, by extension, deliveries of any kind. In other cities, some lenience is given to motorcoaches performing this first function when delivering passengers to a particular place of business, e.i., a hotel, a tour boat, a museum or some other specific location where it is important to keep the passengers together as a group. However, such visits are usually allowed by city-issued permit and the businesses receiving this traffic are identified so that long-term requirements are established and a management plan for the traffic can be implemented.

The second function is basically one of business activity *specifically* directed at historic neighborhoods or other areas of interest to the tourist. That is why a number of cities have established ordinances that specifically regulate *touring as a business*. This is done so as to ensure both the quality of the touring experience and to minimize the disruption to sensitive residential neighborhoods and fragile historic districts. Having an ordinance that controls touring businesses allows cities to establish an appropriate scale for the touring activity that can address both the size and frequency of vehicles that are used. If not kept to an appropriate scale, touring can have destructive influences on the character and livability of residential areas.

The Commonwealth of Virginia encourages localities to create conditions so “that residential areas be provided with healthy surroundings for family life.”²⁹ These conditions are usually cre-

ated and enforced through zoning regulation. According to the Code of Virginia, “zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public” with such ordinances have among their purposes, “to reduce or prevent congestion in the public streets... to facilitate the creation of a convenient, attractive and harmonious community... to protect against destruction of or encroachment upon historic areas.”³⁰

Of course, the focus of zoning ordinances is mainly on buildings and land and the uses thereof. Still, the exploitation of residential areas by touring companies using motorcoaches is a concern and a violation of the intent and spirit of these laws.

In closing, motorcoach regulations can usually be found amongst the traffic codes in many cities where touring activity is significant. These regulations can also be found in a vehicles-for-hire section, or in a the section of codes that govern businesses. Touring activity is a business that other cities have wisely brought under control. Many cities have taken these more expansive approaches to the issue and recognize that motorcoaches are but just one aspect of the tourist industry. At least one city, Charleston, has created a comprehensive chapter of tourism codes that include motorcoach operations.

Because motorcoaches are an aspect of tourism, it is useful to review the current philosophies and practices regarding tourism planning and development. Such is the topic of the next chapter.

End of Chapter III.

Chapter III Notes

1. *Alexandria Convention & Visitors Association Motorcoach Task Force Report*, November 2005, p. 3.
2. Hardin, Garrett. *The Tragedy of the Commons*, Science, 162 (1968): 1243-1248.
3. Sheinberg Associates and Juneau, Alaska. *Juneau's Visitors's Industry, Tourism Analysis and Planning Recommendations*, Prepared for: Tourism Working Group, City and Borough of Juneau, 155 South Seward Street, Juneau, Alaska 99801. May 1996.
4. *The Columbia Electronic Encyclopedia, Sixth Edition* Copyright © 2003, Columbia University Press. Licensed from Columbia University Press.

Police power, in law, is the right of a government to make laws necessary for the health, morals, and welfare of the populace. The term has greatest currency in the United States, where it has been defined by the Supreme Court as the power of the states to enact laws of that type even where, under ordinary circumstances, Constitutional law or federal statute would override them. The doctrine was first stated by Chief Justice John Marshall, who ruled that the power of Congress over interstate commerce (Article 1, Section 8) could not prevent the states from controlling goods shipped from another state after they had been broken out of the original package. The concept of police power became very important after the passage (1868) of the Fourteenth Amendment; on the one hand, the states had to be restrained from taking liberty or property without due process of law; on the other hand, the states could not be made helpless in dealing with grave problems of an economic and social nature. Gradually the court moved away from its initial strict interpretation of the Fourteenth Amendment, during which time it had struck down economic regulations such as minimum wages and maximum hours as a violation of the amendment's due-process clause. Since the late 1930s, however, the court has upheld almost all state economic regulation as falling within the police power.

5. Land, Diane. *Dillon's Rule...and the Birth of Home Rule*. The Municipal Reporter, December, 1991
6. *West's Encyclopedia of American Law*. The Gale Group, Inc, 1998.
7. *The Columbia Electronic Encyclopedia*, op. cit.
8. See Palm Beach, FL, page VI-11. Also Aiken, SC, page VI-14. This paper.
9. The District is separate from any state, and has its own elected government; in many ways, on a day-to-day basis, it operates much like another state, with its own laws, court system, Department of Motor Vehicles, public university, and so on. However, the governments of the 50 states have a broad range of powers reserved to them by the U.S. Constitution, and most of their laws cannot be voided by any act of the U.S. federal government. The District of Columbia, by contrast, is constitutionally under the sole control of the United States Congress, which created the current District government by statute. Any law passed by the District legislature can be nullified by Congressional action, and indeed the District government could be significantly altered or eliminated entirely by a simple majority vote in Congress.
10. *Dillon's Rule: Good or Bad for Local Governments?* League of Women Voters of the Fairfax Area Education Fund. October 2004.

