

## **Summary of SB 549 (Obenshain, Saslaw, Chafin, Reeves)**

SB 549, which passed the General Assembly, has been signed by Governor McAuliffe, and will take effect on July 1, 2016, will:

- Regulate rezonings and proffered condition amendment applications only for residential development, including any residential component of a mixed-use development.
- Apply to cash and non-cash proffers.
- Require all onsite proffers for such residential development to only address impacts that are “specifically attributable” to the proposed development.
- Further restrict off-site proffers to only address needs created by the development to expand existing capacity of transportation facilities (including transit); public safety facilities; public school facilities; and parks (including playgrounds and other recreational facilities). Cash and other proffers for off-site affordable housing (including the housing trust fund), libraries, or other offsite items will no longer be able to be offered by developers or be accepted by the County.
- Define “transportation facilities” for the purpose of this bill as: new roads (but not necessarily stand-alone sidewalks); improvement or expansion of existing roads and appurtenances; and structures (including parking) related to transit. This definition may not include stand-alone pedestrian and bicycle projects, or transit operating assistance (for example, proffered shuttles that run to Metrorail and other transit stations).
- Codify a definition of the term “small area comprehensive plan” to be a portion of a locality-wide comprehensive plan that is specifically applicable to a designated area within a locality (a small area comprehensive plan cannot encompass an entire locality, but there can be multiple small area comprehensive plans within a locality). The Board retains its authority to delineate and plan for such small areas within the County under this definition.
- Allow off-site proffers only if they provide a “direct and material benefit” to the development. If the development creates some negative effect on the community, a proffer cannot address the issue beyond the public facilities above, and must provide a direct and material benefit back to the development.
- Allow only applicants and property owners to challenge in circuit court the locality’s decision on a rezoning or a proffered condition amendment application on the basis that the locality requested or accepted an unreasonable condition, or denied any rezoning or proffered condition amendment application where such denial was based in whole or in part on an applicant’s failure or refusal to submit an unreasonable proffer. In addition, the new legislation:
  - Increases the burden of proof on a locality that denies a rezoning or a proffered condition amendment application, after the applicant or property owner proves by a preponderance of evidence that such denial resulted from the failure or refusal to submit an unreasonable proffer, and requires localities to produce clear and convincing evidence that the denial did not result from the applicant’s or property owner’s refusal or failure to submit an unreasonable proffer.
  - Requires a plaintiff to show only that such a proffer was “suggested, requested, or required” by the locality to shift the burden of proof to the locality. Then the locality will have to prove it complied with this statute by “clear and convincing evidence,” the highest standard of proof in civil cases.
  - Allows the court to grant the applicant or property owner a judgment for reasonable attorney fees and costs in the event of a successful court challenge against a locality under the new law.

- Allows the court to remand the case to the locality, ordering it to approve the rezoning without a proffer that violates this statute. The locality would have 90 days to act, and if it does not, the rezoning would proceed without the prohibited proffer (in such a case, the Board would not be required to again provide public notice and conduct additional public hearings on the case).
- Applications for rezonings or proffer condition amendments filed before July 1, 2016, are grandfathered from the provisions of the legislation.

### **Exemptions Included in SB 549**

SB 549 does not apply to the following:

- any residential development in an approved small area comprehensive plan if a portion of that plan allows a density of at least 3.0 floor area ratio (FAR) in a revitalization area that encompasses mass transit and mixed-use development;
- an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to one in a neighboring locality, that allows additional density within the vicinity of the station; or
- an approved area of a service district created pursuant to § 15.2-2400, if that area encompasses an existing or planned Metrorail station.

Attached for your convenience is a March 22, 2016, memo to the Board which outlines staff's analysis of exempt areas in the County.



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** March 22, 2016

**TO:** Board of Supervisors

**FROM:** Fred R. Selden, Director *FRS*  
Department of Planning and Zoning

**SUBJECT:** New Proffer Legislation, Exempt Areas

On March 7, 2016, the Governor signed legislation that will add a new code section, 15.2-2303.4 *Provisions applicable to certain conditional rezoning proffers* that will take effect on July 1, 2016 and apply to all rezoning and proffered condition amendment applications filed on and after that date. This new legislation places certain restrictions on proffers related to new residential development including new residential development that is a part of mixed use development. However, the provisions of the new code section do not apply to new residential development within certain specified areas. Areas that are "exempt" from this legislation must fall within one of the three categories outlined in the legislation and summarized below.

### Exemption Categories

- Category A – An approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in Va. Code § 33.2-100, includes mixed use development, and allows a density of at least 3.0 FAR in a portion thereof.
- Category B – An approved small area plan that encompasses an existing or planned Metrorail station and allows additional density within the vicinity of such existing or planned station.
- Category C - An approved service district created pursuant to Va. Code § 15.2-2400 that encompasses an existing or planned Metrorail station.

