

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2024 VIRGINIA GENERAL ASSEMBLY

October 3, 2023

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ENVIRONMENT – ELECTRIC VEHICLE (EV) CHARGING STATIONS IN COMMERCIAL AND MULTIFAMILY HOUSING

PROPOSAL:

Support legislation to either require statewide, or allow local jurisdictions to require, Electric Vehicle (EV) charging stations or EV charger-ready parking spaces in commercial and multifamily housing.

SOURCE:

Environmental Quality Advisory Council (EQAC)
July 2023

BACKGROUND:

Fairfax County has long been committed to environmental sustainability and addressing the impacts of global climate change, including conserving limited natural resources and protecting the environment. In the Carbon Neutral Counties Declaration (adopted in July 2021), Fairfax County commits to being carbon neutral by 2040, and urges federal and state lawmakers to provide incentives, requirements, or other measures to meet carbon neutrality goals – specifically targeting the building and energy, transportation, and solid waste sectors. Transportation is a notable source of CO₂ emissions, and as a result, the benefits of EVs in the effort to combat climate change are increasingly and widely recognized. According to the US Department of Energy, EVs can “reduce the emissions that contribute to climate change and smog, improving public health and reducing ecological damage.” The vehicles themselves produce zero emissions, and their increased adoption could help improve air quality for both the County and the Commonwealth. Reducing pollution not only promotes sustainable mobility, it also provides local and regional health benefits. Initiatives to assist residents and the County in transitioning to EVs will help reduce both direct emissions (those emitted from the vehicle tailpipe) and life cycle emissions (those related to fuel and vehicle production, processing, distribution, use, and recycling/disposal).

In 2021, the General Assembly (GA) enacted legislation to adopt vehicle emission standards and EV sales targets set by the California Air Resources Board. As a result of that legislation, the sale of all new gas-powered cars will be prohibited in Virginia beginning in 2035 (used gas-powered cars may continue to be sold). This shift to EVs will require that sufficient infrastructure, like EV charging stations, is in place to support EVs, and work to expand that infrastructure is necessary to meet the growing demand as EV owners will seek convenient ways to charge these vehicles, such as at home, work, or shopping centers.

Despite the growing need for EV charging infrastructure, there are obstacles with incorporating EV chargers into existing parking. One such impediment is that, even when a tenant or resident with assigned parking is willing to pay for the installation of an EV

charger, a building's electrical system and wiring may be inadequate or insufficient to support the demand for such charging stations. Moreover, even those interested in installing EV charging stations often cannot, as there are concerns about installing this infrastructure on concrete floors (that were not designed to be drilled into) to support structures like charging stations. The goal of requiring some EV capacity on all new builds may avoid some of these issues in the future, but some flexibility will likely be needed to ensure unique sites and appropriate capacity are addressed. The County currently negotiates with developers through the proffer/rezoning process, and has been fairly successful in many cases in achieving approximately two percent capacity for EV chargers – this proposal suggests all parking spaces in new construction should be EV charger-ready, but such a high threshold would be problematic due to the extraordinary electrical capacity that would be needed to achieve such compliance, and is unnecessary because EV charging can be a shared resource, and because as EV batteries continue to improve the need for charging facilities will likely decrease.

As part of the County's first-ever Community-wide Energy and Climate Action Plan (CECAP), which outlines greenhouse gas reduction goals for the community for the coming decades, the County has developed the Charge Up Fairfax program. That program is designed to help residents of homeowners associations (HOAs) and condominium owners associations (COAs) access charging for EVs. Charge Up Fairfax supports HOAs in identifying and overcoming challenges, both technical and financial, to on-site EV charging for residents and their guests. For the purpose of this program, HOA communities can include multi-family condominium buildings, clusters, or townhome communities that offer common area parking that is accessible for residents and their guests. Charge Up Fairfax is designed to utilize the County's existing authority.

The County has also supported state legislation that would require EV charging stations in new developments, including **SB 1312** (Boysko), which was considered by the 2023 GA. That legislation would have permitted a locality to require EV charging stations as part of a subdivision or site plan approval for a development containing commercial, industrial, or multifamily residential uses with a density of seven residential dwelling units per acre or greater. Although the bill passed the Senate on a party-line vote, the bill failed in a House subcommittee.