11. Wirt, Clay. *Dillon's Rule*. Virginia Town and City Magazine. August, 1989.
12. Ibid.
13. *Dillon's Rule: Good or Bad for Local Governments?*, op. cit.
14. Dillon, John Forrest. *Treatise on the Law of Municipal Corporations*. Chicago: James Cockcroft. 1872. 808 pp.
15. Richardson, Jesse J., Gough, Megan Z., Puentes, Robert. *Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management*. The Brookings Institution Center of Urban and Metropolitan Policy. January 2003.
16. Regionalism and the Dillon Rule: An Interpretive Essay. Old Dominion University.
<http://www.odu.edu/bpa/forecasting/2001chapter6.pdf#search=%22%22Regionalism%20And%20The%20Dillon%20Rule%22%22>
17. Ibid.
18. Ibid.
19. Wirt, Clay., op. cit.
20. E-mail from Virginia Senator Patsy Ticer to Trish Klingenmaier, 29 August 2006, in response to an enquiry regarding the regulation of motorcoaches on city streets and in residential areas:

“I have checked into the Virginia laws governing motor coaches and here is what I have found.

The Code for the Commonwealth of Virginia gives the locality the authority to regulate motor coach travel on residential city streets. There are two Code citations - 15.2-2028 and 46.2-1305 that provide for this.

I called the City Attorney's office and spoke to Christopher Spera, the Assistant City Attorney who handles this issue. I am giving him a copy of your e-mail and he will talk to his counterparts in Transportation and Environmental Services and the police. Since they haven't looked at your e-mail yet, he isn't sure who all is involved, but after they decide that, Chris will get back to you. That should take about two weeks - if you haven't heard from the City by then, let me know and I can pursue it again.

I hope this helps. Best regards, Patsy”

21. E-mail from Delegate Dave Englin to Rob Aronson, 10 September 2006, in response to an enquiry regarding section 46.2-1304 of the Virginia Code. Dave answered and forwarded an additional comment that was sent to his legislative assistant Beth Isaacs.

“Rob,

Please see below for more details from the General Assembly's legislative services staff. As you can see, population brackets were used to avoid special legislation, but they can have unintended consequences because populations change.

Philosophically, I oppose the Dillon Rule and believe this is a good example of the kind of local power Alexandria ought to have. I'm certainly willing to pursue adding Alexandria to the localities included in this legislation, although I would encourage you to raise this issue with City Council before we move forward too quickly so that everyone is on the same page.

Best,
David”

Forwarded comment:

“Beth,

Here is some information you can take back to your constituent.

The specific population numbers are a way for members of the General Assembly to avoid what is called “special legislation.” When a bill targets one particular locality, a super majority is required for passage of a bill rather than simply a majority. With the use of population brackets, the bill is not considered “special legislation” and, therefore, only requires a majority of votes for passage. Population brackets are used consistently throughout the Code.

The bill amending 46.2-1304 which added these population brackets was sponsored by Senator Norment in the 1998 session. In 1998, that population bracket included the city of Williamsburg.

After the census 2000, the population bracket now includes Poquoson as well.

I would suggest giving Senator Norment's office a call to find out about the history of the legislation, who requested it, what parties were involved, etc.

As Delegate Englin is most likely aware, Virginia operates under the Dillon Rule. This means that localities are NOT authorized to do something unless specifically authorized by state code or charter. Therefore, only the cities of Poquoson and Williamsburg are authorized under this section. No others.

So, Delegate Englin could submit legislation with the local government attorneys in our office, Jeff Sharp and Kevin Stokes, to add Alexandria to this section. According to the last census, Alexandria's population is 128,283.

The repeal of 46.2-2200 et seq. was to align state code with federal regulation. Delegate Landes patroned the bill. It was HB2380 offered in the 2001 session and passed both houses without contest. See the bill summary and history from LIS below:

(history from LIS omitted)

All issues relating to passenger carriers in accordance with federal law are now addressed in Chapter 20 of Title 46.2.

Again, Delegate Landes' office will have more detailed information on the history of the legislation.

I hope this information is helpful to the Delegate. Please let me know if you need anything further.

Stephanie

sbishop@leg.state.va.us”

22. Ibid

23. Alexandria already has some regulations that deal with sight-seeing buses. Since Alexandria does not have the authority to “restrict the operation of nonscheduled buses,” does this mean that those few regulations that Alexandria does have are not authorized?