### Exempt Mixed Use Areas

The legislation defines a small area comprehensive plan as that portion of a comprehensive plan that is specifically applicable to a designated area within a locality rather than the locality as a whole. Based on this definition and the three categories for exemption, the Department of Planning and Zoning has determined that based on the current provisions in the Comprehensive Plan fifteen areas of the county are exempt from the provisions of the proffer legislation (see attached map). The following is a list of these areas with a short statement as to why it conforms to the exemption categories.

1. Tysons Urban Center – Tysons is covered by an approved small area plan that encompasses four Metrorail stations and the plan allows additional density within the vicinity of each station. Tysons is also within an approved service district created pursuant to Va. Code §15.2-2400. Exemption Categories B & C.
2. Reston – Reston is covered by an approved small area plan that encompasses three Metrorail stations and the plan allows additional density within the vicinity of each station. Exemption Category B.
3. Merrifield Suburban Center – This Suburban Center is covered by an approved small area plan that encompasses the Dunn Loring Metrorail station and the plan allows additional density within the vicinity of the station. Exemption Category B.
4. Franconia-Springfield Area – This approved small area plan includes the Springfield Community Business Center (CBC) and the Franconia-Springfield Metrorail station and allows additional density within the vicinity of the station. Exemption Category B.
5. Dulles Suburban Center – This approved small area plan includes the southern portion of the Innovation Center Metrorail station and allows additional density in the vicinity of the station. Exemption Category B.
6. Innovation Center Transit Station Area (TSA) - This approved small area plan includes the northern portion of the Innovation Center Metrorail station and allows additional density within the vicinity of the station. Exemption Category B.
7. Huntington TSA – This approved small area plan includes the Huntington Metrorail station and allows additional density within the vicinity of the station. Exemption Category B.
8. Vienna TSA – This approved small area plan includes the Vienna Metrorail station and the plan allows additional density within the vicinity of the station. Exemption Category B.
9. Van Dorn TSA – This approved small area plan includes the Van Dorn Metrorail station and the plan allows additional density within the vicinity of the station. Exemption Category B.
10. West Falls Church TSA – This approved small area plan includes the West Falls Church Metrorail station and allows additional density within the vicinity of the station. Exemption Category B.

11. Fairfax Center Area – This approved small area plan includes a planned Metrorail station adjacent to Fair Oaks Mall and the Fairfax County Government Center and allows additional density within the vicinity of the planned future station. Exemption Category B.
12. Annandale Community Business Center (CBC) – Annandale CBC, a designated revitalization area, is covered by an approved small area plan that encompasses mass transit, includes mixed use development, and allows density at 3.0 FAR and above in a portion of the area. Exemption Category A.
13. Baileys CBC – Baileys CBC, a designated revitalization area, is covered by an approved small area plan that encompasses mass transit, includes mixed use development, and allows a density at 3.0 FAR and above in a portion of the area. Exemption Category A.
14. Seven Corners CBC – Seven Corners CBC, a designated revitalization area, is covered by an approved small area plan that encompasses mass transit, includes mixed use development, and allows a density at 3.0 FAR and above in a portion of the area. Exemption Category A.
15. Richmond Highway Corridor Area – The Richmond Highway Corridor is a designated revitalization area that is covered by an approved small area plan that includes the North Gateway, Penn Daw, Beacon/Groveton, Hybla Valley/Gum Springs, South County Center, and Woodlawn CBCs and the designated portion of Suburban Neighborhoods between these CBCs. The plan encompasses mass transit, includes mixed use development, and allows a density at 3.0 FAR and above in a portion of the area. Exemption Category A.

#### Not Exempt Mixed Use Areas

The following mixed use areas are not exempt from the provisions of the proffer legislation because they currently do not fall within one of the exemption categories provided in the legislation.

1. Centreville Suburban Center
2. Flint Hill Suburban Center
3. Lorton-South Route 1 Suburban Center
4. McLean CBC
5. Kingstowne CBC

The attached map shows the locations of each of the exempt mixed use areas. Larger scale versions of this map will be provided upon request.

In response to the Board's March 15<sup>th</sup> request, staff is examining the new legislation and will provide additional information regarding the possible impacts on the development process in those parts of the county that are not exempt from the legislation. This information will be provided in advance of the next meeting of the Board's Development Process Committee which has not been scheduled as yet. Any questions regarding this memorandum should be

directed to me or Marianne Gardner, Director of the Planning Division. We can both be reached at 703-324-1380.