RECOMMENDATION:

Staff will continue to advocate at the GA based on the existing language in the Legislative Program in support of incentivizing and reducing barriers to the installation of EV charging infrastructure, expanding EV infrastructure where practicable, and providing state income tax incentives, funding, and rebates for businesses or residents to defray the cost of new construction, building improvements, and the transition to more efficient or alternative fuel vehicles. Additionally, direct staff to monitor for the introduction of specific legislation related to these issues in 2024, in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

ENVIRONMENT – TREES

PROPOSAL:

Proposal A: Support legislation that provides resources and funding to assess where and why tree canopy losses are occurring in Virginia, incentives to stop tree canopy loss, and funding for statewide education efforts regarding the harms caused by tree canopy loss, the benefits of native trees, and how they help mitigate the adverse effects of climate change.

Proposal B: Support legislation to continue to adequately fund the Virginia Conservation Assistance Program’s (VCAP) ability to provide financial incentives and educational assistance to property owners installing eligible native trees and using low-impact planting practices to address stormwater and erosion issues. Also support legislation that would help ensure that all residents of Virginia’s 8,810 community associations have the ability to leverage this program without being prohibited by property community association covenants from installing conservation landscaping.

Proposal C: Support legislation that would allow counties to adopt ordinances banning or imposing a surcharge on the sale of the most damaging of invasive plant species which are threatening the viability of countless trees in parklands and forested areas across Virginia.

Proposal D: Support legislation establishing a study to assess the benefits and impacts of permitting systems to preserve healthy, mature native trees in urban forests, including, but not limited to, resource protection areas, riparian buffers, and flood plains. The study topics could include the application process, use of a professional consulting arborist assessment in the process, homeowner requirements to demonstrate the need to remove the identified tree, and whether fees for failure to get a permit or failure to abide by the permit requirements might be effective.

SOURCE:

Fairfax County Tree Commission
August 2023

BACKGROUND:

Fairfax County has long been committed to environmental sustainability, including addressing the impacts of tree canopy loss and the growth of invasive species that threaten the viability of the County’s parks and forested areas. Additionally, the County is committed to the health of the Chesapeake Bay watershed, using innovative practices to address stormwater and erosion issues to meet its obligations under the Chesapeake

Bay Preservation Act, as well as assisting the Commonwealth in meeting its obligations, as outlined in Virginia's Phase III Watershed Implementation Plan (WIP III).

Trees provide significant levels of environmental, social, and economic benefits to the community, including improved air quality, increased carbon dioxide absorption and storage, energy conservation, improved water quality, improved wildlife habitat, decreased stormwater runoff, and cooled ambient air temperature. Additionally, trees lower energy costs, increase property values, muffle urban sound, and reduce the heat islands effects in concrete corridors.

Recent General Assembly Actions

In recent years, the General Assembly (GA) has taken an interest in trees, particularly in studying policies that encourage the conservation of trees, increasing tree canopy, planting of trees, and preserving trees as an urban land cover and as a stormwater Best Management Practice (BMP).

- In 2020, **HB 520** (Bulova) directed the Department of Environmental Quality to convene a stakeholder advisory group for the purpose of studying the planting or preservation of trees as an urban land cover and as a stormwater BMP. Unfortunately, the COVID-19 pandemic had a substantial impact on studies after the 2020 session, and the work group was unable to complete the study.
- In 2021, **HB 2042** (Guy)/**SB 1393** (Marsden) were introduced to continue the work that was directed by **HB 520** (2020). These bills directed the Secretaries of Natural Resources and Agriculture and Forestry to convene a stakeholder work group to develop recommendations for the Commonwealth and local governments. The work group was charged with examining policies to encourage the conservation of mature trees and tree cover on sites being developed, increase tree canopy cover in communities, and encourage the planting of trees. Though this work group was able to complete its assignment, the stakeholders were unable to reach a consensus on any policies and no legislative recommendations were made.
- In 2022, **SB 537** (Marsden) provided other localities with the authority to adopt tree conservation ordinances similar to Fairfax County's tree conservation ordinance, but at lesser levels than the County's current authority. That bill passed the 2022 GA with a reenactment clause (which requires the bill to pass again in a future GA to become law), and the GA failed to pass it in 2023. **SB 537** also created yet another work group of stakeholders charged with studying local tree ordinances. The report was due in December 2022 but is currently overdue.