24. E-mail from Delegate Dave Englin to Rob Aronson, 10 September 2006. op. cit.

25. The Federal Motor Carrier Safety Administration (FMCSA), a modal agency of the U.S. Department of Transportation (DOT), is the federal agency responsible for commercial truck and bus safety. According to

FMCSA, the agency's primary mission is to reduce crashes, injuries, and fatalities involving commercial motor vehicles. The FMCSA sets minimum safety standards that motorcoach companies must follow for the buses they operate and the physical qualification and operating rules for their drivers. These safety regulations include rules to ensure that the motorcoach is in proper working condition and is systematically maintained; the driver is physically qualified and licensed; and the driver maintains accurate logs of hours-of-service.

Source: Minutes of the House Transportation and Infrastructure Motorcoach Safety Hearing. U.S. House of Representatives, Washington, DC 20515. March 20, 2007. Page vii.

26. State registration does nothing to enhance local control of motorcoach traffic. Each locality must still make its own rules. However, the recent implementation of new motorcoach regulations in Washington DC introduced the idea of state-level apportionment of registration taxes. This should be understood by anyone studying motorcoach operations in this region.

In 2007, the District of Columbia began requiring motorcoaches registered outside of the District to either carry a District-issued permit costing \$50 or be part of the International Registration Plan (IRP) that apportions registration and road use taxes to the various states.

The International Registration Plan was originally conceived as a way to simplify the operation of heavy commercial trucks involved in interstate commerce. Registering heavy commercial vehicles such as trucks can be complicated if they operate in more than one state. Different states will have different rules and tax structures that commercial trucks must observe. Prior to the establishment of the International Registration Plan in the 1970s, making sure that each state received its proper amount of tax from the commercial carrier was a challenge.

The International Registration Plan is headquartered in Arlington, VA and is in effect in the 48 contiguous United States, the District of Columbia, and the provinces of Canada. The IRP is a reciprocal agreement that authorizes the proportional registration among the states of commercial motor vehicles. This means that if a truck is operated in multiple states, the owner must annually report mileage driven in each state. The taxes are then paid proportionately based on the mileage driven. The owner may pay those taxes in one state—referred to as the base state—and the taxes thus paid are then apportioned to the various states where the truck was driven.

Commercial trucks operating between states are required to belong to the International Registration Plan if they are over 26,000 pounds GVW and have at least three axles. An interstate motorcoach used for chartered parties is exempt from this rule even though it has three axles and may be as much as 54,000 pounds GVW. The motorcoach industry has consistently argued that it should not be subject to the same rules as the trucking industry in spite of the fact that their vehicles often far exceed commercial trucks in both size and weight. Registration in the IRP for motorcoaches remains optional.

It should be noted that the District of Columbia is the most recent jurisdiction to join the International Registration Plan and motorcoaches are an integral part of that plan. This plan has special utility in the District because the jurisdiction is unique, resembling that of both a state *and* a city.

The money generated through the plan flows to the District at the local level; Washington DC is, after all, a city. This may or may not be true elsewhere in the IRP where money would flow directly to the various states. This money would not trickle down to where the local areas where the vehicles actually operated. Adoption of this practice in other cities is not anticipated as there is nothing to be gained by it. It will be interesting to see how well the District will fare with this plan. Motorcoaches traveling within the District are highly impactful on infrastructure. Mileages that will be recorded for travel in the District will likely be very low and a small part of the motorcoach's total travel for the year. Will the monetary return to the District be sufficient?

Sources: District of Columbia, Department of Motor Vehicles. <http://dmv.dc.gov/serv/dlicense/IRP.shtm>
The International Registration Plan, Inc. <http://www.irponline.org/>

27. The District of Columbia recently enacted a law that requires a bus from any US state or Canadian province used for travel of a chartered party with a seating capacity of greater than fifteen (15) passengers to obtain one of the following:

- Registration of the chartered bus as a Class B commercial vehicle in the District of Columbia
- Proportional registration in the base jurisdiction through the International Registration Plan
- A Trip Permit for travel within the District of Columbia

Vehicle owners must be in compliance with the chartered bus law prior to entering the District of Columbia. The chartered bus law became effective on March 14, 2007.

Source: <http://dmv.dc.gov/info/charteredbuses.shtm>

28. The National Park Service maintains authority to regulate motorcoaches on roads and parkways under its jurisdiction, including the George Washington Memorial Parkway connecting Mount Vernon with Alexandria, Arlington, and the I-495 Capitol Beltway at Cabin John Bridge. Also included in this jurisdiction is the Clara Barton Parkway and Spout Run Parkway.

