

ITEM FOR CONSIDERATION

**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2017 VIRGINIA GENERAL ASSEMBLY**

September 13, 2016

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GOVERNANCE—LIMITED RESIDENTIAL LODGING

PROPOSAL:

Monitor issues related to the local regulation of limited residential lodging, including the ongoing study by the Virginia Housing Commission.

SOURCE:

Board of Supervisors
March 15, 2016

BACKGROUND:

As allowed by current state law, Fairfax County places reasonable restrictions on the short-term rental of residential dwelling units. According to the County's Zoning Ordinance, the use of a dwelling unit for short-term (less than 30 days) rental is considered to be transient occupancy, which is not permitted unless the Board of Supervisors has approved a special exception to allow the dwelling to be used as a bed and breakfast (which can only occur in a single-family, detached dwelling located in one of the following zoning districts: R-1, R-2, R-E, R-C, R-P, PRC, and PDH).

Legislation was considered by the 2016 General Assembly – SB 416 (Vogel) and HB 812 (Peace) – that would have established a state law governing short-term rentals in residential areas through hosting platforms such as Airbnb, FlipKey and other websites. Though the proponents of the bills presented them as being helpful to local governments by allowing for state collection and remittance to localities of local transient occupancy taxes on short-term rentals, the bills would not have actually required companies like Airbnb to collect and remit such taxes (they would have simply authorized it). And, though the bills would have allowed the state Department of Taxation some authority to audit such rental units, they also would have prohibited the Department from sharing any information about the transactions with localities.

The anonymity of which locations were being used as short-term rentals and who was actually staying in such short-term rentals and for what period of time, would have made any enforcement of local ordinances impossible. The enactment of the bills as written would have prevented local governments from being able to ensure that the commercial use of residential property was not adverse to neighborhoods and surrounding communities. It is important to note that SB 416 and HB 812 would not have simply allowed a person to rent out a room in his or her primary residence – the bills would have allowed one person to own multiple “primary residences” if a landlord lived in each of those residences.

Because the bills would have preempted state and local taxation and land use

ordinances governing such rentals, local governments throughout the state, including Fairfax County, were united in their opposition. Ultimately, the issue was sent for study to the Virginia Housing Commission (similar to the statewide study done in 2014 relating to Uber/Lyft and other transportation network companies) – the work group includes representatives from the hotel industry, hosting platform providers like Airbnb, local governments, state and local tax officials, common interest communities, and other interested parties to explore issues related to registration, land use, taxation, and other items of public interest tied to short-term rentals. The work group has a December 1, 2016, deadline to complete its work (with the goal of developing recommendations and draft legislation for the 2017 session).

RECOMMENDATION:

Direct staff to continue to participate in the ongoing work group on short-term rentals, and to work with the Virginia Association of Counties and other local governments to preserve local land use and taxing authority to the extent possible. Also direct staff to add a position to the 2017 legislative program – a draft position is below:

Limited Residential Lodging

Efforts to encourage the new “sharing economy,” including short-term rentals in residential areas, must balance the interests of entrepreneurs with those of the community, safeguarding local revenue sources and land use authority.

Local authority over limited residential lodging should be preserved, as local governments and communities are best able to consider the benefits and consequences of such rules in widely differing local contexts. Residential areas across the Commonwealth, and even within a particular locality, can differ in terms of population density, public utilities and resources, traffic patterns, and other relevant considerations like the availability of parking and transit options. Business enterprises emerging from the new sharing economy can bring positive innovation to Virginia’s struggling economy, spurring a new kind of economic development activity; however, it is essential that such economic development be well-integrated into the existing character of the community, in order to avoid inadvertently providing protections to illegal boardinghouses or making code enforcement efforts more difficult. Additionally, state legislation must preserve related local taxing authority without pre-emption, including applicable real estate, personal property, transient occupancy and Business, Professional and Occupational License (BPOL) taxes (especially rental by owners, a BPOL category for which certain localities are able to levy based on “grandfather” provisions under existing law). Any state legislation governing this topic must include some form of registration or licensing of limited residential lodging operators, to ensure that relevant health and safety codes are met, along with the payment of relevant taxes and fees.