Although the GA has shown an interest in studying the issue of trees, it has not been willing to increase local authority for tree conservation. **Proposal A** seeks to support another statewide study concerning tree canopy. Though it is often the case that passage of legislation directing a particular issue be studied can be helpful in moving the issue forward at the GA, in this case there have been several statewide studies conducted in recent years, but the issue of additional tree authority continues to stagnate. The draft

2024 Legislative Program includes language supporting an increase in local authority to address the issues raised by the loss of tree canopy and invasive species, and the County has frequently supported legislation to expand local authority over trees.

The Virginia Conservation Assistance Program (VCAP) is an urban cost-share state program that provides financial incentives and technical and educational assistance to property owners installing eligible BMPs. These BMPs can be installed in areas where problems like erosion, poor drainage, and poor vegetation occur. VCAP funding is administered through participating Soil and Water Conservation Districts (SWCDs). In the Northern Virginia Soil and Water Conservation District, VCAP funds are used in conjunction with funds from the Conservation Assistance Program (CAP) to support eligible projects. **Proposal B** seeks to support VCAP funding. It also seeks to support legislation that would prevent community associations from using covenants to prevent residents from installing conservation landscaping. Although VCAP funding does not go directly to the County, there is some benefit to County residents that participate and receive VCAP funding. Legislation to potentially override community association covenants is typically fairly controversial at the GA, as such covenants are considered to be contractual relationships between the associations and the residents who live within them.

Proposal C seeks to support legislation that would allow counties to adopt ordinances banning or imposing a surcharge on the sale of the most damaging of invasive plant species. Invasive plant species can certainly create significant problems for the Commonwealth's forested areas, as these invasive plants can topple trees with their weight, and some can make the ground toxic for native plant species. Furthermore, the dominance of invasive species makes statewide tree planting efforts difficult, as they often do not provide food for insects or birds, potentially causing the food web to collapse, threatening the health of the entire ecosystem. In addition, the cost of removing invasive species can be substantial and difficult for property owners. The current draft of the 2024 Legislative Program supports actions to discourage the sale of invasive species, but Proposal C goes further in including the imposition of a surcharge or a complete ban.

Proposal D seeks to support legislation establishing a study to assess the benefits and impacts of permitting systems for trees. Although the County typically supports increased local authority, it is unclear whether a tree permitting system would be worth implementing. The legislation would have to be carefully reviewed to determine the extent of the authority granted, the costs associated with implementing the authority, and whether there are any potential legal issues that would make implementing the authority problematic.

The County has long sought additional state authority to increase protection of urban tree canopy, strengthen stormwater management and erosion control, support greenhouse gas reduction, and reduce the urban heat island effect. The County's Legislative Program

has included language in support of additional authority in this area, and that language is also included in the current draft of the County's 2024 Legislative Program.

RECOMMENDATION:

Proposal A: Support legislation that provides resources and funding to assess where and why tree canopy losses are occurring in Virginia, incentives to stop tree canopy loss, and funding for statewide education efforts regarding the harms caused by tree canopy loss, the benefits of native trees, and how they help mitigate the adverse effects of climate change.

Recommendation: Direct staff to continue to advocate at the GA in support of the existing language in the Legislative Program seeking to increase the County's authority to conserve trees during the development process. Additionally, direct staff to monitor for specific legislation or budget actions in 2024, in order to bring related items to Legislative Committee for consideration by the Board of Supervisors.

Proposal B: Support legislation to continue to adequately fund VCAP's ability to provide financial incentives and educational assistance to property owners installing eligible native trees and using low-impact planting practices to address stormwater and erosion issues. Also support legislation that would help ensure that all residents of Virginia's 8,810 community associations have the ability to leverage this program without being prohibited by property community association covenants from installing conservation landscaping.

Recommendation: Direct staff to monitor for specific legislation or budget actions in 2024 concerning the funding of VCAP, in order to bring related items to Legislative Committee for consideration by the Board of Supervisors.

Proposal C: Support legislation that would allow counties to adopt ordinances banning or imposing a surcharge on the sale of the most damaging of invasive plant species which are threatening the viability of countless trees in parklands and forested areas across Virginia.

Recommendation: The draft 2024 Legislative Program already contains support for actions to discourage the sale of invasive species. Legislation providing localities the ability to implement an outright ban on these sales would require consideration of a wide range of issues, including the process that would be used to identify and implement such a ban, as well as the development of an appropriate enforcement system.