Permits are required for all commercial vehicles traveling these Parkways, including motorcoaches. There has been considerable confusion regarding this requirement. Many have considered that the Parkway restrictions apply only to trucks. However, the regulations apply to *all* commercial vehicles.

Commercial Vehicles

A National Park Service Commercial Vehicle Permit must be obtained prior to the use of the George Washington Memorial Parkway, the Clara Barton Parkway, Spout Run Parkway, Crest Lane, East Boulevard or West Boulevard by any type of commercial vehicle.

If routes other than the George Washington Memorial Parkway or the Clara Barton Parkway are available to reach your destination, then a permit will not be issued for use of the Parkway by a commercial vehicle.

Title 36: Parks, Forests, and Public Property
PART 5—COMMERCIAL AND PRIVATE OPERATIONS

§ 5.6 Commercial vehicles.

(a) The term “Commercial vehicle” as used in this section shall include, but not be limited to trucks, station wagons, pickups, passenger cars or other vehicles when used in transporting movable property for a fee or profit, either as a direct charge to another person, or otherwise, *or used as an incident to providing services to another person, or used in connection with any business.* (italics added)

(b) The use of government roads within park areas by commercial vehicles, when such use is in no way connected with the operation of the park area, is prohibited, except that in emergencies the Superintendent may grant permission to use park roads.

(c) The Superintendent shall issue permits for commercial vehicles used on park area roads when such use is necessary for access to private lands situated within or adjacent to the park area, to which access is otherwise not available.

In 2004, when a southbound Eyre motorcoach struck the Alexandria Avenue overpass on the way to Mount Vernon, it was discovered that the owners did not believe that they needed a permit to access the Parkway.

While the lack of a permit was never considered to be a cause of the accident, it revealed ignorance by a wide number of motorcoach operators of the requirement to obtain commercial permits for Parkway access.

In a National Transportation Safety Board review of the November 2004 collision, the National Park Service (NPS) “stated that, at the time of the accident, permit issuance and enforcement had not been a priority but that, since the accident, the NPS had increased enforcement and contacted carriers to inform them of the permit requirement.” Unfortunately, this effort appears to have been in vain. Many motorcoach companies and drivers seem to remain unaware of the Parkway’s commercial permit requirement even to this day. Conversations with motorcoach drivers in 2008 at the National Mall, the Christ Church stop in Alexandria and at Mount Vernon confirm this. Most drivers felt the requirement applied only to trucks.

Commercial permits for motorcoaches to travel on the George Washington Memorial Parkway are free and are said to be available for either one trip or up to one year. The procedures to obtain these permits are the same. One is left to wonder why there is not more awareness and compliance with this requirement for a permit... until one tries to obtain one.

Published information as to how to obtain a permit for the Parkway is either misleading or incorrect.

From Visit Alexandria VA.com: Motorcoaches traveling on the George Washington Parkway are required to obtain a permit. There is no charge for a permit and they may be issued for a one-time usage or on an annual basis. Please contact the National Park Service at 703.289.2516.
<http://visitalexandriava.com/about/maps/maps/motorcoach>

From the NPS GWMP Permit webpage: Contact Person. Please contact the Park Ranger for Permits at (703) 289-2516 with any questions or inquiries.
<http://www.nps.gov/gwmp/planyourvisit/permits.htm>

This 703-289-2516 number goes directly to voicemail at the *Temporary Desk for the Fort Hunt World History Project*. Another number is provided at the end of the message as the one to contact for permits: 703-289-2515. Telephone calls to this number also go directly to voicemail. Requests for information and a request for a return phone call were made to this number on 29 April (9:38 AM), 1 May (2:20 PM), and 7 May 2008 (11:20 AM). The calls were never returned.

The email address on the permit application form obtained at the George Washington Memorial Parkway website in April 2008 was incorrect. It belonged to a person who no longer worked at the Parkway. The form had never been updated. No other email was available for contact. An email received from the departed park ranger suggested that information could be obtained at the number 703-289-2515, the same number not returning calls.

It should be noted that the National Park Service website that is supposed to inform about permits for the George Washington Memorial Parkway is extraordinarily misleading. Nowhere on the website are the words *motorcoach* or *bus* mentioned. Could this be intentional? Bold letters at the top of the webpage relate the following:

NO TRUCKS ARE ALLOWED ON THE GEORGE WASHINGTON MEMORIAL PARKWAY, CLARA BARTON PARKWAY OR THE SPOUT RUN PARKWAY!

Commercial vehicles require a permit.

Vehicles used for activities by a school or non-profit institution do not require a permit.