Cc: Fairfax County Planning Commission  
Edward L. Long, County Executive  
Robert A. Stalzer, Deputy County Executive  
Tom Biesiadny, Director, Department of Transportation  
Barbara Byron, Director, Office of Community Revitalization  
James Patteson, Director, Department of Public Works and Environmental Services  
Kirk Kincannon, Director, Fairfax County Park Authority  
Thomas Fleetwood, Director, Department of Housing and Community Development  
Marianne Gardner, Director, Planning Division, DPZ  
Barbara Berlin, Director, Zoning Evaluation Division, DPZ  
Leslie Johnson, Zoning Administrator, DPZ

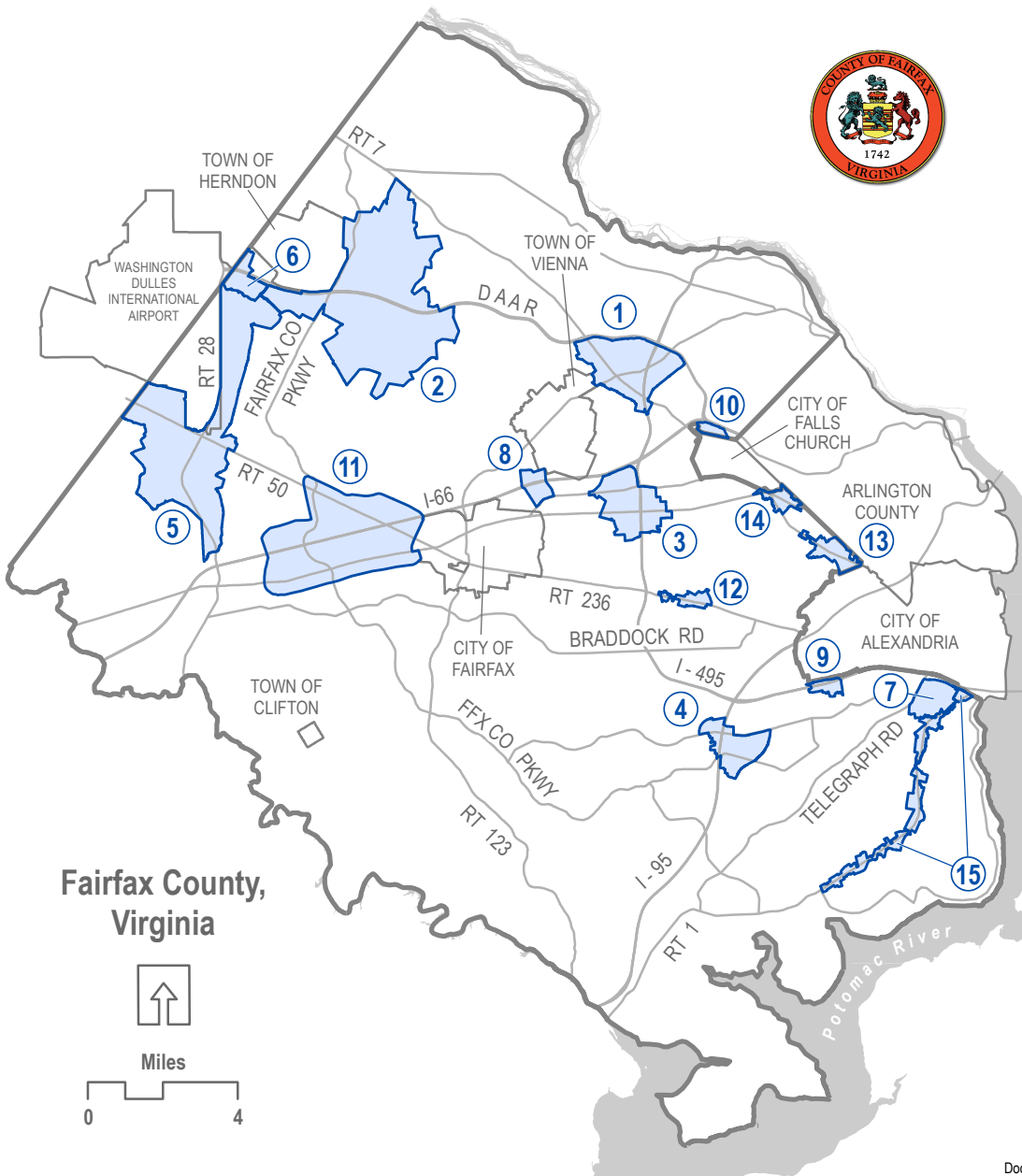


## Proffer Legislation Exempt Mixed Use Areas

- 1) Tysons Urban Center
- 2) Reston
- 3) Merrifield Suburban Center
- 4) Franconia-Springfield Area
- 5) Dulles Suburban Center
- 6) Innovation Center Transit Station Area
- 7) Huntington Transit Station Area
- 8) Vienna Transit Station Area
- 9) Van Dorn Transit Station Area
- 10) West Falls Church Transit Station Area
- 11) Fairfax Center Area
- 12) Annandale Community Business Center
- 13) Baileys Crossroads Community Business Center
- 14) Seven Corners Community Business Center
- 15) Richmond Highway Corridor Area

Comprised of:

North Gateway Community Business Center  
Penn Daw Community Business Center  
Beacon/Groveton Community Business Center  
Hybla Valley/Gum Springs Community Business Center  
South County Center Community Business Center  
Woodlawn Community Business Center  
and adjacent Suburban Neighborhoods



Map prepared by the  
Fairfax County Department of Planning & Zoning  
March 23, 2016