Proposal D: Support legislation establishing a study to assess the benefits and impacts of permitting systems to preserve healthy, mature native trees in urban forests, including, but not limited to, resource protection areas, riparian buffers, and flood plains. The study

topics could include the application process, use of a professional consulting arborist assessment in the process, homeowner requirements to demonstrate the need to remove the identified tree, and whether fees for failure to get a permit or failure to abide by the permit requirements might be effective.

Recommendation: Direct staff to monitor for the introduction of specific legislation in 2024 in order to bring related items to Legislative Committee for consideration by the Board of Supervisors.

ENVIRONMENT – TIDAL WETLANDS PROTECTION

PROPOSAL:

Oppose legislation that weakens the existing tidal wetlands law, regulation, and guidelines. In particular, oppose existing tidal wetlands bulkheads from being exempted from the law.

SOURCE:

Environmental Quality Advisory Council (EQAC)
July 2023

BACKGROUND:

Social, economic, and environmental pressures are increasing in coastal areas along the Chesapeake Bay and Virginia’s southeast ocean coast. People enjoy living by and visiting the coast, and the pressure for more housing and coastal-based services is increasing. This sort of development places stress on natural coastal habitats that are vital to the Chesapeake Bay. With approximately 85 percent of the Chesapeake Bay’s shoreline privately owned, there have been efforts in recent years to increase awareness of erosion potential and the choices available for shore stabilization that maintains habitats at the land-water boundary.

A living shoreline is a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances natural shoreline habitat; and, maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials. Living shorelines provide shoreline stabilization in a manner that protects tidal wetland vegetation and the ecosystem, and reduces shoreline erosion. In Virginia, a living shoreline can result in greater protection of the Chesapeake Bay.

In 2020, the General Assembly (GA) enacted **SB 776** (Lewis), which requires the Virginia Marine Resources Commission (VMRC) and local Wetlands Boards to consider only “living shoreline” approaches to shoreline stabilization, unless the best available science shows that such approaches are not suitable on a particular property. The VMRC updated the Wetlands Guidelines to provide minimum standards for the protection and conservation of wetlands, and to communicate to stakeholders and regulatory authorities that it is the policy of the Commonwealth to support living shorelines. In response, Fairfax County updated its Zoning Ordinance and Comprehensive Plan to reflect these changes.

Because the change in Virginia law in favor of living shorelines is fairly recent, it is not surprising that navigating these changes can be confusing for property owners. Importantly, existing bulkheads that are kept in good working order are *not* subject to

removal under the existing law. For those in Fairfax County with tidal wetlands on their property wishing to continue using existing structural controls to protect against erosion, it is important to maintain those structures in a manner that does not disturb tidal wetlands. If tidal wetlands are identified on the property landward of an erosion control structure at the time repairs are requested, a permit to repair the structure will be needed if the waterway is altered or additional wetlands are covered. The need for a permit triggers the possibility that a living shoreline would be suitable shoreline protection measure. There is no grandfathering provision in the law for failed bulkheads.

In 2022, the GA considered legislation, **HB 739** (Krizek), that would have prohibited the replacement of an existing shoreline improvement with a living shoreline if the property owner was only seeking to restore or maintain the existing improvement. The bill also would have prohibited a permitting decision from requiring the replacement of an existing shoreline improvement if the living shoreline would substantially detract from established use and enjoyment of the property. Effectively, this would have substantially weakened the 2020 living shorelines legislation and **HB 739** did not pass the GA.

The issue of potentially amending this legislation was discussed by the Legislative Committee in October 2022. During the fall of 2022, the Fairfax County Wetlands Board (FCWB) was also working with the Office of the County Attorney (OCA) to develop and issue additional permitting guidelines for Fairfax County tidal wetlands. These guidelines were publicly noticed, commented on, and published in 2023. Since that time, and pursuant to the Board's direction, staff from FCWB, the Department of Planning and Development's (DPD) Environmental Policy and Plan Development Branch, and others have continued to conduct public outreach to better inform property owners about the resources available in addressing issues related to living shorelines (it is important to note that since December 2021, County staff have held seven public meetings where the revised policy documents relating to the 2020 law were discussed). The FCWB has also distributed these policy documents to numerous community associations and other citizen groups. Additionally, staff from FCWB, VMRC, and DPD often attend and speak at the meetings of community associations and residents' groups to share information about these issues. Earlier this year, staff also updated information available online on the County's website at <https://www.fairfaxcounty.gov/plan2build/tidal-wetlands-and-shorelines> and <https://www.fairfaxcounty.gov/plan2build/tidal-wetlands-and-shorelines/how-do-i-apply-wetlands-permit>.