(<http://www.nps.gov/gwmp/planyourvisit/permits.htm>)

This leads a potential applicant to believe that it is *only* trucks that need to have a permit. After all, trucks are commercial vehicles and commercial vehicles must have a permit. But are motorcoaches commercial vehicles? Well, the applicant could conclude that it doesn't matter because the next line states that "school or non-profit" groups are exempt from permits. This is exactly the type of demographic that motorcoaches usually cater to; and so it may be concluded that motorcoaches, particularly when they are carrying school or non-profit groups, are exempt. This is of course false.

Motorcoaches operating on the parkway are operated almost exclusively *for-profit* and by reading the finer print of Title 36 as to what is considered a commercial vehicle, motorcoaches are clearly included.

But when attempting to acquire a permit to operate a commercial motorcoach on the George Washington Memorial Parkway, the motorcoach applicant is asked for the same seemingly irrelevant information on form A90 (GWMP) (Revised 7/2006). This form must be faxed or mailed (the email address provided is incorrect).

Name of company
Name of company representative with signature authority (Person who will sign permit):
Company address: Street, City, State and Zip Code
Telephone, FAX number and E-mail address
Destination(s) or **location of project** on the Parkway
Purpose of request (**delivery, service call, construction, etc.**) including **nature of the cargo**.
Manufacturer, year, type, height, tag numbers and gross vehicle weight (GVW) of **delivery vehicle(s)**.
Approximate **scheduling of deliveries** or **project-Date(s)** (Times per week and time of day) [emphasis added]

The information requested does not give the applicant the impression that he is completing the proper form. Just like the NPS website, *motorcoach* or *bus* are not mentioned anywhere. Terminology such as "**delivery, service call, construction**" or "**nature of the cargo**" or "**delivery vehicle(s)**" or "**scheduling of deliveries or project**" or "**project-Date(s)**" does not appear to be pertinent to motorcoaches and leaves the impression that motorcoaches are exempt from having to submit it... and so it probably does not get submitted in most cases.

The application for permit advises to "Allow three days for processing." No information is provided as to when or how the applicant will actually receive the permit or what should be done with it. Will it come by mail? Need it be displayed when on the Parkway? If the application is faxed, will there be an acknowledgement that it was received? No other information is provided. The 703-289-2516 number is listed on the form—the one that goes directly to voicemail, which then provides another number, 703-289-2515, that does not return calls.

When a permit is free, it may be perceived as having little value and can be seen as an inconvenient bit of unnecessary paperwork. And when the paperwork appears to be indifferent in its conception, then the entire process can be seen as indifferent. This perception can hold true for both the issuer and the applicant. And because there is apparently no rule that permits are to be displayed while the motorcoach is on the Parkway, any enforcement of the permitting requirement is rendered blind. It is little wonder that motorcoach commercial permits on the Parkway have not been taken seriously.

A conclusion to be drawn from all of this is that permit issuance and enforcement on the George Washington Memorial Parkway are still not a National Park Service priority. Another conclusion to be drawn is that the commercial permitting requirement on the George Washington Memorial Parkway is probably just as ignored now as it was in November of 2004.

All of this has special relevance for the region. If the rules are to be taken seriously by motorcoach companies and their drivers, clear and consistent maintenance of these rules is of paramount importance—and should be followed by purposeful enforcement. If permitting requirements are allowed to go untended and unenforced by one authority in the region, it can tend to give the impression that all of such regulations in the region can be discounted as being of concern.

29. § 15.2-2200. Declaration of legislative intent.

This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; **that residential areas be provided with healthy surroundings for family life;** that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

(Code 1950, §§ 15-891.1, 15-900, 15-916, 15-961; 1950, pp. 487, 889; 1956, c. 497; 1962, c. 407, § 15.1-427; 1975, c. 641; 1981, c. 418; 1996, cc. 585, 600; 1997, c. 587.)

30. § 15.2-2283. Purpose of zoning ordinances.

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: **(i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community;** (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; **(v) to protect against destruction of or encroachment upon historic areas;** (vi) **to protect against** one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, **danger and congestion in travel and transportation,** or loss of life, health, or property from fire, flood, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; and (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

(Code 1950, §§ 15-821, 15-968.3; 1962, c. 407, § 15.1-489; 1966, c. 344; 1968, c. 407; 1975, c. 641; 1976, c. 642; 1980, c. 321; 1983, c. 439; 1988, c. 439; 1989, cc. 447, 449; 1990, cc. 19, 169, 384; 1992, c. 812; 1993, cc. 758, 884; 1997, c. 587; 2004, c. 799.)