**LAND USE—LOCAL REGULATION OF TELECOMMUNICATION TOWERS
AND OTHER FACILITIES**

PROPOSAL:

Monitor issues related to the local regulation of monopoles and other telecommunication facilities. Additionally, initiate legislation to reverse the impact of HB 883 on the County by amending Virginia Code § 15.2-2232(G) to exempt Planning District 8.

SOURCE:

Board of Supervisors Development Process Committee
May 3, 2016

Board of Supervisors
June 21, 2016

BACKGROUND:

Federal law currently allows localities to request that telecommunications companies disclose information about the character and location of wireless telecommunication facilities of all types (i.e., towers, monopoles, distributed antenna systems and other small-cell facilities, and related equipment cabinets and structures), including a proposed facility's service coverage area and alternative, less-intrusive locations. The 2016 General Assembly considered HB 1347 (Heretick), which would have prohibited localities from requiring the disclosure of such information, and would have exempted such facilities from certain local application fees or capped the amount of fees that localities could charge for applications. The County opposed HB 1347.

HB 1347 was continued to the 2017 General Assembly by the House Committee on Commerce and Labor, and the Virginia Wireless Communications Infrastructure Work Group was created to study the bill. The work group is comprised of members of the General Assembly and representatives from the telecommunications industry and local governments, including a Virginia Association of Counties representative. The work group has met four times in 2016, and is scheduled to meet again on September 15, 2016. Legislative staff have been monitoring the work group, which has been negotiating proposed compromise legislation to replace HB 1347 for consideration by the 2017 General Assembly.

HB 1347 work group members have also discussed HB 883 (Habeeb), which was enacted by the 2016 General Assembly. As the Board is aware, HB 883 (Habeeb) removed the statutory requirement for a public hearing before the Planning Commission to determine whether a telecommunications tower or

electric cooperative facility conforms to a locality's comprehensive plan if the tower or facility is allowed by right under the zoning ordinance. Although the County initially obtained an exemption to preserve these public hearings in Planning District 8, the exemption was stripped from the bill, and HB 883 was enacted without the exemption. As a result, the Board amended the Zoning Ordinance on June 21, 2016, to require special exceptions for all telecommunications towers, thereby preserving the public hearings that allow community input in the siting of telecommunications towers and facilities. The HB 1347 work group has discussed this amendment to the County's Zoning Ordinance, and legislative staff explained that the amendment was the result of the enactment of HB 883 without an exemption for Planning District 8. Staff also indicated that the County was very comfortable with the process that existed prior to enactment of HB 883, and would like to return to that process.

RECOMMENDATION:

Direct staff to continue to participate in the ongoing work group on HB 1347. Further direct staff to negotiate provisions that protect or strengthen local authority in any proposal considered by the work group, including obtaining the exemption that the County sought in HB 883.

Finally, direct staff to add the following position to the 2017 legislative program:

Wireless Telecommunications Facilities

The siting of telecommunications facilities is an important component of local land use authority, ensuring community involvement, and should be retained.

Federal law currently preserves local land use authority to determine the location, construction, and modification of wireless telecommunications facilities, subject to certain restrictions. These federal restrictions on local land use decisions have been extensively litigated. Overlaying additional state restrictions on these local land use decisions may remove all community involvement in decisions about where very large facilities will be located, among other negative consequences. The 2016 General Assembly already eliminated some existing local flexibility, by deeming telecommunications towers located in zoning districts where they are permitted by right to be in conformance with a locality's comprehensive plan, removing the requirement for a public hearing before the local planning commission; such authority should be restored. Additionally, new legislation should not be enacted to upset the balance that already exists under current federal regulation, which ensures that wireless services are provided without completely preempting already limited local authority to determine the appropriate location of such facilities.