RECOMMENDATION:

Direct staff to monitor for the introduction of related legislation in the 2024 GA to bring to the Legislative Committee for consideration by the Board of Supervisors.

GENERAL GOVERNMENT – ELECTRONIC PARTICIPATION IN PUBLIC MEETINGS

PROPOSAL:

Support legislation to allow members of public bodies who meet the definition of a “person with a disability,” or who serve as the primary caregiver for a person who meets that same definition, to both participate remotely in meetings of public bodies and count toward the quorum of that public body when they participate remotely.

SOURCE:

Fairfax Area-Disability Services Board (FA-DSB)
July 2023

Commission on Aging (COA)
July 2023

Fairfax Community Long Term Care Coordinating Council (LTCCC)
August 2023

BACKGROUND:

The Virginia Freedom of Information Act (VFOIA) is the state law governing access to public records and to meetings of public bodies by residents of Virginia and representatives of the media. VFOIA provides that, with some specific exemptions and exceptions, all meetings of public bodies shall be open to the public and all public records shall be open for public inspection.

Current state law allows members of public bodies who have a temporary or permanent disability to use remote participation instead of attending a public meeting in person, if that public body has adopted an electronic participation policy and the member notifies the chair of the public body in advance of the meeting. However, such members may not count toward the meeting quorum. Nevertheless, some public bodies are comprised of numerous members who may qualify for this flexibility, such as disability commissions, which creates challenges for the public body in determining how to achieve a quorum when a majority of the membership is legally allowed to participate remotely.

The FA-DSB’s proposal, which was also supported by the COA and LTCCC, seeks to resolve this issue by allowing members of public bodies who are eligible to participate remotely under current law to also count toward the quorum of that public body when they participate remotely – this would include individuals who meet the definition of a “person with a disability” as well as those who serve as the primary caregiver to a person who meets that definition. Such a change would impact a unique population and provide an appropriate accommodation for these members, particularly as people with disabilities

(and those who care for people with disabilities) are essential participants on public bodies tasked with formulating public policy about services for the disability community. As many members within this category face limitations in attending regular, in-person meetings, current state law regarding quorums can be a barrier to their participation.

Recent General Assembly Legislation

The issue of electronic meetings of public bodies received increased attention at the General Assembly (GA) as a result of the COVID-19 pandemic. While the 2021 GA passed legislation (**SB 1271** (McPike)), which the County supported, allowing electronic meetings in the context of a state of emergency (under certain conditions), further attempts to expand opportunities for members of public bodies to participate in public meetings electronically have been met with mixed results. The 2022 GA passed legislation (**HB 444** (Bennett-Parker)), which was also supported by the County, allowing certain public bodies to conduct all-virtual public meetings where all of the members who participate do so remotely when public access is provided through electronic communication (the bill contains exceptions to this expanded authority for local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, or boards with the authority to deny, revoke, or suspend a professional or occupational license). Localities must still have policies governing electronic meetings, and electronic meetings can only be used for two meetings or 25 percent of the meetings per year, with rules related to public access.

During the 2023 GA, the County supported legislation (**HB 2050** (Bennett-Parker)/**SB 1351** (Marsden)) that would have allowed, with certain exceptions, local and regional public bodies to convene as many all-virtual public meetings as each public body deems acceptable in its individual remote participation meeting policy (local policies would have to be adopted at least once annually by recorded vote at a public meeting).

The FOIA Council has discussed the importance of balancing the competing demands of ensuring public access to meetings of public bodies while also seeking to expand participation on the public bodies. The FOIA Council ultimately formed a subcommittee to further examine these issues, which may lead to a recommendation for legislative action by the 2024 GA.

RECOMMENDATION:

Direct staff to continue to advocate for increased opportunities for members of public bodies to participate in and attend public meetings remotely, while ensuring that public service is available to individuals with a wide array of backgrounds and maintaining the transparency required for the conduct of public business, as included in the County's Legislative Program. Also, direct staff to monitor the work of the FOIA Council on this issue, as well as monitor for the introduction of legislation related to remote participation in public meetings to bring to Legislative Committee for consideration by the Board of Supervisors.